



815 Swan Street
Terre Haute, Indiana 47807
812-235-6218 Phone
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SUBCONTRACT AGREEMENT
Subcontractor

No.
Click here to enter a date.

To: Ship Hannig Construction, Inc.
To:

Attention: HCI Project No.

Email:

Phone:

Mobile:

Fax:

Project Manager: Choose an item.
Choose an item.
Onsite Manager: Choose an item.
Choose an item.

Furnish (all labor) or (and deliver F.O.B. Jobsite the necessary) materials, services, supplies, and equipment incidental to and necessary to perform and complete the _____ work including all related accessories as specified and as required for the above referenced project in accordance with the Contract Documents attached hereto and/or identified in Appendix "A" (collectively, the "Contract Documents"), all as prepared by _____. All of which documents form a part of a contract between the Owner and HANNIG CONSTRUCTION, INC., (Contractor), hereby become a part of this Agreement and herein are referred to as the Contract Documents.

In addition to its obligations under this Agreement, the Subcontract/Material Supplier shall have, with respect to this Subcontract/Purchase Order, the same obligations and makes the same covenants, representations, warranties, and indemnities (including, but not limited to, (Indemnification Article) of the (General Conditions or other contract document article)) to the Contractor as the Contractor has to the Owner, as specified in the Contract Documents.

The material and equipment to be furnished and work to be done by the Subcontractor/Material Supplier shall be as outlined by the Contract Documents and items as follows:

SECTION (Spec Section & Description)

The scope of work specifically includes, but is not limited to, the following:

CONTRACT PRICE.....\$_____

(State in which project is located) State Sales and/or Use Tax (is or is not) included in the above Contract Price. Our tax exempt identification number is _____.

Submit (# of copies) (electronic or physical) copy(ies) of all shop drawings, brochures, color data samples, test data and manufacturer's instructions and specifications, as required by the Contract Documents, for approval within _____ weeks from receipt of this Subcontract/Purchase Order.

Please forward copies of your Certificate of Insurance with the following requirements satisfied:

1. Reference this project number #_____.
2. Name Hannig Construction, Inc., (other additional insured requirements) as additional insured(s).
3. Limits as set forth in Appendix E of the Contract.

Please also forward your Certificate of Employers Compliance with the Indiana Worker's Compensation and Occupational Disease Acts. **THESE REQUIREMENTS MUST BE FULFILLED PRIOR TO COMMENCING WORKING ON THIS PROJECT.**

FAILURE TO COMPLY WITH THESE REQUIREMENTS WILL RESULT IN THIS CONTRACT BEING VOIDED AND TERMINATED UNDER ¶10 AND APPENDIX C, AND THE WORK HEREIN ISSUED TO ANOTHER SUBCONTRACTOR/MATERIAL SUPPLIER.

Your signature on this Agreement confirms that your Company is in compliance with the insurance requirements as outlined in the Project Specifications (if any) and Appendix E of the Subcontract.

Please give reference to *HANNIG CONSTRUCTION, INC., PROJECT NO.* _____ in all correspondence related to this project.

Acceptance of this Purchase Order Agreement is limited to acceptance of the express terms of the offer.

Subcontractor/Material Supplier acknowledges that he has received Subcontract/Purchase Order and that he understands that it includes specific Contract Documents and that he has read and understands same.

Please sign the **ACKNOWLEDGMENT** copy of this Purchase Order Agreement and return it to this office as soon as possible.

You will not be allowed to commence work on this project and no payments will be made until you have fully signed and returned this Purchase Order and an Insurance Certificate is received in our office with all requirements fully satisfied.

Appendices A, B, C, D, E, F (and other appendices) attached hereto are a part of this Purchase Order Agreement.

VENDOR: Return Acknowledgment Copy With Acceptance Signed.

