

## AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT OF PURCHASE AND SALE ("**Agreement**") is entered into by the United States Postal Service ("**USPS**") and the City of Noblesville, Indiana, a Municipal Corporation ("**Buyer**") effective as of the date indicated below the USPS signature on the execution page of this Agreement (the "**Effective Date**").

In consideration of the mutual agreements set forth below, USPS and Buyer agree as follows:

### 1. KEY DEFINED TERMS.

The terms below have the meanings ascribed to them:

**Closing Date:** if USPS notifies Buyer under Section 2.5 that Management approves the sale, then the "Closing Date" will be the date that USPS specifies for closing in its notice.

**Day or day:** means a calendar day; **business day** will mean those days of the week that are not a Saturday, Sunday or federal holiday.

**Effective Date:** as defined in the opening paragraph.

**Notice Addresses:** For purposes of notices pursuant to Section 9.1, Notice Addresses are:

**Buyer:**

City of Noblesville  
Attention: Monica Neff  
8415 E. 56<sup>th</sup> Street, Suite A  
Indianapolis, IN 46216

**With a Copy To:**

Attention:  
[Address]

**USPS:**

USPS HQ  
Attention: Charles Curry  
475 L'Enfant Plaza, SW, Room 6670  
Washington, DC 20260-1862

**With a Copy To:**

U.S. Postal Service  
475 L'Enfant Plaza SW  
Room 6425  
Washington, D.C. 20260-1127  
Attention: Michael J. Mintz

**Property:** that certain parcel of vacant land, which is a portion of real property known as 1900 Pleasant Street, Noblesville, IN 46060 and more particularly described on Exhibit A. By notice to Buyer, USPS may modify Exhibit A to conform to Buyer's survey and title commitment.

**Purchase Price:** USD\$19,050 payable in immediately available funds by check.

**Quitclaim Deed:** the form of deed attached as Exhibit B.

**Surviving Rights:** USPS and Buyer rights and obligations under:

Section 4.2 (Studies and Reports/Nondisclosure)

Section 6.4 (Brokerage)

Section 6.5 (Payment of Escrow Fees and Costs)

Section 7 (Default and Remedies)

Section 8 (Indemnification, Release, Assumption)

TCES: the Temporary Construction Easements attached as Exhibit C.

USPS Representative: Joseph Lowe. Joseph.D.Lowe@usps.gov

**2. AGREEMENT TO PURCHASE AND TO SELL**

- 2.1. When Agreement Effective; Purchase and Sale. Submission of the form of this Agreement to Buyer will not constitute an offer or option. This Agreement will become effective and the parties bound as of the Effective Date. Buyer will purchase the Property from USPS, and USPS will sell the Property to Buyer, for the Purchase Price on the terms and conditions contained in this Agreement.
- 2.2. Additional Consideration. If within 12 months of the Closing Buyer both changes the zoning for the Property and sells, leases or otherwise transfers the Property, then immediately thereafter, Buyer will pay USPS 60% of the excess, if any, of (i) the gross sale price and/or other consideration received by Buyer for such transaction over (ii) the Purchase Price.
- 2.3. Exclusions from Sale - General. Sale of the Property excludes, and USPS reserves exclusively to itself, all rights, interests, and assets not expressly and specifically included in the term "Property" defined above. Without limiting the foregoing, "Property" excludes all intangibles, including (i) murals and artwork, and (ii) all rights to the use of USPS Marks (defined below), logos, images, insignia, and other intangibles and intellectual property of the USPS.
- 2.4. Exclusions from Sale – USPS Marks.
- 2.4.1. Definitions. "USPS Marks" refers to all trademarks, service marks, trade names, brands, and domain names, containing the terms "POST OFFICE," "UNITED STATES POSTAL SERVICE," "U.S. POSTAL SERVICE," "POSTAL SERVICE," and "USPS" in any form or format, with or without any accompanying design or additional terms, and regardless of spacing.
- 2.4.2. Use of USPS Marks By Buyer Prohibited. This sale excludes the name "POST OFFICE" and all USPS Marks. Buyer will not use or purport to license others to use the USPS Marks or any confusingly similar mark in any format or form, whether in connection with any goods or services, in advertising, marketing and promotional materials (including by way of example and not limitation, websites, domain names, advertisements, and signage), or otherwise. Buyer will not use the USPS Marks in any corporate name, company name, or fictional firm name. Without limiting the above, Buyer will not use "POST OFFICE," "OLD POST OFFICE" or similar designations as the name of the Property or any building or any businesses relating to or that are located on the Property. Buyer represents and warrants that it does not possess or control any rights to any domain names, social media usernames or any other transferable username, login or registration containing any USPS Marks or any confusingly similar mark.
- 2.4.3. Ownership; Agreement Not to Challenge Rights. Buyer acknowledges and will not contest Seller's exclusive ownership and control of the USPS Marks worldwide, the validity of the USPS Marks, the goodwill associated therewith in the minds of the public, and the validity of all pending applications and registrations therefor. Buyer will take no action that would or may adversely affect the USPS Marks, including by way of example and not limitation, filing any trademark application worldwide containing any USPS Marks, in whole or in part.
- 2.5. USPS Contingency. USPS's obligation to sell the Property is subject to USPS management approval of the sale and is conditioned upon completion to USPS's satisfaction of all

applicable legal requirements and policies for compliance with certain laws and regulations, including:

- (i) Section 106 of the National Historic Preservation Act, 16 U.S.C. 470, 36 CFR Part 800, Executive Order 12072, and Executive Order 13006;
- (ii) 39 CFR 778 [IGN];
- (iii) 39 U.S.C. 409 [PAEA], and
- (iv) the National Environmental Policy Act [NEPA].

