NOTE: This is a sample emergency occupancy agreement for homeless providers to lease additional space to support clients during COVID-19 response. This sample was provided by an actual community, however, you will need to customize the agreement based on your local laws, regulations, and funding sources.

***EMERGENCY OCCUPANCY AGREEMENT***

*OCCUPANCY AGREEMENT COVERING PREMISES LOCATED AT: [Address of Premise]*

*OWNER'S FED. TAX. I.D., NO. OR SOCIAL SECURITY NO.:*

*TENANT AGENCY: [Agency Name]*

**Preamble**

THIS OCCUPANCY AGREEMENT, made and entered into this day of [date] by and between [premise owner] Herein after called the Owner, without distinction as to number or gender, and the State of [state name] acting by and through the Director of the Department [contracting state agency], hereinafter called the State. **This Agreement is entered into pursuant to the [list any relevant executive orders or disaster declarations], in response to COVID-19, and is directly related to that emergency and necessary for the preservation of public health and safety.**

**Description**

1.  The Owner hereby authorizes the State and the State hereby hires from the Owner those certain premises “AS IS” with appurtenances situated in the City of [city name], County of [county name] , State of [state name], and more particularly described as follows:

The hotel name[facility name] (up to [number or rooms) rooms, located at [facility address], as outlined in red on the attached Exhibit "A" aerial site plan, consisting of one (1) page, dated , said Exhibit "A", hereby being incorporated into this occupancy agreement, and including all parking spaces contiguous to the subject hotel building, and unlimited use of the building's common facilities. The State shall occupy a fluctuating number of rooms, up to \_\_\_\_\_, and pay for rooms based on the actual daily occupancy. The State shall have exclusive access to and use of the occupied premises set forth in this occupancy agreement twenty-four (24) hours per day, seven (7) days per week with no exceptions.

**Term**

2.  The term of this occupancy agreement shall commence on [date of occupancy], 2020, and shall continue month to month, with such rights of termination as may be hereinafter expressly set forth.

**Early Termination**

3.  The State may terminate this occupancy agreement at any time by giving written notice to the Owner at least thirty (30)days prior to the date when such termination shall become effective. If the State fails to complete its move out within the notice period and remains in the premises, additional rent shall be paid and prorated on a thirty (30) day month, based on the actual number of days the State occupies the premises following the effective date of termination. Any such payments for additional rent shall be limited to the actual number of rooms occupied by the state following the effective date of termination.

**Rent**

4.  Rental payments shall be paid by the State, from legally available funds, in arrears on the last day of each month during said term as follows:

**The daily room rate shall be AND [cost of rooms] during the term of this occupancy agreement.**

Owner shall provide a monthly invoice to the State at the address below based on each room occupied, multiplied by the number of days actually occupied in that month, and then multiplied by the daily room rate. Rental shall be paid to Owner at the address specified in Paragraph 5 or to such other address as the Owner may designate by a notice in writing.

Invoices to the State shall be sent to:

**Notices**

5.  All notices and correspondence herein provided to be given, or which may be given by either party to the other, shall be deemed to have been fully given when made in writing and either: 1) deposited in the United States Mail, certified and postage prepaid; or 2) sent via an alternate commercial overnight delivery service (i.e. FedEx or similar) with receiver’s signature required; and addressed as follows:

To the Owner:

Phone No.:

Hotel No.:

Email: \_\_\_\_\_\_\_\_\_\_\_\_\_

To the State:

[State agency name, address, phone number, and email contact]

ALL NOTICES AND CORRESPONDENCE MUST REFERENCE  
STATE AGENCY AND PREMISES ADDRESS

Rental warrants shall be made payable to:

and mailed to:

Nothing herein contained shall preclude the giving of any such written notice by personal service. The address to which notices and correspondence shall be mailed to either party may be changed by giving written notice to the other party.

**Parking**

6. Parking spaces, upon commencement of the occupancy agreement, shall be unobstructed and completely accessible for State’s use.

**Services, Utilities, and Supplies**

7.  Owner, at Owner's sole cost and expense, shall furnish normal and standard hotel operation functions including but not limited to the following services, utilities, and supplies to the area occupied by the State, and also to the "common" building areas (if any) such as lobbies, elevators, stairways, corridors, etc., if any:

A. Sewer, trash disposal, and water service, including both hot and cold water to the lavatories.

B. Elevator (if any) service.

C. Electricity and/or gas as necessary to provide power for heating, ventilating, and air conditioning, and electrical or gas service as needed for State's operations.