ACCEPTED

COMPANY
BY

_____ HANNIG CONSTRUCTION, INC.
BY

DATE

_____ TITLE

_____ [Click here for Hannig Representative](#)

_____ Choose an item.

APPENDIX A

CONTRACT DOCUMENTS

The Contract Documents shall consist of the following:

1. Written contract between Hannig Construction, Inc., and _____ dated _____.
2. General Conditions, _____.
3. Drawings and Specifications as follows:
(List)
4. Addenda as follows:
(List)
5. List other contract documents as required by specifications.
(List)

APPENDIX B

1. Prosecution of the Work - The Subcontractor/Material Supplier acknowledges that time is of the essence and shall vigorously prosecute the work in accordance with the Contractor's Construction Schedule which forms a part of this contract. If Subcontractor/Material Supplier causes or contributes to a delay to the progression of its work, or that of Contractor or any other subcontractor/material supplier on the Project, then Subcontractor/Material Supplier shall be liable to Contractor for any costs incurred by Contractor in recovering the Construction Schedule. In order to maintain the approved Construction Schedule, the Subcontractor/Material Supplier shall work overtime, increase the size and number of crews, work multiple shifts, or take other measures as directed by Contractor, and except as otherwise provided all such measures shall be at Subcontractor's/Material Supplier's expense.

Subcontractor/Material Supplier recognizes that changes may be made or occur in the Construction Schedule and agrees to comply with such changes without additional compensation. In the event Subcontractor's/Material Supplier's performance of the Work is delayed, interfered with, hindered or disrupted for any period of time by individual or cumulative acts or omissions of or interference by Owner, Architect, other contractors, subcontractors or third parties, or due to fire or other casualty, or on account of riots or of strikes, or other combined action of workmen or others, or on account of any Acts of God, or any other cause whether or not within the Owner's control, Subcontractor/Material Supplier may request an extension of time for performance of the Work, and the right to such time extension shall be Subcontractor's/Material Supplier's sole and exclusive remedy. Subcontractor/Material Supplier shall not be entitled to claim or recover any increase in the Contract Price or damages or additional compensation of any type whatsoever as a consequence of any such delays, suspensions, hindrances or disturbances, whether or not contemplated by the parties and regardless of the severity or duration thereof.

Accordingly, if Subcontractor/Material Supplier is delayed, hindered, or otherwise damaged by the act, omission, or delay by any separate contractor, Subcontractor's/Material Supplier's sole right and recourse shall be against such separate contractor except as to the conditional right to an extension of time as provided in Article 8 hereof.

Contract Time extensions will be granted to Subcontractor/Material Supplier only to the extent that excusable delays occur without concurrent non-excusable delays and which actually extend the time required by Subcontractor/Material Supplier to perform and complete critical Work elements and activities and thereby cause an actual delay to achievement of Project completion.

2. Entire Agreement. The Contract Documents identified herein form the entire contract between the parties and supersede all prior or contemporaneous agreements, negotiations, and communications. No representation, promise, or agreement not expressed in the Contract Documents has been made to induce either party to enter into this contract.
3. Inspection of Site. The Subcontractor/Material Supplier represents and agrees that the Subcontractor/Material Supplier has carefully examined and understands this Agreement and the aforementioned Contract Documents, has investigated the nature, locality and site of the Work and the conditions under which the Work is to be performed, and that the Subcontractor/Material Supplier enters into this Agreement on the basis of its own examination, investigation and evaluation of all such matters. No allowance in the form of additional compensation is to be made by reason of any error on the part of the Subcontractor/Material Supplier with respect to such matters.

The Subcontractor/Material Supplier further acknowledges that he has visited the site and is familiar with all of the existing conditions that may affect his work. No additional compensation will be allowed for the Subcontractor/Material Supplier's failure to do so.

