

Wabash Valley Health Center
Site Improvements – Building Addition/Renovation
Supplementary General Conditions/General Provisions

The form of agreement between the Owner and Contractor is the “Standard Form of Design-Build Agreement and General Conditions Between Owner & Contractor,” AGC Document 410 (1993 Edition), as amended, a copy of which is available for review at the office of Hannig Construction, Inc. All bidders/contractors are bound to the terms of the agreement in the same manner as the Contractor is bound to the Owner.

The supplemental conditions, amendments and clarifications set out herein modify, delete and/or add to the General Conditions/General Provisions. Where any article, paragraph or subparagraph in the General Conditions/General Provisions is supplemented by the provisions of this Supplement, such Article, paragraph or subparagraph shall remain in effect and the supplemental provisions shall be considered as added thereto. Where any Article, paragraph or subparagraph in the General Conditions/General Provisions is amended, deleted, voided or superseded by any of the following paragraphs, the provisions of such Article, paragraph or subparagraph not so amended, voided or superseded shall remain in effect.

ARTICLE 2.4.6 Amend the first sentence to read as follows: Substantial Completion of the Work, or a designated portion, occurs on the date when the construction is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Project, or a designated portion, for the use for which it is intended, and all required permits related thereto have been issued.

ARTICLE 3.1.7 Amend to read as follows:

OWNERSHIP OF DOCUMENTS. All Documents shall remain the property of Contractor, however, Contractor agrees to furnish Owner with 3 complete sets of all plans, drawings and specifications related to the Project. No Documents provided by Contractor shall be used by Owner in connection with any other Project.

ARTICLE 3.2.4.2 Add the following clarification: The GMP will be based upon what is provided on the drawings. An allowance will not be included unless the Owner requests an allowance be included. Allowances will be reviewed with Owner, as well as the cost included, and the scope of work to be covered.

ARTICLE 3.3.4 Add the following sentence: All of the Work shall be scheduled and conducted so as to provide the minimum possible interference with the conduct of operations by Owner of its current facilities.

ARTICLE 3.3.5 Add the following sentence: Contractor shall work with owner to secure all required permits.

ARTICLE 3.4.2 Amend to read as follows: If, after the commencement of the Work previously unknown Hazardous Material is discovered at the Project site, the Contractor shall be entitled to immediately stop Work in the affected area and the Contractor shall report the condition to the Owner and if required, the government agency with jurisdiction.

ARTICLE 3.4.6 Amended to read as follows: To the fullest extent shall allowed by law Owner shall defend, indemnify and hold harmless the Contractor, Architect/Engineer, subcontractors and sub-

subcontractors and the agents, officers, directors and employees of each of them, from and against any and all claims, damages, losses, costs and expenses, whether direct, indirect or consequential, including but not limited to attorneys' fees, costs and expenses incurred in connection with litigation or arbitration arising out of or relating to the performance of the Work in any area affected by Hazardous Material not previously identified, prior to the commencement of construction, which does not result from the negligence of the indemnitee.

ARTICLE 3.7.05 Add new section as follows:

3.7.05 Contractor guarantees that the design of the Work will be prepared in a professional manner consistent with the standard of care required of licensed design professionals practicing in the area and will be sufficiently complete and detailed to permit construction of the Work and that if constructed in accord with the plans and specifications to be furnished by Contractor the Project will be of good quality, suitable for use for its intended purpose as a medical facility and qualified for licensing by all required bodies.

Contractor guarantees that all work to be performed pursuant to this Agreement will be performed in a good and workmanlike manner in conformance with all plans and specifications and that all materials will be new, of good and merchantable quality and fit for the purposes intended and that the work when completed will be of good quality and suitable for use for its intended purpose as a medical facility suitable for licensing by all required bodies.

ARTICLE 3.7.2 Delete and replace with the following: Contractor and Owner will incorporate into Amendment No.1, fixing the GMP, provisions for such warranties of those products, equipment, systems or materials incorporated in the Work as requested by Owner.

ARTICLE 3.7.6 Add 3.7.6 as follows:

3.7.6 In the event of any breach of Contractor's warranties herein, Contractor will, at its sole cost and expense, repair or replace any portion of the Work which fails to comply with the warranty provisions hereof at Contractor's sole cost and expense and shall be liable for any consequential damage resulting from said breach and Owner's reasonable attorney's fees. The provisions hereof shall survive termination of this Agreement.