D. Pool, pool area, and pool equipment, if any.

E. Linen/terry and laundry services.

F. Standard hotel housekeeping/janitorial services not less than every 3 days.

All housekeeping/janitorial services, as well as linen/terry and laundry services shall be provided in accordance with any applicable, current health and safety protocols established by public health officials.

In the event of failure by the Owner to furnish any of the above services or utilities in a satisfactory manner, the State may furnish the same at its own cost; and, in addition to any other remedy the State may have, may deduct the amount thereof, including State's administrative costs, from the rent that may then be, or thereafter become due hereunder.

**Repair and Maintenance**

8.  During the term of this occupancy agreement, the Owner shall maintain the occupied premises in good repair and tenantable condition.

**Assignment**

9.  The State shall have the ability to assign this occupancy agreement.

**Quiet Possession**

10.  The Owner agrees that the State, while keeping and performing the covenants herein contained, shall at all times during the existence of this occupancy agreement, peaceably and quietly have, hold, and enjoy the occupied premises without suit, trouble, or hindrance from the Owner or any person claiming under Owner.

**Destruction**

11.  If the occupied premises are totally destroyed by fire or other casualty, this occupancy agreement shall terminate. If such casualty shall render ten percent (10%) or less of the floor space of the occupied premises unusable for the purpose intended, Owner shall effect restoration of the premises as quickly as is reasonably possible, but in any event within thirty (30) days.

In the event such casualty shall render more than ten percent (10%) of such floor space unusable but not constitute total destruction, Owner shall forthwith give notice to State of the specific number of days required to repair the same. If Owner under such circumstances shall not give such notice within fifteen (15) calendar days after such destruction, or if such notice shall specify that such repairs will require more than ninety (90) days to complete from date such notice is given, State, in either such event, at its option may terminate this occupancy agreement or, upon notice to Owner, may maintain occupancy and elect to undertake the repairs itself, deducting the cost thereof from the rental due or to become due under this occupancy agreement and any other occupancy agreement between Owner and State.

In the event of any such destruction other than total, where the State has not terminated the occupancy agreement as herein provided, or pursuant to the terms hereof has not elected to make the repairs itself, Owner shall diligently prosecute the repair of said premises and, in any event, if said repairs are not completed within the period of thirty (30) days for destruction aggregating ten percent (10%) or less of the floor space, or within the period specified in Owner's notice in connection with partial destruction aggregating more than ten percent (10%), the State shall have the option to terminate this occupancy agreement or complete the repairs itself, deducting the cost thereof from the rental due or to become due under this occupancy agreement and any other occupancy agreement between Owner and State.

It is understood and agreed that the State or its agent has the right to enter its destroyed or partially destroyed occupied facilities no matter what the condition. At the State's request, the Owner shall immediately identify an appropriate route through the building to access the State occupied space. If the Owner cannot identify an appropriate access route, it is agreed that the State may use any and all means of access at its discretion in order to enter its occupied space.

**Subrogation Waived**

12.  To the extent authorized by any fire and extended coverage insurance policy issued to Owner on the herein occupied premises, Owner hereby waives the subrogation rights of the insurer, and releases the State from liability for any loss or damage covered by said insurance.

**Prevailing Wage Provisions**

13.  For those projects defined as "public works" pursuant to Labor Code [relevant code number], the following shall apply:

A. Owner/contractor shall comply with prevailing wage requirements and be subject to restrictions and penalties in accordance with [relevant code number] of the Labor Code which requires prevailing wages be paid to appropriate work classifications in all bid specifications and subcontracts.

B. The Owner/contractor shall furnish all subcontractors/employees a copy of the Department of Industrial Relations prevailing wage rates which Owner will post at the job site. All prevailing wage rates shall be obtained by the Owner/contractor from:

[State agency name, address, and contact information]

C. Owner/contractor shall comply with the payroll record keeping and availability requirement of [relevant labor code] of the Labor Code.

D. Owner/contractor shall make travel and subsistence payments to workers needed for performance of work in accordance with the Labor Code.

E. Prior to commencement of work, Owner/contractor shall contact the [Relevant state agency for prevailing wage and codes]

**Fair Employment Practices**

14.  During the performance of this occupancy agreement, the Owner shall not deny benefits to any person on the basis of religion, color, ethnic group identification, sex, age, physical or mental disability, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, mental disability, medical condition, marital status, age, or sex. Owner shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.