4. Flow-Down of Obligations. The Subcontractor/Material Supplier shall be bound to the Contractor by the terms of this Agreement and of the Contract Documents between the Owner and Contractor, and shall assume toward the Contractor all obligations and responsibilities which the Contractor, by those Documents, assumes toward the Owner, including, but not limited to, all warranty obligations, claim procedures, notice requirements and dispute resolution, provided that where any provision of the Contract Documents between the Owner and Contractor is inconsistent with any provision of this Agreement, this Agreement shall govern.
5. Changes in the Work and Claims. The Subcontractor/Material Supplier shall not do any extra or change work, or make any changes therein under this Agreement, except upon the written order of the Contractor, or his authorized representative, given before Subcontractor/Material Supplier commences any such work. If Subcontractor/Material Supplier proceeds with any extra or change work without prior written authorization from Contractor, Subcontractor/Material Supplier does so at its own risk and waives all rights to payment for such work.

Subcontractor/Material Supplier shall make any and all claims to Contractor for additional costs, damages and extensions of time in writing within twenty-one (21) calendar days of the event giving rise to such claim, or within the specified time as dictated by the General Conditions or other Contract Documents. In addition, such claim must be submitted in accordance with any other requirements set forth in the Contract Documents. The failure to give such written notice within the twenty-one (21) day time limit allowed for submission of a claim shall constitute an irrevocable waiver of the claim by Subcontractor/Material Supplier.

No action, conduct, omission, prior failure or course of dealing by Contractor shall be effective to waive, modify, change or alter the requirement that all extra and/or change work must be authorized in writing and signed by Contractor. As such, the Change Order or Construction Change Directive are the exclusive methods of affecting any change in the Contract Price or Contract Time. Contractor acknowledges that the Contract Price and Contract Time cannot be changed by implication, oral agreement, actions, inactions, or course of conduct other than the methods prescribed by the Construction Documents.

6. Payment - Payment shall be made in accordance with the General Conditions of the Contract provided that before each payment, the Subcontractor/Material Supplier shall submit with each payment application an express written waiver and release of all claims for payment on such forms and in such manner as Contractor may require (or as set forth in Appendix D) for the period of time for which the Subcontractor/Material Supplier requests payment, for all work performed, and labor, materials, equipment, and services furnished through the date of the payment application. The waiver and release shall specifically exclude any retainage withheld and any pending, unresolved change orders or claims properly asserted and preserved under the subcontract and specifically enumerated in the waiver and release. Additionally, upon request by Contractor, Subcontractor/Material Supplier shall also furnish, as a condition precedent to payment, similar waivers and release by any lower tier Subcontractor/Material Supplier, or other person providing labor, materials or services relative to the work, for which payments are being requested by Subcontractor/Material Supplier. Any waiver of claims provided hereunder is solely for the benefit of the Contractor, but may be transferred or assigned by Contractor to the Owner. At Contractor's request, and as a condition precedent to final payment, Subcontractor/Material Supplier will provide affidavits on such forms or in such format as Contractor may require from all persons furnishing labor, materials, or services to the effect that they have been paid in full. If at any time there is any lien or claim for which, if established, the Contractor or the said premises or Owner might be liable, the Contractor shall have the right to retain out of, or set off against, any payment then due or thereafter, an amount to be determined in Contractor's sole discretion sufficient to completely indemnify against such lien or claim until same shall be discharged, including costs and attorney's fees incurred by Contractor in responding to such lien or claim.

Should Subcontractor/Material Supplier at any time fail to pay for all labor, materials or equipment used by Subcontractor/Material Supplier when due, Contractor may, but shall not be obligated or required to, make direct payment on behalf of Subcontractor/Material Supplier of any part or all of such sums due and owing to said subcontractors, material suppliers and/or laborers for their labor, materials or equipment furnished to the Project, not to exceed the Subcontract Price remaining due and owing to Subcontractor/Material Supplier. In the event of such payments, Contractor shall charge all such direct payments against the

Subcontract Price under the Contract. However, nothing contained in this paragraph shall create any personal liability on the part of Contractor to any subcontractor, material supplier or laborer, or establish any direct contractual relationship between Contractor and them. Joint-payable checks may be issued at Contractor's discretion whenever Contractor has notice that subcontractors or materialmen are not being paid promptly by Subcontractor/Material Supplier.