If USPS management approves the sale, then it will notify Buyer of such approval and specify a closing date (the "**Closing Date**"). If USPS notifies Buyer that management does not approve the sale or does not notify Buyer within 180 days after the Effective Date that it has approved the sale, then upon either event USPS's obligation to sell the Property will terminate.

### **3. STATUS OF TITLE**

3.1. Condition of Title. USPS will not voluntarily place any encumbrances against title to the Property after the Effective Date. At Closing, USPS will convey, and Buyer will accept, title to the Property by quitclaim deed, subject only to the following:

3.1.1. All restrictions, covenants, easements, encumbrances, liens of any kind, leases, and interests of others, including rights-of-way for roads, pipelines, railroads, and public utilities, whether or not matters of public record;

3.1.2. Applicable laws, ordinances, statutes, order and regulations to which the Property is subject, including all building and zoning laws, ordinances and regulations, and all environmental laws ordinances or regulations;

3.1.3. Liens for taxes and liens for special assessments that exist as of the Closing Date but that are not payable by USPS;

3.1.4. All matters of public record as of the Effective Date, any matter that would be disclosed by a survey of the Property, all matters or circumstances that a physical inspection of the Property might disclose, and any matter that appears on title or survey information Buyer obtains;

3.1.5. If the Property, in whole or in part, contains wetlands or is located in a 100-year floodplain, the instrument of conveyance will reference the same and state that the Property may be restricted in use pursuant to federal, state, or local wetland and/or floodplain regulations.

### **4. PROPERTY CONDITION**

4.1. AS-IS WHERE-IS CONDITION. THE PROPERTY IS SOLD STRICTLY IN ITS AS-IS, WHERE-IS CONDITION AS OF THE CLOSING DATE, SUBJECT TO SECTION 4.4 (DESTRUCTION OF PROPERTY), INCLUDING REASONABLE WEAR AND TEAR THEREAFTER, WITH ALL FAULTS, INCLUDING DEFECTS SEEN AND UNSEEN AND ALL CONDITIONS NATURAL AND ARTIFICIAL, WITHOUT RIGHT OF SET-OFF OR REDUCTION IN THE PURCHASE PRICE AND WITHOUT REPRESENTATION OF ANY KIND, EXPRESS OR IMPLIED. BUYER ACCEPTS ALL RESPONSIBILITY TO INSPECT THE REAL AND PERSONAL PROPERTY FOR PATENT AND LATENT DEFECTS AND, IN ENTERING INTO THIS AGREEMENT, BUYER HAS NOT BEEN INDUCED BY, AND HAS NOT RELIED

UPON, ANY REPRESENTATIONS, WARRANTIES, OR STATEMENTS, WHETHER EXPRESS OR IMPLIED MADE BY USPS OR ANY AGENT, EMPLOYEE OR OTHER REPRESENTATIVE OF USPS THAT ARE NOT EXPRESSLY SET FORTH HEREIN. INSTEAD, BUYER'S DECISION TO BUY THE PROPERTY IS BASED SOLELY UPON BUYER'S OWN EXAMINATION, INSPECTION AND ANALYSIS OF THE PROPERTY. USPS WILL HAVE NO LIABILITY TO BUYER FOR THE CONDITION OF THE PROPERTY. IN NO EVENT WILL THE PURCHASE PRICE BE REDUCED OR THE SALE RESCINDED IF THE PROPERTY FAILS TO CORRESPOND TO BUYER'S EXPECTATIONS, OR IF ACTUAL COSTS FOR BUYER'S USE OF THE PROPERTY EXCEED PROJECTED COSTS.

- 4.2. Studies and Reports/Nondisclosure. Buyer will cause all environmental and other reports, studies, and analyses (collectively "**Reports**"), obtained or prepared by or for Buyer relating to the Property to be conspicuously labeled "DRAFT" and Buyer will promptly deliver copies to USPS. Buyer will not disclose any Reports to any person or entity whatsoever, except pursuant to applicable statutory or regulatory requirements or with USPS's written consent, provided that Buyer may furnish a copy of the Reports, subject to this nondisclosure provision, to Buyer's potential mortgagees or investors, or to any consultants who prepare or review any of the Reports. Buyer will notify USPS of the identity of recipients of the Reports. If the sale under this Agreement does not close for any reason, including a termination in accordance with this Agreement, then all copies of the Reports will become the property of USPS exclusively and Buyer will deliver, or cause to be delivered, to USPS all copies of all Reports in the possession of Buyer and other recipients of the Reports within 30 days after USPS requests such copies. Buyer will cooperate with USPS and assist USPS in obtaining such Reports following any termination of this Agreement.
- 4.3. Buyer's Failure to Deliver Phase I; USPS Termination. If Buyer obtains a Phase I for the Property but fails to deliver a copy of Buyer's Phase I to USPS at least 15 business days prior to the Closing Date, or if USPS in its sole discretion is not satisfied with the conditions disclosed by the Reports, then USPS may terminate its obligations to sell the Property by giving Buyer notice of termination prior to the Closing Date.
- 4.4. Destruction of Property. In the event of destruction of the Property, or damage to the Property exceeding normal wear and tear, prior to Closing, then by notice to Buyer, USPS may terminate its obligation to sell the Property or may postpone the Closing Date by 60 days (the "**Closing Extension**"). If USPS so terminates, then neither party will have any further obligations or rights under this Agreement, except the Surviving Rights. If USPS postpones the Closing Date, then by notice to Buyer on or before the 45<sup>th</sup> day of the Closing Extension, USPS may elect to restore the Property to its condition prior to the damage or destruction, or to such lesser condition acceptable to Buyer. If USPS fails to timely give such notice or affirmatively elects not to restore the Property, then by notice to USPS prior to the 50<sup>th</sup> day of the Closing Extension, Buyer may terminate its obligation to purchase by notice to USPS and upon such termination, neither party will have any further obligations or rights under this Agreement, except the Surviving Rights. If USPS elects to restore the Property, or if Buyer fails to terminate despite USPS not electing to restore, then the Agreement will continue in full force and effect with no reduction in the Purchase Price, except the Closing Date will be extended to allow for any restoration by USPS, if USPS so elects.