ARTICLE 3.8 Add the following clarification: Article 3.8 lists additional services that will be provided upon the request of the Owner and are considered things that are outside the contractual scope of work, unless agreed upon elsewhere in the Contract.

ARTICLE 3.8.1 Add the following clarification: Completed during Master Plan Phase.

ARTICLE 3.8.1 THROUGH 3.8.6 Add the following clarification: If requested by the Owner, these would require additional compensation

ARTICLE 3.8.7 Add the following clarification: Measuring for standard design work required to complete the scope of work is included. This article is referencing other Owner-provided information that we might be asked to perform, such as if there were existing/old documents, drawings, etc., that the Owner wanted verified.

ARTICLE 3.8.8 Add the following clarification: The rendering has already been completed. Anything more extensive, as defined in 3.8.8, would require additional compensation.

ARTICLE 3.8.8 THROUGH 3.8.20 Add the following clarification: If requested by the Owner, these would require additional compensation.

ARTICLE 3.8.12 Add the following clarification: On occasion, the Owner will procure some items on their own, separate from the contracted services. For example: The Owner may procure their own furniture outside the scope of the contract, so furniture would not be included in the GMP. If this were the case, and then the Owner might request our assistance in evaluating these purchases; this would be additional compensation.

ARTICLE 3.8.16 Add the following clarification: Standard travel as defined in this article is included. The Architect/ Engineer will bill for travel provided outside these definitions. For example, travels to Indianapolis to the State Plan office to file required documents would require travel compensation.

ARTICLE 3.8.21 Add the following clarification: Normally, these Contract drawings are marked-up in red during the course of construction to indicate any changes made. A copy would be made for the Owner and the cost of copying would require additional compensation. They are not usually made to the AutoCad drawings unless requested by the Owner, then this would require additional compensation.

ARTICLE 7.2.2 Add the following: All fees for Design Services shall be calculated based upon time and materials using the schedule of rates as shown in the Owner/Contractor Agreement.

Fees for Design Services shall be payable as provided in Article 10.

No services compensable under Phase II Design shall commence until Owner has approved the Phase I Design and authorized commencement of Phase II Design. Owner's review or approval of any design submissions or construction documents shall not transfer any design liability to Owner.

ARTICLE 7.2.4 Delete the first sentence and substitute with the following:

Payments for Design Phase Services shall be due and payable within 30 days following the presentation of Contractor's monthly invoices to the Owner.

ARTICLE 7.3 Add the following clarification: The Contractor's Fee will be included in the GMP.

ARTICLE 7.3.3 Add the following clarification. Once the GMP is established and construction has begun, any additional (new) design work would require compensation. For example: if a new addition were requested, the design for that addition would require additional compensation. Reference Article 9.1 Change Orders. Once the GMP is established, any changes to the work requiring design changes would require compensation to the Architect/Engineer. By definition in this article, "each adjustment in the GMP resulting from a Change Order shall clearly separate the amount attributable to compensation for Design Phase Services, other Cost of the Work and Contractor's Fee."

ARTICLE 7.5 AND 7.5.1 Add the following clarification: If changes in the work result in the need for changes in design, then the fees that would be applied are x% Design Fee plus x% Construction Fee. If

changes in the work do not result in the need for changes in design, then the fee that would be applied is x% Construction Fee.

ARTICLE 10.1.1 AND 10.1.2 Delete and insert the following:

10.1.1 Payment shall be made within 30 days after submission to Owner of all required documents.

10.1.2 The Contractor shall submit to Owner, in triplicate, an itemized Application for Payment, supported by such data, such invoices substantiating the Contractor's right to payment as the Owner may require including the Cost of the Work performed up to the billing date, including the cost of material stored on the site or at other locations approved by Owner along with a proportionate share of Contractor's Fees.

Contractor must provide Partial Waivers of Lien satisfactory to Owner for themselves and from all subcontractors and suppliers with each Application for Payment. The waivers for subcontractors and suppliers shall cover disbursements made from the previous payment request.

Anything in the Contract Documents to the contrary notwithstanding, Contractor agrees to provide Owner with evidence satisfactory to the Owner of payment to all subcontractors, sub-subcontractors, materialman, suppliers, and employees as Owner may reasonably request from time to time.