All invoices must be received by the ____ day of the month. Invoices received after the ____ day of the month may not be processed until the following month. Invoices will be paid to the Subcontractor/Material Supplier in amounts equal to 90% of the value of the work performed and materials incorporated in the construction less the aggregate of previous payments, and less amounts due to defective work unless specified otherwise. All payments will be made as and when such payments are received by the Contractor from owner. Receipt of payment from the owner for the Subcontractor/Material Supplier's work is a condition precedent to Contractor's obligation to make payments to the Subcontractor/Material Supplier, regardless of the reason for non-payment whether attributable to the fault of the Owner, the Contractor, the Subcontractor/Material Supplier, or to any other cause. Payments shall not become due to the Subcontractor/Material Supplier unless and until the Contractor receives payment for such work from the Owner and the amount due shall not exceed the amount actually received by the Contractor as applicable to the Subcontractor/Material Supplier's work; otherwise the time when such payment shall be due the Subcontractor/Material Supplier shall be postponed until Contractor has received same from Owner. Such receipt of payment by Contractor is intended as a condition precedent to Contractor's duty to pay Subcontractor/Material Supplier and Subcontractor/Material Supplier accepts the risk of nonpayment by the Owner. Subcontractor/Material Supplier expressly contemplates that payments to it are contingent upon Contractor receiving payment from the Owner, and Subcontractor/Material Supplier expressly agrees to accept the risk that it will not be paid for work performed by it in the event that the Contractor, for whatever reason, is not paid by the Owner for such work. Subcontractor/Material Supplier hereby acknowledges that it relies solely and exclusively, for work performed, on the credit and ability of the Owner, and not Contractor, and Subcontractor/Material Supplier agrees that payment to Contractor for work performed by Subcontractor/Material Supplier shall be a condition precedent to any obligation of Contractor to Subcontractor/Material Supplier for payment for its work. Payment as used in this clause shall include retainage, progress payments, payments for change orders, extra work, final payment and payment for claims.

Final payments will be made after completion of the work, its acceptance by the Owner, complete submittal of all required project close out documents, receipt of all required express written waivers and release of all claims including similar waivers and releases by lower tier Subcontractor/Material Suppliers or other person providing labor, materials or services relative to the work for which payments are being requested by Subcontractor/Material Supplier. Acceptance of final payment by Subcontractor/Material Supplier shall constitute a release of Contractor from all further liability and claims under this Subcontract/Purchase Order, except for claims previously and properly and timely submitted in writing. Contractor may deduct from such payments any amounts owed by Subcontractor/Material Supplier to Contractor.

A completed Affidavit and Waiver of Lien Form (herein attached by appendix) must be submitted with each Pay Request. The amount reflected on this form in Item #4 should be equal to the amount of the Pay Request with which it is submitted.

Contractor requires all Subcontractors/Material Suppliers to provide waivers of lien from their Subcontractors/Material Suppliers on any contracts or purchases they have or make that is over \$10,000, showing proof of payment. The waivers must be included with your monthly pay applications. The furnishing of such lower tier waivers shall be a condition precedent to payment to Subcontractor/Material Supplier.

All work performed as "extras" or "field orders" to your contract cannot be invoiced until you have received a written fully executed change order letter from Contractor's home office instructing you to include the change order amount in your next AIA Billing. Field Work Orders, or any other written order or acknowledgment, issued or received and signed by the Contractor's Project Superintendent will indicate that the Work performed thereunder was accomplished by the Subcontractor/Material Supplier, and will not indicate that the work is extra work, unless so acknowledged by the signature of an officer of the Contractor. Such a determination shall be made jointly by the Subcontractor/Material Supplier and the Contractor's Project Manager within fourteen (14) days of issuance of such an order. The Subcontractor/Material Supplier shall be required to comply with Field Work Orders. Subcontractor/Material Supplier will not receive an increase in price for extra work, unless such increase is approved by written change order signed by Contractor.