## **5. REPRESENTATIONS AND DISCLAIMER OF WARRANTIES.**

- 5.1. USPS Representations. The USPS representations set forth below are made only to the current, actual knowledge of the USPS Representative, without conducting any investigations,

except a review of Property files in his direct possession. Buyer may make a claim based on or arising out of any alleged inaccurate or false USPS representation only if Buyer asserts any such claim with specificity in a notice to USPS delivered within twelve months after the Closing Date. Buyer waives all other claims based on or arising out of any alleged inaccurate or false USPS representation. Subject to the foregoing, as of the Effective Date, USPS represents to Buyer that:

5.1.1. USPS has not given any person or entity an option, right of first refusal, or other right to purchase the Property that remains in full force and effect.

5.1.2. There is no litigation concerning the Property that would have a material adverse effect upon the Property or Buyer's ownership thereof.

5.2. Buyer's Representations. Buyer hereby represents to USPS that:

5.2.1. Buyer and the individuals signing this Agreement on behalf of Buyer have the full legal power, authority and right to execute and deliver, and to perform their legal obligations under, this Agreement.

5.2.2. Buyer's performance hereunder and the transactions contemplated hereby have been duly authorized by all requisite action on the part of Buyer and no remaining action is required to make this Agreement binding on Buyer.

5.2.3. By entering into this Agreement, performing its obligations under this Agreement, and purchasing the Property, Buyer will not be in default of any contract to which it is a party.

5.3. No Warranties. No representation, warranty, agreement, or promise that is not expressly set forth in this Agreement will be binding on USPS. In furtherance of the foregoing, USPS expressly disclaims warranties and representations, express or implied, as to the Property's development potential or zoning, the quality of the labor and/or materials included in any of the improvements, the nature, size, or quality of the Property or fitness for any particular purpose, the accuracy of any plats or plans, the Property's compliance with applicable laws, regulations, or codes, or the presence or suspected presence of underground storage tanks, piping, or hazardous wastes, asbestos-containing materials or lead-based paint. USPS is not responsible for the acts and/or omissions of predecessors in title, or management of the Property. BUYER WILL RELY SOLELY ON ITS OWN INVESTIGATIONS OF THE PROPERTY, INCLUDING TITLE AND THE PHYSICAL CONDITION OF THE PROPERTY, AND BUYER WILL NOT RELY ON ANY STATEMENT OR INFORMATION MADE OR GIVEN, DIRECTLY OR INDIRECTLY, ORALLY OR IN WRITING, EXPRESS OR IMPLIED, BY USPS OR ITS AGENTS AS TO THE CONDITION OF THE PROPERTY.

5.4. Buyer's Waiver of Claims. USPS will not be liable to Buyer or its successors or assigns for any errors, omissions, or construction defects for work performed by contractors and consultants in connection with the Property.

## 6. CLOSING

6.1. Closing and Delivery of Funds. USPS and Buyer will consummate the purchase and sale of the Property (the "Closing") as follows:

6.1.1. Delivery of Purchase Price and TCES Consideration. Not later than the Closing Date, Buyer will wire the Purchase Price and the total consideration required by the TCES ("TCES Consideration") to USPS according to the wire Instructions attached as Exhibit D.

**6.1.2. Delivery of Deed and TCES.** If Buyer delivers the Purchase Price and TCES Consideration as required by Section 6.1.1, then USPS will deliver USPS executed originals of the Quitclaim Deed and the TCES to Buyer. As of the Closing Date, Buyer will secure its own insurance, and assume all other responsibilities of ownership, including responsibility for taxes and assessments, and for personal injury, property damage, and any loss or damage of any type that relate to the Property. Whether or not Buyer performs as stated in the immediately preceding sentence, USPS will have no liabilities of ownership, including responsibility for taxes or assessments, or for personal injury, property damage, or any loss or damage of any type relating to the Property following Closing, nor will USPS be required to notify any utilities or local or state governmental agencies or authorities of the transfer of ownership of the Property to Buyer.

- 6.2. **USPS Performance.** USPS's performance under Section 6.1.2 will constitute USPS's full performance of all of USPS's obligations under this Agreement. Buyer, at its cost, will timely comply with all applicable laws, regulations and ordinances applicable to purchasing a portion of an existing property, including, as applicable, recording the deed, subdividing the Property from the existing parcel, complying with zoning requirements, and creating a separate tax parcel. Promptly after completing each compliance requirement, Buyer will deliver evidence of such compliance to USPS.
- 6.3. **Prorations.** [Intentionally Deleted]
- 6.4. **Brokerage.** Buyer represents that it has not engaged any broker. Buyer will indemnify USPS from and against all Claims for or in connection with any brokerage commission, fee or other compensation due or alleged to be due because of Buyer's actions or inactions in connection with the transaction contemplated by this Agreement.
- 6.5. **Payment of Closing Fees and Costs.** Each of Buyer and USPS will pay the fees and costs of their respective legal counsel and consultants. Buyer will pay all other costs related to this transaction, including title insurance, surveys, reports, due diligence, insurance of any kind, taxes, recording fees and stamps, and environmental assessments, and no such costs will be credited towards the Purchase Price.
- 6.6. **Possession.** Effective with the Closing, USPS will be deemed to have delivered possession of the Property to Buyer.