It is further agreed that anything in the Contract Documents to the contrary notwithstanding, Owner may make payment by joint checks or other similar arrangements to insure payment of any and all subcontractors, sub-subcontractors, materialmen, suppliers and/or employees of any of them provided, however, that nothing herein contained shall be deemed to create an obligation on the part of Owner to make such payment or to insure payment is made to any such Sub-subcontractor, materialman, supplier or employee or of any them create any contractual relationship between Owner and any such person, firm or corporation.

Owner may withhold a retainage from Progress Payments as follows:

Retainage withheld shall be 5% of contract sum through to 50% completion. At that point, unless Contractor is not performing the contract retainage shall be reduced to 0%.

ARTICLE 10.2.1 AND 10.2.2 Delete and insert the following:

Final payment, constituting the unpaid balance of the contract sum shall be paid to the Contractor in full, including any retainage or escrowed principal and escrowed income by the escrow agent, not less than sixty-one (61) days following the Date of Substantial Completion. If at that time there are any remaining uncompleted items, an amount equal to two hundred percent (200%) of the value of each item.

Contractor must provide final Waivers of Lien for themselves and from all subcontractors, sub-subcontractors and suppliers before final payment will be made.

Owner may make payment by joint checks or similar arrangements to ensure payment to all Subcontractors, sub-sub-contractors, materialmen, suppliers, and/or employees of any of them provided, however, nothing herein contained shall be deemed to create an obligation on the part of Owner to make such payment or to ensure payment is made to any such Subcontractor, Sub-subcontractor, materialmen,

suppliers, and/or employees of any of them, or create any contractual relationship between Owner and any such person, firm or corporation.

The making of final payment shall constitute a waiver of Claims by the Owner except those arising from:

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents or any warranty; or
- .3 terms of special warranties required by the Contract.

ARTICLE 11.1.1 Delete and insert the following:

To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, officers, directors, employees, and agents of Owner from and against claims, damages, losses, costs, fines, penalties, and expenses, including but not limited to attorneys' fees, arising out of, in any way related to or resulting from performance of the Work, or any failure of Contractor to comply with the provisions of this Contract, but only to the extent caused by the negligent acts or omissions of the Contractor, Contractor's failure to comply with the provisions hereof, or the negligent acts or omissions of a Subcontractor, anyone directly or indirectly employed by them or anyone for those acts they may be liable, regardless of whether or not such claim, damage, loss, cost, fine, penalty, or expense results in part from the act or omission of a party indemnified hereunder. The Contractor shall not be required to defend, indemnify or hold harmless the Owner for any claims, damages loss, cost or expense arising solely out of the negligence of Owner, officers, directors, employees, agents, or separate contractors.

ARTICLE 11.2 CONTRACTOR'S LIABILITY INSURANCE Add the following requirements:

Subcontractor and Material Supplier (if Material Supplier shall be on site with their own vehicles/employees) shall purchase and maintain during the entire project term and for two (2) years after final payment to the Subcontractor/Material Supplier, insurance with the minimum limits and coverage shown below, **or greater as may be set forth in the contract documents/specifications**, from insurance companies acceptable to Hannig Construction, Inc.

- A. Workmen's Compensation & Employer's Liability - claims under applicable Workers Compensation and Occupational Disease and any other similar employee benefit acts with a minimum of:

Worker's Compensation: Statutory in the state the project is located
Employer's Liability: Bodily Injury by Accident \$500,000 each accident;
Employer's Liability: Bodily Injury by Disease \$500,000 each employee;
Employer's Liability: Bodily Injury by Disease \$500,000 policy limit

- B. Commercial General Liability, written on an occurrence basis and including coverage for:

- Per Project Aggregate Limits
- Premises and Operations
- Employees as Insureds
- Explosion Collapse & Underground

- Broad Form Contractual, including Personal Injury
- Products and Completed Operations for a period of two years after final payment
- Independent Contractors
- Limits
 - \$1,000,000 Each Occurrence
 - \$2,000,000 General Aggregate per project
 - \$2,000,000 Completed Operations Aggregate
 - \$1,000,000 Personal Injury
 - \$ 100,000 Fire Damage
 - \$ 5,000 Medical Payments