The Subcontractor/Material Supplier shall, prior to the submission of the first draw, supply the Contractor the name, address and telephone number of all suppliers furnishing or to furnish materials for work covered hereby. No payment shall be made to the Subcontractor/Material Supplier until such information is furnished. The Contractor reserves the right and is authorized by the Subcontractor/Material Supplier to make draw checks jointly payable to the Subcontractor/Material Supplier and Material Suppliers or to Subcontractor/Material Supplier and Sub-Subcontractors of the Subcontractor/Material Supplier.

Subcontractor/Material Supplier may not be allowed to commence work on this project and no payments will be made until you have fully signed and returned the "Acknowledgment Copy" of this Purchase Order.

7. Taxes - Unless specifically provided otherwise, all prices include all federal, state, and local sales or use taxes, and the cost of all licenses and permits.
8. Safety - The Subcontractor/Material Supplier shall comply with all applicable safety laws, rules, and regulations of the State in which the project is located. Subcontractor/Material Supplier shall have the sole responsibility, and shall exercise all reasonable care for the safety of its employees and other persons who, in the ordinary course of business, come in contact with Subcontractor's/Material Supplier's work. Subcontractor/Material Supplier shall comply in every respect with applicable safety rules and regulations and other laws of the State in which the project is located, including particularly the Williams-Steiger Occupational and Safety Health Act of 1970, as amended and the Indiana Occupational Safety and Health Act of 1971, and with other applicable statutes and safety orders and regulations. Subcontractor/Material Supplier shall also comply with such rules for the prevention of accidents as may be prescribed by Owner or Contractor. Subcontractor/Material Supplier shall notify the Contractor immediately following any accident and promptly confirm the notice in writing; a detailed written report shall be furnished to the Contractor. The undersigned Subcontractor/Material Supplier accepts full responsibility for its compliance with the Occupational Safety and Health Act of 1970.
9. Tests, Samples, Drawings, Data, Quality Control - Subcontractor/Material Supplier shall provide all testing of all materials and equipment, and the furnishing of test reports, manufacturer's certificates, warranties, samples, shop, detailed and as-built drawings, manuals of instruction for the work. Approval of submittals shall not relieve Subcontractor/Material Supplier from responsibility for errors, omissions, or deviations from Principal contract or Subcontract/Purchase Order requirements. Subcontractor/Material Supplier shall provide, both in the shops and at the site, for the inspection of the work by the Owner and Contractor, or authorized representatives.

Submittals, as required by the Contract Documents, shall be submitted for approval within one (1) week from receipt of this Subcontract/Purchase Order, unless specified otherwise.

10. No Liens or Claims - Subcontractor/Material Supplier will indemnify defend and hold harmless Contractor, Owner, and Architect against any lien or claim (including a stop notice or a claim against a Contractor's bond) and damages (including attorney's fees incurred by Contractor in responding to such lien or claim) arising out of obligations incurred by or for Subcontractor/Material Supplier in connection with this Contract, including obligations incurred by or for lower tier Subcontractors and Suppliers of Materials or Equipment. If any lien or claim shall be asserted, Subcontractor/Material Supplier shall within five days cause it to be discharged.

Upon request, Subcontractor/Material Supplier will furnish a certification in a form satisfactory to Contractor from all lower tier Subcontractors, Suppliers of Materials or Equipment, and others that provided any of the work, showing that they have been paid in full, and will promptly furnish certified copies of payrolls showing payment in full for all labor in connection with the work. Furnishing such certifications, releases and certified copies, when so requested, shall be a prerequisite to any payments to Subcontractor/Material Supplier.