## **7. DEFAULT AND REMEDIES.**

- 7.1. **Default by Buyer.** Buyer will be in "default" if (i) the Closing does not occur on the Closing Date because of any Buyer act or omission, (ii) Buyer fails to comply with or perform any other obligation under this Agreement and Buyer fails to cure such failure within 10 days after notice from USPS, or (iv) any Buyer representation is untrue when made or as of the Closing Date and Buyer fails to cure such false representation within 10 days after notice from USPS. If Buyer defaults, USPS may terminate its obligation to sell the Property, and additionally, pursue any and all other available remedies.
- 7.2. **Default by USPS.** USPS will be in "default" if (i) USPS wrongfully refuses to convey the Property to Buyer at Closing for any reason other than a Buyer default, and such failure continues for three business days, or (ii) USPS fails to comply with or perform any other obligation under this Agreement and fails to cure such failure within 10 days after notice from Buyer. In the event of a USPS default, Buyer's sole remedy will be to terminate its obligation to purchase the Property by notice to USPS and receive liquidated and agreed upon damages in the

amount of \$100. Under no circumstances will Buyer be entitled to specific performance of this Agreement, or to special, punitive or consequential damages, including anticipated profits. Buyer and USPS understand the impracticality and difficulty of fixing Buyer's actual damages in the event of such default, and the parties therefore agree that the \$100 represents a reasonable estimate of the actual damages that Buyer would incur.

- 7.3. Remedies Not a Limitation on Indemnity Obligations. Nothing in this Section 7 will limit any obligations or indemnities of the parties contained elsewhere in this Agreement.

## **8. INDEMNIFICATION, RELEASE, ASSUMPTION**

- 8.1. Defined Terms. The following terms have the meanings ascribed to them below:

**"Claims"** means claims, liens, costs (including reasonable attorneys' fees, court costs, allocated in-house attorney costs and costs paid in settlement of any claims), liabilities (including liability under Environmental Laws), damages, losses and causes of action of whatever kind or nature, known or unknown, suspected or unsuspected, actual or potential, existing now or in the future.

**"Environmental Laws"** means all applicable federal, state or local statutes, laws, ordinances, rules or regulations, relating to protection of human health or the environment, including (i) all laws relating to the release of Hazardous Materials into the air, surface water, groundwater or land, or relating to the manufacture, processing, distribution, use treatment, storage, disposal, transport or handling of Hazardous Materials; (ii) all laws pertaining to the protection of the health and safety of employees; and (iii) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §9601, et seq.; the Hazardous Materials Transportation Act as amended 49 U.S.C. §1801, et seq.; the Resource Conservation and Recovery Act, as amended 42 U.S.C. §6901, et seq.; and the Federal Water Pollution Control Act, as amended, 33 U.S.C. §1251 et seq.

**"Hazardous Materials"** means (i) any toxic substance or hazardous waste, substance or related material, or any pollutant or contaminant that is or may hereafter be defined as or included in the definition of "hazardous substances," "toxic substances," "hazardous materials," "hazardous waste" or words of similar import under any and all Environmental Laws; (ii) petroleum, radon gas, asbestos in any form that is or could become friable, urea formaldehyde foam insulation, transformers or other equipment that contain dielectric fluid containing levels of polychlorinated biphenyls in excess of federal, state or local safety guidelines, whichever are more stringent; and (iii) any substance, gas material or chemical that is or may hereafter be defined as or included in the definition of "hazardous substances," "toxic substances," "hazardous materials," "hazardous waste" or words of similar import under any Environmental Laws.

- 8.2. General Indemnification and Release. Buyer will indemnify USPS against all Claims arising out of, or in any way connected, directly or indirectly, with Buyer's, its employees', agents', or contractors' performance or nonperformance under this Agreement or Buyer's entry on and examination of the Property. Buyer waives all Claims against USPS in connection with the existence or release of any Hazardous Materials.
- 8.3. Indemnification and Release – Hazardous Materials. From and after the Closing, Buyer and its successors, assigns and transferees, will indemnify, release and forever discharge USPS and its successors and assigns, from and against all Claims arising out of or relating in any way to the Property and improvements, including any Hazardous Materials on, under or around the

Property. Buyer has carefully reviewed this provision and discussed its significance with legal counsel or has knowingly and intentionally declined to do so. Buyer acknowledges that this provision is a material inducement to USPS to enter into this Agreement. The obligations under this Section 8.3 will inure to the benefit of and be binding upon the successors, assigns and transferees of Buyer and USPS. Nothing stated herein is intended to limit the general indemnification and release set forth in Section 8.2 hereof.

- 8.4. Assumption of Liability. Commencing upon the Closing Date, Buyer will be solely responsible at its sole expense for, and assumes all liabilities and risk associated with, the Property and improvements thereon, including all Hazardous Materials existing on, around, under or about the Property or originating or migrating therefrom.

## 9. MISCELLANEOUS

- 9.1. Notices. All notices under this Agreement will be in writing, will be effective when received or refused, and will be delivered by USPS Priority Mail Express with confirmation of receipt, to the respective parties at their notice addresses set forth in Section 1 (or such substitute address as a party may specify by notice to the other party).
- 9.2. Assignment. Buyer will not assign this Agreement without USPS's prior written consent, which USPS may withhold in its sole discretion. If USPS gives such consent, then as a condition to USPS's obligation to sell, Buyer must deliver to USPS the assignee's written assumption of all Buyer obligations under or in connection with this Agreement. No assignment, whether with or without USPS consent, will release Buyer from any obligations or liabilities. Any purported assignment by Buyer without USPS' prior written consent will be void, and at USPS's election, will constitute a Buyer default for which USPS may terminate its obligation to sell.
- 9.3. Survival of Agreement. Any purported termination of Buyer's obligations will be void unless exercised strictly in accordance with the requirements in this Agreement. Except to the extent expressly otherwise provided in this Agreement, the terms, conditions, obligations, indemnifications, representations, and warranties contained in this Agreement will survive the Closing, and will be binding upon and will inure to the benefit of the successors and permitted assigns of the parties.
- 9.4. No Recordation. Neither this Agreement nor any document relating to the subject matter hereof will be recorded without USPS prior written approval.
- 9.5. Governing Law. This Agreement will be governed and interpreted in accordance with federal law.
- 9.6. Construction. Each party has reviewed this Agreement and the rule of construction that provides for ambiguities to be resolved against the drafting party will not apply to the Interpretation of this Agreement. This Agreement will be construed neither for nor against USPS or Buyer, but will be given a reasonable interpretation in accordance with the plain meaning of its terms. "Including" will mean "including, without limitation." Section headings are for convenience only and will not affect interpretation of this Agreement. "Herein," "hereof," "hereunder" and like words will mean "in this Agreement."
- 9.7. Time is of the Essence. With respect to all of Buyer's obligations under this Agreement, time is of the essence. However, if the date for performance of any obligation or the deadline for exercising a right, giving notice, or satisfying a condition, falls on a day that is not a business day, then the date for such performance will be extended to the next business day.