Subcontractor/Material Supplier shall provide Contractor with an Additional Insured Endorsement on ISO form CG2010 1185 (or substitute forms approved by Contractor providing equivalent coverage) or on the combination of ISO forms CG2010 10 01 and CG2037 10 01 (or substitute forms approved by Contractor providing equivalent coverage) naming Contractor, Owner, Architect/Engineer and any other parties contractor is required to provide additional insured status in the contract between Owner and Contractor as Additional Insureds thereunder on a primary basis with Contractor's owners and other parties own liability coverage to be excess and non-contributory as respects additional insured coverage provided by Subcontractor/Material Supplier. Subcontractor/Material Supplier hereby waives all claim and rights or recovery against Contractor and/or Owner arising out of the negligence of either of the foregoing for which Subcontractor/Material Supplier is insured or is required to be insured under the insurance policies to be maintained by Subcontractor/Material Supplier under this Subcontract. Furthermore, the General Liability policy shall not include a deductible amount imposed on a 'per claim" basis, and the policy shall not include any of the following ISO forms or their equivalents; CG2243 Professional Liability; CG2139 Contractual Liability Limitation; CG2426 Amendment of Insured Contract Definition. This policy shall also include the following ISO Form Endorsements: CG 2001 04 13 Primary and Noncontributory and CG2279 07 98 or CG 2280 07 98 Contractors Professional.

- C. Commercial Business Auto - including coverage for all owned, non-owned and hired autos. Limits:
 - \$1,000,000 Combined Single Limit Bodily Injury & Property Damage
- D. Umbrella Liability and/or Excess Liability. Limit:
 - \$2,000,000 per Occurrence
 - \$2,000,000 Aggregate

Prior to starting work, the Subcontractor/Material Supplier shall furnish satisfactory evidence to Hannig Construction, Inc., and the other parties upon request, that the Subcontractor/Material Supplier has insurance as required by the Contract Documents. All such insurance, including General Liability and Umbrella/Excess Liability (except Workers' Compensation/Employer's Liability) shall name Hannig Construction Inc., the Owner, and any other parties so required by Hannig's contract with the Owner, or any other party to whom Hannig is contracted as an additional insured and shall provide primary coverage (including Completed Operations) for all claims and losses against Hannig Construction, Inc. and any other parties so required by Hannig's contract with the Owner or any other party to whom Hannig is Contracted, including but not limited to, those claims that arise out of injuries to the employees of the Contractor,

employees of the Contractor's subcontractors or injuries to third parties, from your work under this agreement, or as a result of the Subcontractor's/Material Supplier's performance. Any other insurance in force for said additional insured's shall not contribute in the payment of any claim made hereunder to the extent of the limits of liability afforded hereunder. Any coverage provided by Hannig Construction, Inc., the Owner, and any other parties so required by Hannig's Contract with the Owner or any other party to whom Hannig is contracted shall be excess coverage.

To the fullest extent permitted by law, Subcontractor/Material Supplier for itself and on behalf of its worker's compensation insurer who may be obligated to pay workers' compensation benefits to Subcontractor's/Material Supplier's employee, hereby waives and releases any and all rights and/or claims for subrogation, workers' compensation benefits against Owner, General Contractor, Construction Manager, Contractor, Architect and Engineer, who are liable or alleged to be liable for work-related injury to Subcontractor's/Material Supplier's employee, arising out of Subcontractor's/Material Supplier's contract with Contractor. Subcontractor/Material Supplier will obtain a waiver of any subrogation rights or workers' compensation lien that its insurers may acquire against Owner, General Contractor, Construction Manager, Contractor, Architect and Engineer by virtue of payment of any workers' compensation benefits.

Commercial General Liability, Comprehensive Automobile Liability and Worker's Compensation & Employer's Liability Coverage limits may be achieved by a combination of underlying coverages for lesser limits with the remaining limits provided by an Excess or Umbrella Policy.

Subcontractor/Material Supplier shall purchase such insurance as may be required for the protection of his own tools and construction equipment as he may desire. Contractor does not assume any liability for temporary tools and Equipment of others.

Prior to starting work, Subcontractor/Material Supplier shall require his insurance carrier or agent to complete and return to Contractor a Certificate of Insurance, in a form satisfactory to Contractor, evidencing the required insurance coverages for subcontractors/material suppliers.

Before permitting any lower tier Subcontractor/Material Supplier (other than vendors of standard commercial materials and supplies) to perform any work under this Subcontract, Subcontractor/Material Supplier shall require such Subcontractor/Material Supplier or supplier to maintain insurance similar to the requirements as set forth above for Subcontractor/Material Supplier.