Owner shall comply with the provisions [list any relevant fair employment codes]

**Holding Over**

15.  In the event the State remains in possession of the premises after the expiration of the occupancy agreement term, or any extension or renewal thereof, this occupancy agreement shall be automatically extended on a month to month basis, subject to a thirty day (30) days termination by the State and otherwise on the terms and conditions herein specified, so far as applicable. If the State fails to vacate the premises within the notice period and remains for an extended period, additional rent shall be paid and prorated on a thirty (30) day month, based on the actual number of days the State occupies the premises following the effective date of termination. Any such payments for additional rent shall be limited to the actual number of rooms occupied by the state following the effective date of termination.

**Surrender of Possession**

16.  Upon termination or expiration of this occupancy agreement, the State will peacefully surrender to the Owner the occupied premises in as good order and condition as when received, except for reasonable use and wear thereof and damage by earthquake, fire, public calamity, the elements, acts of God, or circumstances over which State has no control or for which Owner is responsible pursuant to this occupancy agreement.

**Time of Essence, Binding upon Successors**

17.  Time is of the essence of this occupancy agreement, and the terms and provisions of this occupancy agreement shall extend to and be binding upon and inure to the benefit of the heirs, executors, administrators, successors, and assigns to the respective parties hereto. All of the parties hereto shall be jointly and severally liable hereunder.

**No Oral Agreements**

18.  It is mutually understood and agreed that no alterations or variations of the terms of this occupancyagreement shall be valid unless made in writing and signed by the parties hereto, and that no oral understanding or agreement not incorporated herein, shall be binding on any of the parties hereto.

**Insurance**

19.  Owner understands and agrees to the following:

In accordance with Government Code [list relevant code sections] has elected to be self-insured for liability exposures. Under this form of insurance, the State and its employees acting in the course and scope of their employment are insured for tort liability arising out of official State business. All claims against the State of [state name] based on tort liability should be presented as a government claim to the [relevant agency and contact information]

The State of [state name] has also elected to be insured for its motor vehicle liability exposures through the [list relevant laws or codes for state motor vehicle insurance] Motor vehicle liability claims against the State of [state name] should be presented to the [include relevant office and contact information].

[Include relevant information for worker’s compensation].

**Hazardous Substance**

20.  State agrees that it will comply with all applicable laws existing during the term of this occupancy agreement pertaining to the use, storage, transportation, and disposal of any hazardous substance as that term is defined in such applicable law. In the event a government order is issued naming the State or the State incurs any liability during or after the term of the occupancy agreement in connection with contamination which pre-existed the State's obligations and occupancy under this occupancy agreement or which were not caused by the State, Owner shall hold harmless, indemnify, and defend the State in connection therewith and shall be solely responsible as between State and Owner for all efforts and expenses thereto.

**Restoration of Premises**

21.  Upon termination of this Occupancy agreement, Owner agrees that the equipment installed by the State shall be and remain the property of the State, and State shall remove such property when vacating the premises. State shall restore all surfaces, including floors and walls, to the condition existing prior to its installation, including repair of damaged floor tile and patching and repainting damaged wall surfaces to match adjacent existing surfaces. State shall clean the premises per the current health and safety protocols established by public health officials, immediately prior to vacating the premises.

**Access**

22.  Owner shall allow State or its agents to enter the premises as of [time and date of occupancy], to stage and prepare the property for occupants, or other parties, or for any other purpose State deems necessary.

**Indemnification**

23.  The State agrees to indemnify and hold harmless the Owner to the extent authorized by Government Code Section [include relevant state code] and agrees to repair or pay for any damage proximately caused by reason of the State’s use of said premises during the term of this agreement, except to the extent that any such damages suffered by Owner are the result of Owner's negligent or wrongful acts or the acts of any persons acting under or on behalf of the Owner and/or where the State is found to have no liability by reason of any immunity arising by statute or common law in connection with the fulfillment of the State's constitutional and statutory public responsibilities.

Owner agrees to indemnify and hold harmless the State in the event of any claim, demand, cause of action, judgments, obligations, or liabilities, and all reasonable expenses which State may suffer as direct and proximate result of the negligence or other wrongful act or violation of law by the Owner, its employees, or any person or persons acting under the direct control and authority of the Owner or its employees, in connection with the State's occupancy of said premises under and during the term of this agreement except to the extent that any such damages or expenses suffered by State are the result of State’s sole negligence.