- 9.8. Waiver. No waiver by any party hereto of any default hereunder will be deemed a waiver of any other or subsequent default.
- 9.9. Severability. If any court determines that any one or more of the provisions of this Agreement are unenforceable, then the remaining provisions will remain in full force and effect.
- 9.10. Counterparts; Electronic Delivery. This Agreement may be executed in any number of counterparts each of which, when so executed and delivered, will be deemed an original, but such counterparts together will constitute but one agreement. This Agreement and any amendments may be delivered electronically with the same legal effect as if delivered in paper form by hand.
- 9.11. Further Assurances. Following the Closing Date, and for no further consideration, USPS and Buyer will perform such acts and execute, acknowledge and deliver such additional documents as reasonably requested by the other party to: (i) vest Buyer with all of USPS's right, title, and interest in the Property; (ii) carry out the transactions contemplated by this Agreement; and (iii) protect each party's rights under this Agreement.
- 9.12. Exhibits. The following Exhibits are attached hereto and made a part of this Agreement:
- Exhibit A - Description of Property
  - Exhibit B – Form of Quitclaim Deed
  - Exhibit C – TCES
  - Exhibit D – Wire Instructions
- 9.13. Entire Agreement. This Agreement including the Exhibits: (i) integrates all terms and conditions of the parties agreement with respect to the purchase and sale of the Property, (ii) supersedes all oral negotiations and prior writings with respect to the subject matter hereof, and (iii) is intended by the parties to be the complete and exclusive statement of the terms agreed to by the parties. This Agreement may be amended only by a written document that expressly refers to this Agreement and that is signed by and delivered to both parties.

[Signature Page attached]

IN WITNESS WHEREOF, the parties hereby execute this Agreement.

**BUYER:**

CITY OF NOBLESVILLE, INDIANA

By: 

Printed

Name: JOHN DITSCHEAR

Title: MAYOR

**USPS:**

UNITED STATES POSTAL SERVICE

By: 

Printed

Name: Joseph D. Lowe

Title: Contracting Officer

Date: 4/27/2018

## EXHIBIT "C"

### TEMPORARY CONSTRUCTION EASEMENT

The TEMPORARY CONSTRUCTION EASEMENT, (the "TCE") granted this 30<sup>th</sup> day of April, 2018, by the United States Postal Service ("USPS"), an independent establishment of the executive branch of the Government of the United States, 475 L'Enfant Plaza, SW, Room 6670, Washington, DC 20260-1862 (the "Grantor"), to the City of Noblesville, a municipal corporation located at 16 S. 10<sup>th</sup> Street, Noblesville, IN 46060, (the "Grantee"). The designation Grantor and Grantee as used herein shall include said parties, their heirs, successors and assigns, and shall include the singular, plural, masculine, feminine or neuter as required by context.

### RECITALS

A. Grantor is the owner of a tract of land and improvements in County of Hamilton located at 1900 Pleasant Street, Noblesville, IN 46060, (the "Grantor's Parcel"), and legally described in Exhibit A, attached hereto and incorporated herein, at which Grantor operates the Noblesville IN Main Post Office.

B. Grantee has determined that a temporary construction easement over three portions of Grantor's Parcel, (individually, "Parcel 3A"; "Parcel 3B"; "Parcel 3C"; collectively, the three "TCE Areas"), shown and described in Exhibit B, attached hereto and incorporated herein, is reasonably necessary for drive construction as part of construction activities related to 19<sup>th</sup> and Pleasant Street Roundabout construction project hereinafter called the "Project", which Project is described in final design and construction plans dated June 30, 2017, under Hamilton County, Indiana, Project 1401713, ("Final Plans"), which are on file with the Hamilton County, and are incorporated herein by reference.

C. Grantor and Grantee set forth below their respective rights and obligations for the TCE on Grantor's Parcel.

NOW, THEREFORE, for and in consideration of the mutual promises set forth herein and the sum of one thousand, eight hundred, fifty dollars, (\$1,850.00), represents the value of temporarily encumbering the TCE Areas, and other good and valuable consideration, received in hand and acknowledged by the Grantor prior to the start of the term of the TCEs, the Grantor and Grantee covenant and agree as follows:

### AGREEMENTS

1. Grantor hereby grants, declares, establishes and creates for the benefit of Grantee a temporary, non-exclusive easement over, under, along, across, and upon the three TCE Areas, for the purpose of constructing a traffic roundabout and temporary driveway as shown in Exhibit B, attached hereto and incorporated herein. The following are the temporary construction easements indicated in Exhibit B:

Parcel 3A- This temporary construction easement area is located along the 19<sup>th</sup> Street frontage at the main drive entrance and required for the drive construction.