No Lien Agreement: Subcontractor/Material Supplier, for itself and all parties claiming through Subcontractor/Material Supplier who would be entitled to liens as provided in I.C. 32-8-3-1, agrees with Contractor that no liens shall attach to and hereby waives all rights to file mechanic's liens against the project real estate, or to any improvements now existing or to be constructed thereon in favor of Subcontractor/Material Supplier, or his subcontractor, mechanic, journeyman, laborer, material vendor, lessor of tools or machinery or any other party who may furnish work, materials, services, tools, or machinery for construction or improvements on the project real estate pursuant to the Contract Documents or pursuant to any subsequent agreement between contractor and Subcontractor/Material Supplier to furnish extras or additions.

11. Indemnification - To the fullest extent permitted by law, Subcontractor/Material Supplier shall indemnify, defend, and hold harmless Hannig Construction, Inc., Owner, Architect/Engineer, General Contractor, and Construction Manager and all of their officers, directors, partners, agents, employees, consultants, attorneys and any other person or entity for whom any of them may be legally responsible, of and from and against all claims, suits, demands, causes of action, damages, losses, costs and expenses, including reasonable attorney's and consultant's fees and expenses, of any nature whatsoever which arise out of, or are alleged to arise out of, result from, or are in connection with or incidental to the performance of Subcontractor's/Material Supplier's Work under this Contract, or occasioned by any breach or nonperformance of its terms and obligations, or by any labor, materials or equipment furnished hereunder, provided that any such claim, suit, demand, cause of action, damage, loss, cost, fees or expense:
- (a) is attributable to, or alleged to arise out of or be attributable to, bodily injury, sickness, disease or death, or actual or alleged infringements of any patent, trademark, copyright or other intellectual property or proprietary right, or the breach of or failure to comply with any term, condition or obligation under the Contract, or to injury or damage to or destruction of tangible property or real property, including the loss of use thereof and consequential damages resulting therefrom, or is attributable to damages from economic harm or loss, or is attributable to damages to any party indemnified hereunder or its employees, servants and agents, and whether such claim, suit, demand, cause of action, damage, loss, cost, fees or expense, is based upon, or claimed to be based upon, statutory, contractual, tort or other liability of any indemnified party hereunder; and
 - (b) is caused in whole or in part by any negligent act or omission, breach of contract, breach of warranty, strict liability, or other breach of any duty or obligation of Subcontractor/Material Supplier or anyone directly or indirectly employed by it or anyone for whose acts it may be liable, or is caused by or arises out of the use of any products, materials, machinery or equipment furnished by Subcontractor/Material Supplier, regardless of whether such claim, suit, damage, loss, cost or expense is caused in part by any joint, several or comparative, but not sole, negligent act or omission, breach of contract, breach of warranty, strict liability, or other breach of duty or obligation by any party indemnified hereunder.

Subcontractor/Material Supplier shall, on Contractor's request, but at Subcontractor's/Material Supplier's own expense, defend any suit asserting a claim covered by this indemnity. Subcontractor/Material Supplier shall pay all costs and litigation expenses, including, without limitation, reasonable attorney fees, incurred in enforcing this indemnity. Acts or omissions of Subcontractor/Material Supplier shall include acts or omissions of lower tier subcontractors, material suppliers, or others operating within the scope of authorization of Subcontractor/Material Supplier. In any action brought by a party hereto to enforce this Subcontract/Purchase Order or any term(s) hereof (or, in connection with a declaratory judgment action with respect to this Subcontract/Purchase Order and/or any term(s) thereof), the ultimately prevailing party shall be entitled to recover its reasonable attorney fees and legal expenses in prosecuting such action (including, without limitation, the prevailing party's filing fees, deposition expenses, other out-of-pocket litigation expenses, and reasonable paralegal fees) from the non-prevailing party.