Neither Hannig Construction, Inc.'s failure to require or insist upon Certificates of Insurance or other evidence of insurance nor Hannig Construction, Inc.'s acceptance of a certificate or other evidence of insurance showing a variance from The Specified Coverage changes or waives the Subcontractor's/Material Supplier's obligation to comply with all provisions of Appendix E.

Builder's Risk Insurance: The Owner or Contractor may maintain during the course of construction, Builder's Risk Insurance or other similar types of property insurance for the project. The Builder's Risk Insurance may contain deductible provisions, and when applicable to the Contractor, those deductibles will be borne by the Subcontractor/Material Supplier, or Contractor, whose scope of work is affected by the loss covered under the Builder's Risk or similar coverage.

The Contractor shall notify Hannig Construction, Inc., in writing of any material change in the insurance including company, limits, termination or cancellation, etc., not less than 30 days prior to such occurrences.

ARTICLE 12.1.3 Add as follows: Provided, however, that in no event shall Contractor be entitled to recover more than the GMP. It is acknowledged that any delays or other changes due to Owner activities that would increase our costs will be handled as change orders to the GMP and treated as such.

ARTICLE 12.3 Add the following clarification: Termination by Owner Without Cause. Contractor would be paid for all work completed to the date of cancellation plus all demobilization costs and any proven loss they will incur (for example, orders placed but not yet received which are not refundable under the subcontractor's terms). See following articles.

ARTICLE 12.3.05 Add the following: Anything these Supplementary Conditions or 12.3 to the contrary notwithstanding: If the Owner terminates this Agreement prior to the commencement of the Phase II Design the contractor shall be paid the balance of the Contractor's Design Phase I compensation as set forth in Subparagraph 7.2.2 All fees for Design Cost shall be based upon time and materials up to the amount shown in Appendix A of the Owner/Contractor Agreement.

ARTICLE 12.3.1 Add the following clarification: See definitions in this article. Before the Construction Phase starts, Contractor would receive the balance of the Contractor's Design Phase Compensation and x% of the Contractor's Fee as defined in 7.3.1.2, which is included in the GMP.

Add the following: Anything in the Supplementary Conditions to the contrary notwithstanding: If Owner terminates this Agreement after completion of the Phase I Design, but prior to commencement of the Construction Phase the Contractor shall be paid the balance of the Contractor's Design Phase compensation as set forth in Subparagraph 7.2.2. All fees for Design Cost shall be based upon time and materials up to the amount shown in the Owner/Contractor Agreement.

ARTICLE 12.3.2 Add the following clarification: See definitions in this article. After the Construction Phase starts, Contractor will receive the balance of the Contractor's Design Phase Compensation and x% of the Contractor's Fee as defined in 7.3.1.2, which is included in the GMP.

ARTICLE 12.4 Add the following clarification: Suspension by the Owner for Convenience. See following articles.

ARTICLE 12.4.2 Add the following clarification: Depending on the length of time the job was suspended, delayed, or interrupted and then resumed, an adjustment in cost would be applied to account for increases in labor, material, equipment, and subcontractor costs at the time the job was resumed and the GMP adjusted. If the job is suspended, delayed or interrupted indefinitely, costs will be billed based upon expenses incurred and non-refundable costs which have already been incurred.

ARTICLE 13.1 THROUGH 13.4 Delete and insert the following:

If the Owner and Contractor cannot satisfactorily resolve any claim, they may, but are not obligated to agree to submit the matter in dispute to a person qualified as a mediator pursuant to the Indiana Rules of Alternative Dispute Resolution for a nonbinding determination. Such person shall be selected from the list of mediators maintained by the Vigo Superior Court, Division 1, as approved mediators pursuant to

those rules and the selection shall be made by the parties alternatively striking from said list or by the parties agreeing to a mediator. The costs of mediation shall be shared equally by the parties. The procedures to be followed shall be as set forth in Rule 2.7 of the Indiana Rules of Alternative Dispute Resolution provided, however, that no report of mediation need be made. Rules 2.8 and 2.9 shall be applicable to such mediation. Rule 2.10 concerning discovery shall not apply. Rule 2.11 shall apply. The results of such mediation shall not constitute evidence in any later proceeding and such mediation proceeding shall be nonbinding on either party.