Parcel 3B- This temporary construction easement area is located along the west part of the Pleasant Street frontage and for installation of a temporary access drive way that will allow access to the customer entrance while 19<sup>th</sup> Street is closed. Closure of 19<sup>th</sup> Street is planned for 3 weeks.

Parcel 3C- This temporary construction easement area is be located along the east part of the USPS frontage at the facility easternmost driveway entrance.

Maintenance of Traffic Plan: Continuous access to the post office is being provided during the construction. Construction of the roundabout is being broken into 4 phases. The phases are described below, and a plan sheet for each phase is included in the enclosed plans at Exhibit C, specifically Sheets 14, 15, 16, and 17 therein.

- Phase 1A: Traffic will be shifted to the north side of the existing pavement along Pleasant Street, in order to construct the south side of the roundabout along Pleasant Street. 19th Street will remain open. All drives at the Grantor's Parcel shall remain as shown at Sheet 14.
- Phase 1B: Traffic will be split so that the westbound lanes remain on the north edge, while the eastbound lanes shift south to the new pavement on the south side of Pleasant Street. All drives at the Grantor's Parcel shall remain as shown at Sheet 15.
- Phase 1C: Traffic along Pleasant Street is shifted south, so that the north part of Pleasant Street and 19th Street can be constructed. Complete closure of 19th Street is proposed, in order to reduce the length of impact to 19th Street. Prior to closing 19th Street, a temporary drive will be constructed along Pleasant Street, approximately 150' east of 19th Street. This temporary drive will allow Grantor's customers' access to the Noblesville IN Main Post Office while the southern drive along 19th Street is reconstructed. The Noblesville IN Main Post Office's drives along Pleasant Street will be reconstructed during this phase. The drives will be reconstructed in phases, so that access is maintained at all times. See Sheet 16.
- Phase 1D: Traffic will be on the new roundabout, while the interior splitter island construction is completed. All driveways at the Noblesville IN Main Post Office shall have been constructed and shall be fully open. See Sheet 17.

2. Term. This TCE shall commence on May 1, 2018, provided that it has been fully executed and that Grantee has paid Grantor the consideration referenced above. This TCE shall expire upon the Grantee's completion of the Project or by June 1, 2019 whichever shall first occur. Upon the expiration or termination of the TCE, all of the rights and benefits of Grantee in this TCE shall automatically cease and be of no further force or effect.

3. All work performed by Grantee or its contractors hereunder shall be coordinated with the postmaster or installation head and performed in full compliance with all applicable local, state and federal statutes, rules, regulations, orders, codes, directives, and ordinances, and any binding judicial or administrative interpretations thereof or requirements thereunder. In addition, Grantee shall obtain all necessary local, state and federal permits, licenses and approvals necessary for the performance of such work.

4. Prior to the expiration or termination of the TCE, Grantee shall restore the TCE Areas to substantially the same condition it was in prior to Grantee's entry, including but not limited to repaving driveway; replacement of asphalt removed or destroyed for grading purposes; and replacement of fences, or other structures removed or damaged by Grantee in the course of performance of the work.

5. During the term of the TCE, Grantee shall be responsible for maintenance and repair of the TCE Areas, which includes but is not limited to snow and ice removal, landscaping, grading, paving and removal of all trash and debris caused by Grantee's exercise of its rights under the TCE. In addition, Grantee shall be responsible for Grantee's equipment and facilities, and any and all costs related thereto. In the event the Grantee fails in its responsibility to maintain and repair the TCE Areas as set forth above, upon reasonable notice and opportunity to cure, Grantor shall have the right to perform such maintenance and/or repair, and shall further have the right to recover its costs from the Grantee.

6. Insurance. Grantee and/or any consultant, contractor or subcontractor entering the TCE Areas on its behalf, shall be required to maintain and keep in effect insurance, with USPS named as additionally insured, against claims for personal injury, (including death), and property damage, under a policy of comprehensive general public liability insurance, with such limits, (through basic coverage plus umbrella coverage), as may be reasonably requested by the Grantor from time to time, but not less than \$1,000,000 in coverage for bodily injury, (including death), and property damage, which amounts shall be adjusted upon reasonable request of Grantor from time to time to amounts which are normal and customary for similar operations. Such policies of insurance shall name USPS as an additional insured. The policy shall provide that it shall not be cancelable nor may it expire without at least thirty (30) days' prior written notice to the Grantor.

Prior to the commencement of the construction under the TCE, there shall be delivered to the Grantor a certificate of the insurance carrier certifying that the policy so delivered has been issued and is in effect and the duration thereof. At least thirty (30) days before any policy shall expire (10 days for non-payment of premium), Grantee shall deliver to the Grantor a replacement certificate, and at least twenty (20) days prior to the date that the premium on any policy shall become due and payable, the Grantor shall be furnished with satisfactory evidence of its payment.

7. Grantee, by acceptance of the TCE, agrees for and on behalf of itself and all persons who may at any time use, occupy, visit or maintain said TCE herein granted to the Grantee, that the Grantor, shall not be responsible for damages, loss to property, injuries or death, which may arise from or be incident to the use or occupation of the TCE Areas.

8. The Grantee, by acceptance of the TCE, agrees to indemnify and hold harmless, the Grantor against any and all claims, demands, damages, costs, expenses, and legal fees, including the cost of defense, for any loss, injury, death or damage to persons or property, which, at any time, is suffered or sustained by the Grantor, its employees, the public, or by any person whosoever may be using, occupying, visiting, or maintaining the property that is the subject of this TCE, or may be on or about the property that is the subject of the TCE, when such loss, injury, death or damage is asserted to have been caused by any negligent act or omission, or intentional act or misconduct of the Grantee, its agents, servants, employees, invitees, or contractors, or by the breach of the Easements by the \_\_\_\_ or its agents, servants,

employees, invitees, or contractors. In case of any action or proceeding brought against the Grantor, by reason of such a claim, upon notice from the Grantor, Grantee shall cover the cost to defend such action or proceeding. The Grantor shall not be liable and the Grantee waives and releases the Grantor from all claims for damage to persons or property sustained by the Grantee, or the Grantee's employees, agents, servants, invitees, contractors and customers resulting by reason of occupying or visiting the property that is the subject of this TCE and/or pertaining to any equipment or appurtenances being used. All property belonging to the Grantee and any use of the TCE shall be at the risk of the Grantee, and the Grantor shall not be liable for damages to any such property or for theft or misappropriation thereof.