**Taxes**

24.  Owner is solely responsible for all tax liabilities, including property taxes.

**Exclusive Use**

25.  Owner shall not rent or allow occupancy of any vacant rooms or facilities in the hotel during the term of the State’s occupancy of the premises.

**Occupancy of Premises**

26. Owner and State understand that they shall not receive rent, fees, or any other form of payments or consideration, or gifts from occupants of hotel rooms in exchange for access to or use of the Premises. Owner and State also understand that they have not entered into any agreements with the occupants of the hotel rooms related to the use of the Premises.

**Options to Acquire Property**

27. Owner hereby grants to State the right and option, but not the obligation, for the State of [state name], to acquire fee title to the Property from Owner (“Option”), upon terms and subject to conditions set forth in this Agreement during the Option Term (as hereinafter defined). State will provide Owner written notification of the exercise of the Option not less than thirty (30) calendar days prior to the Option Expiration (as hereinafter defined).

i. Option Term. For purposes of this Agreement, the term “Option Term” shall mean the period beginning on the effective date of this Agreement and ending upon the State’s termination of this Agreement.

ii. Exercise of Option. The Option herein can only be exercised by State’s execution and delivery of a written exercise of Option to Owner at any time during the Option Term. The State Public Works Board (“SPWB”) must approve of the State’s execution and delivery of a written exercise of Option to Owner to be provided any time prior to the end of the Option Term. Any exercise of Option by the State prior to SPWB approval is void. The Option to acquire the Property may be exercised to provide for a closing date on or after the State’s termination of this Agreement.

iii. Purchase Price. The purchase price for the Property (the "Purchase Price") shall be equal to the fair market value of the Property as determined by an appraisal conducted and approved by the State. The appraisal obtained by State shall comply [list relevant code sections for appraisal].

iv. Conveyance of Property. If the State elects to exercise the Option, the transfer of fee title to the Property shall be in accordance with the terms and conditions of that certain Property Acquisition Agreement by and between State and Owner, acting by and through the State Public Works Board (“SPWB”), the substantive form of which has been agreed to by and between the Parties as set forth in Exhibit \_\_ (the “PAA Form”) attached hereto, and incorporated herein by this reference. In accordance with the terms of the Form PAA, the Property shall be conveyed to State by Owner free and clear of liens and encumbrances by a grant deed, subject only to approved conditions of title.

v. Escrow. In accordance with the terms of the PAA Form, the conveyance of the Property shall be handled through escrow to be selected and opened by the State within seven (7) calendar days after the State’s exercise of the Option.

vi. Memorandum of Option to Purchase. Concurrent with Owner’s execution of this Agreement, Owner shall execute a memorandum of option substantially in the form of Exhibit \_\_ (“Memorandum of Option”) attached hereto and incorporated herein by this reference. The State shall cause the Memorandum of Option to be recorded in the Official Records of the County where the Property is located. In the event State elects not to exercise the Option during the Option Term, State shall execute and cause a quitclaim deed to be recorded in the Official Records of the County where the Property quitclaiming all its rights to acquire fee title to the Property to Owner to remove the Memorandum of Option encumbrance.

vii. Additional Agreements. The Parties acknowledge and agree that if State exercises the Option, additional agreements will be needed in furtherance of the acquisition of the Property. The Parties agree to promptly obtain all necessary approvals and execute and deliver such papers, documents and instruments and perform all acts reasonably necessary or proper to effectuate the acquisition of the Property by the State.

viii. Legislative Approval. Any obligation of the State created by or arising from this Option shall not impose a debt upon the State, but shall be payable solely out of funds duly authorized and appropriated by the [state name] State Legislature.

ix. Authorization, Approvals, Binding Nature. Any agreement executed by the State to effectuate the acquisition of the Property in accordance with this Option shall have no force and effect and is not binding on the State of [state name[ until and unless it is approved by [contracting agency] and is authorized by SPWB.

*IN WITNESS WHEREOF, this occupancy agreement has been executed by the parties hereto as of the dates written below*

*STATE OF [StATE NAME]*

*Approval Recommended*

*[contracting state agency]*

*By*

*, Real Estate Officer*

*Real Estate Leasing and Planning Section*

*Date*

*Approved*

*[CONTRACTING STATE AGENCY]*

*By*

*, Leasing Manager*

*Real Estate Leasing and Planning Section*

*Date*

*owner*

*By*

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*Date*

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