Where Contractor and Owner are entitled under this or other articles to be indemnified by Subcontractor/Material Supplier the indemnity shall extend to Owner, Contractor, and Architect, its partners and affiliates, and to the directors, officers, agents, employees and partners of any of them.

12. Insurance Requirements - Subcontractor/Material Supplier shall at its own expense, maintain insurance in effect at all times during the performance hereof with insurers and under forms of policies, limits of insurance coverage and requirements set forth in Appendix E and as otherwise described in the Contract Documents.
13. Default - The occurrence of any one or more of the following events shall be deemed to be an "event of default" of this Subcontract/Purchase Order Agreement:
- a) Refusal, failure or neglect of the Subcontractor/Material Supplier to supply a sufficient number of properly skilled workmen of a sufficient quantity or quality of materials;
 - b) Dissolution, termination of existence, insolvency (however evidenced), general failure to pay debts as they mature, business failure, appointment of a receiver of any part of the property of, assignment for the benefit of creditors by, commission of any act or bankruptcy by, or the service or filing of any warrant, attachment or levy or of any tax lien or assessment or similar process against the Subcontractor/Material Supplier;
 - c) Failure of the Subcontractor/Material Supplier to make prompt payment to its materialmen, suppliers, subcontractor or workmen, or to insure prompt payment by any of them to any party to whom they may be obligated by reason of the work;
 - d) Failure of the Subcontractor/Material Supplier in any respect to prosecute the work in a proper and prompt manner;
 - e) Failure of the Subcontractor/Material Supplier to perform fully any and all of the obligations of the Subcontractor/Material Supplier to be performed pursuant to this Subcontract/Purchase Order Agreement.

Upon the happening of any "event of default", and at any time thereafter, the Contractor may, at its option, after giving forty-eight (48) hours written notice to the Subcontractor/Material Supplier, provide any such labor and materials and/or do all things as may be necessary or convenient to complete the work and deduct the cost thereof from any monies due, or thereafter to become due, under the Subcontract/Purchase Order Agreement. Alternatively, or in addition, upon the occurrence of any one or more events of default, the Contractor may, at its option, terminate the Subcontract/Purchase Order. In that event, the Contractor shall have the right to enter upon the premises of the Subcontractor's/Material Supplier's facilities at the Project, and take possession, for the purpose of completing the work, of all materials, tools and appliances therein, and may employ any other person or persons to finish the work and provide the materials therefor. In case of such discontinuance of the Subcontractor's/Material Supplier's right to proceed with the work, the Subcontractor/Material Supplier shall not be entitled to receive any further monies under this Subcontract/Purchase Order Agreement until the work undertaken by the Contractor is completely finished and payment therefor has actually been received by the Contractor from the Owner (such payment by the Owner being a condition precedent to any obligation for payment by the Contractor to the Subcontractor/Material Supplier.) At that time, if the unpaid balance of the amount to be paid under this Subcontract/Purchase Order Agreement exceeds the costs (including, but not limited to, any incidental or consequential damages and reasonable attorney fees and litigation expenses (meaning, without limitation, paralegal fees, filing fees, deposition expenses and other out-of-pocket litigation expenses) incurred by the Contractor by reason of the Subcontractor's/Material Supplier's default and/or in any and all types of litigation arising from such, shall be chargeable to, and paid by, the Subcontractor/Material Supplier. If the aforementioned costs exceed the unpaid balance due the Subcontractor/Material Supplier, then the Subcontractor/Material Supplier shall promptly pay the Contractor the amount by which such costs exceed such unpaid balance. The costs incurred by the Contractor as herein provided, either for furnishing materials or for finishing the work, and any damages, including incidental and consequential damages incurred by the Contractor by reasons of the Subcontractor's/Material Supplier's default, shall be chargeable to, and paid by the Subcontractor/Material Supplier. Any and all rights and remedies of the Contractor under this Subcontract/Purchase Order Agreement shall be cumulative. The enumeration of specific rights and remedies of the Contractor shall not affect or impair any of the Contractor's right or remedies at law or in equity, or under the Prime Contract. In the event any acts or omissions of the Subcontractor/Material Supplier delay the Contractor in the performance of the Prime Contract and result in the Contractor's being