9. Grantor reserves the right to use the TCE Areas for any purpose not inconsistent with the rights herein granted. During the term of the TCE, Grantee agrees to provide the Grantor, its employees, contractors, customers, and the public with continual and uninterrupted access to the Noblesville Main Office. Further, Grantee agrees that Grantor's operations shall not be interrupted, disrupted or otherwise impeded as a result of Grantee's activities. In the event Grantor, its employees, customers, or the public are not provided with continual and uninterrupted access to the Noblesville Main Office, or in the event Grantor's operations are interrupted, disrupted or otherwise impeded, Grantee shall be in breach of this TCE. In the event of such a breach, Grantor shall notify the Grantee in writing of the precise nature of the breach; email notice to the Grantee is specifically allowed. Grantee shall remedy such breach within three (3) hours of its receipt of Grantor's written notice. In the event the Grantee fails to remedy such breach, the Grantor has the option of terminating this TCE by providing written notice to the Grantee that the TCE is terminated, in which event Grantee shall restore the TCE Areas to its previous condition at no cost to the Grantor.

10. Notice: Prior to performing any activity within the TCE Areas, Grantee shall provide Grantor with at least 48 hours prior notice before entering the TCE Areas. For purposes of notices set forth herein, addresses are:

Grantee: City of Noblesville  
Attention: Monica Neff  
8415 E. 56<sup>th</sup> Street, Suite A  
Indianapolis, IN 46216

USPS: USPS HQ  
Attention: Easement and Right of Way  
Specialist  
475 L'Enfant Plaza, SW, Room 6670  
Washington, DC 20260-1862

With a Copy To: Local Postmaster  
Attention: Clint Helmold  
1900 Pleasant Street  
Noblesville, IN 46060-9998

11. In the event Grantee fails for any reasonable period of time to exercise the rights and privileges herein granted, or in the event Grantee terminates the TCE, all such rights and privileges shall cease and the TCE herein granted shall revert to Grantor.

12. Any claim, controversy or dispute arising out of this TCE shall be governed by federal law.

13. This TCE is granted subject to any and all restrictions, covenants, other easements, encumbrances, liens of any kind, leases, and interests of others, including rights-of-way for roads, pipelines, railroads, and public utilities, whether or not matters of public record.

14. The Grantor does not warrant that the TCE Area is suitable for the purposes set forth herein and Grantee hereby waives any express or implied warranty on the part of Grantor. Grantor has no knowledge of subsurface conditions and makes no representations as to soil types, existence of underground utilities, or any other latent conditions that may impact Grantee's use and enjoyment of said TCE.

15. Grantee is not permitted to discharge storm water runoff within the TCE Areas or Grantor's Parcel generally. Such prohibition shall include, but not be limited to, discharging silt, hazardous materials or other environmental contaminants within the TCE Areas or Grantor's Parcel generally. Further, Grantee shall comply with all environmental laws when performing any activity within the TCE Areas or Grantor's Parcel generally. In the event that any hazardous materials or other environmental contaminants are discharged by the City of Noblesville, its employees, agents, contractors or invitees, the City of Noblesville, shall be solely responsible for the cost of any remediation or clean up required by applicable law or regulations and shall indemnify and hold the USPS, its successors, and assigns harmless against any and all claims, demands, damages, costs, expenses, and legal fees incurred by USPS in connection with or related to any such discharge, remediation or clean up.

16. Authorized Representative. Each individual signing on behalf of a party to the TCE states that he or she is the duly authorized representative of the signing party and that his or her signature on the TCE has been duly authorized by, and creates the binding and enforceable obligation of, the party on whose behalf the representative is signing.

[SIGNATURES AND NOTARY ACKNOWLEDGEMENTS ON FOLLOWING PAGES.]

IN WITNESS WHEREOF, the parties hereto have executed this Temporary Construction Easement of the day and year first above written.

**Grantor:**

United States Postal Service

By: Joseph Lowe

Its: Contracting Officer

North Carolina )

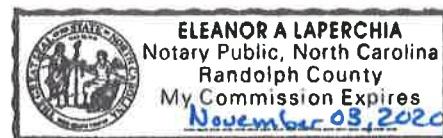
Guilford County )

On this 30<sup>th</sup> day of April, 2018, personally appeared before me  
Joseph D. Lowe, Contracting Officer who being by me duly sworn, did say that he/she represents the United States Postal Service, and acknowledged to me that, acting under a delegation of authority duly given and evidenced by law and presently in effect, he/she executed said instrument as the act and deed of the United States Postal Service for the purposes therein mentioned.

SEAL

Eleanor A Laperchia  
NOTARY PUBLIC

My commission expires: November 03, 2020





Grantee: City of Noblesville

Steve Cooke

By: Steve Cooke

Its: Deputy Mayor

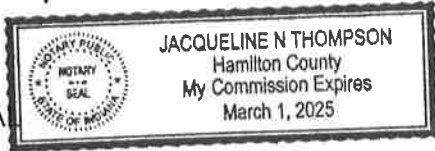
STATE OF Indiana

COUNTY OF Hamilton

)  
) ss  
)

On this 15<sup>th</sup> day of May, 2018, personally appeared before me  
Steve Cooke, who being by me duly sworn, did say that he/she represents,  
and acknowledged to me that, acting under a delegation of authority duly given and evidenced  
by law and presently in effect, he/she executed said instrument as the act and deed of  
City of Noblesville for the purposes therein mentioned.

SEA



Jacqueline N. Thompson  
NOTARY PUBLIC

My commission expires: March 1, 2025

## EXHIBIT "A"

Sheet 1 of 3

**Project: 1401713**

**Pleasant and 19th Street**

**Parcel: 3A Temporary Right-of-Way for Drive Construction**

**Parcel ID: 29-11-06-000-003.001-013**

A part of the Northeast Quarter of Section 6, Township 18 North, Range 5 East, Hamilton County, Indiana, described as follows: Commencing at the southeast corner of said quarter section; thence North 00 degrees 26 minutes 25 seconds West (bearings based on the Location Control Route Survey recorded as Instrument 2015065041) 723.70 feet along the east line of said section to the north line of the land described in Deed Record 145, page 66; thence North 89 degrees 54 minutes 52 seconds West 1,480.79 feet (1,481.25 feet deduced from Instrument 8748368) along said north line to a south corner of the grantor's land on the north boundary of Pleasant Street; thence North 33 degrees 36 minutes 18 seconds West 41.72 feet to the point of beginning of this description; thence North 10 degrees 08 minutes 26 seconds West 50.75 feet; thence South 67 degrees 23 minutes 39 seconds East 25.72 feet; thence South 00 degrees 16 minutes 29 seconds East 40.00 feet; thence South 89 degrees 43 minutes 31 seconds West 15.00 feet to the point of beginning and containing 0.019 acres, more or less.



This description was prepared for the  
The City of Noblesville, Indiana  
on the 6<sup>th</sup> day of October, 2016.

*Kelly D. Marley*

Kelly D. Marley  
Indiana Registered Land Surveyor  
License Number LS20400016



## EXHIBIT "A"

Sheet 2 of 3

**Project: 1401713**

**Pleasant and 19th Street**

**Parcel: 3B Temporary Right-of-Way for Drive Construction**

**Parcel ID: 29-11-06-000-003.001-013**

A part of the Northeast Quarter of Section 6, Township 18 North, Range 5 East, Hamilton County, Indiana, and being that part of the grantor's land lying within the right-of-way lines depicted on the attached Right-of-Way Parcel Plat, marked Exhibit "B", described as follows: Commencing at the southeast corner of said quarter section; thence North 00 degrees 26 minutes 25 seconds West (bearings based on the Location Control Route Survey recorded as Instrument 2015065041) 723.70 feet along the east line of said section to the north line of the land described in Deed Record 145, page 66; thence North 89 degrees 54 minutes 52 seconds West 1,376.06 feet along said north line to the point of beginning of this description, which point of beginning is on the south line of the grantor's land and the north boundary of Pleasant Street; thence continuing North 89 degrees 54 minutes 52 seconds West 63.31 feet along the boundary of said Pleasant Street; thence North 00 degrees 08 minutes 53 seconds West 20.22 feet; thence South 89 degrees 54 minutes 40 seconds East 62.85 feet; thence South 01 degree 26 minutes 53 seconds East 20.22 feet to the point of beginning and containing 0.029 acres, more or less.



This description was prepared for the  
The City of Noblesville, Indiana  
on the 6<sup>th</sup> day of October, 2016.

*Kelly D. Marley*

Kelly D. Marley  
Indiana Registered Land Surveyor  
License Number LS20400016



## EXHIBIT "A"

Sheet 3 of 3

**Project: 1401713**

**Pleasant and 19th Street**

**Parcel: 3C Temporary Right-of-Way for Drive Construction**

**Parcel ID: 29-11-06-000-003.001-013**

A part of the Northeast Quarter of Section 6, Township 18 North, Range 5 East, Hamilton County, Indiana, described as follows: Commencing at the southeast corner of said quarter section; thence North 00 degrees 26 minutes 25 seconds West (bearings based on the Location Control Route Survey recorded as Instrument 2015065041) 723.70 feet along the east line of said section to the north line of the land described in Deed Record 145, page 66; thence North 89 degrees 54 minutes 52 seconds West 1,057.06 feet along said north line to the point of beginning of this description, which point of beginning is on the south line of the grantor's land and the north boundary of Pleasant Street; thence continuing North 89 degrees 54 minutes 52 seconds West 45.28 feet along the boundary of said Pleasant Street; thence North 00 degrees 05 minutes 20 seconds East 11.20 feet; thence North 89 degrees 54 minutes 45 seconds East 45.28 feet; thence South 00 degrees 05 minutes 20 seconds West 11.34 feet to the point of beginning and containing 0.012 acres, more or less.



This description was prepared for the  
The City of Noblesville, Indiana  
on the 6<sup>th</sup> day of October, 2016.

Kelly D. Marley  
Indiana Registered Land Surveyor  
License Number LS20400016



## **MEMORANDUM**

**TO: THE BOARD OF PUBLIC WORKS AND SAFETY**

**FROM: JOHN BEERY, CITY ENGINEER**

**DATE: MAY 10, 2018**

**RE: FINAL AGREEMENT FOR THE SETTLEMENT AND PURCHASE OF RIGHT-OF-WAY  
UNITED STATES POSTAL SERVICE  
19<sup>TH</sup> AND PLEASANT STREET ROUNDABOUT – PARCEL #3**

Attached is an agreement with the United States Postal Service for the purchase and transfer of right-of-way on the northeast corner of the intersection 19<sup>th</sup> and Pleasant Streets. The parcel is secure, but one final copy of the agreement with an original signature is need. There are no substantial changes from the original agreement signed several months ago.

All parcels are acquired for this project.

**I recommend that the Board of Public Works approve and execute the agreement with the subject landowners.**