subjected to any damages (including, but not limited to acceleration, delay or recovery costs), claims, penalties, liabilities, or liquidated damages thereunder, the Subcontractor/Material Supplier shall, upon demand of the Contractor, promptly pay to and reimburse the Contractor for the full amount of any penalties, liabilities or liquidated damages, including costs and attorney's fees incurred by Contractor in responding to such delay.

14. Nonwaiver - Failure of Contractor to insist on strict and timely performance shall not be a waiver of any right or remedy that it may have and shall not be a waiver of any subsequent default. Neither payment for nor acceptance of any or all of the work shall relieve Subcontractor/Material Supplier of liability for any failure to fully perform its obligations.
15. Assignments - The Subcontractor/Material Supplier shall not assign any interest in this Contract, including the right to receive any payment due or to become due nor shall any of the work to be performed hereunder be subcontracted, without prior written consent of Contractor.
16. Legality - Severability - Should any part, term or provision of this Subcontract/Purchase Order be decided to be unenforceable or in conflict with any applicable law or regulation, the validity of the remaining portions or provisions shall not be affected thereby.
17. Cleanup - Subcontractor/Material Supplier shall be responsible for all cleanup and finishing work related to or resulting from the performance of the work, including the prompt removal and disposal of any rubbish, unused materials, tools, and equipment, to common bin. If Subcontractor/Material Supplier fails to remove rubbish as directed by the Contractor, the Contractor may remove the Subcontractor's/Material Supplier's rubbish with his own forces and charge to the Subcontractor's/Material Supplier's account the cost of such work.

Dumpster or trash containers may be provided for disposal of project trash and debris at this project. The cost of the dumpster or trash containers if provided shall be borne by each Subcontractor/Material Supplier based on a prorated percentage of the Subcontractor's/Material Supplier's contract amount to the Project Contract Amount unless the Subcontractor/Material Supplier obtains written confirmation from HANNIG CONSTRUCTION, INC., project superintendent verifying the Subcontractor/Material Supplier did not deposit trash and debris into the dumpster and/or trash containers.

18. Warranty - The Subcontractor/Material Supplier shall warrant his work (including all materials and equipment furnished pursuant thereto) against all defects of material and/or workmanship for the period called for in the Contract Documents, or in the absence of such for the period of two (2) years from the date of the Owner's final acceptance of the project. Work, materials, or equipment not conforming to these requirements may be considered defective. This warranty shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Contract Documents.

Subcontractor/Material Supplier shall, at its sole expense, promptly and properly repair, replace or otherwise correct any Work that is (i) rejected by Owner or Architect, or (ii) known, observed or discovered at any time by Subcontractor/Material Supplier, Contractor, Owner or Architect to be defective or failing to conform to the Contract Documents and shall pay Contractor for all expenses incurred in any delay caused by remedying defective or otherwise nonconforming Work.

If within two (2) years after final completion and acceptance of the Work and Project by Owner, or such longer period as established with respect to Contractor's obligations under the Contract Documents, the Work or any portion thereof is found to be not in accordance with the requirements of the Contract Documents, Subcontractor/Material Supplier shall correct it promptly after receipt of written notice from Owner to do so.

19. Collect Freight Bills - A ten percent (10%) service charge will be made on all "collect" freight bills processed and paid by this office.
20. Scheduling - The Contractor reserves the right to postpone delivery of materials or performance of labor or to accelerate such deliveries or performance of work by the requirement of additional labor as may be required by the progress of the job, and the Subcontractor/Material Supplier hereby agrees to carry out the Contractor's instructions in regard to time of deliveries or manner of performance, or amount of labor at no additional expense to the Contractor.
21. Liquidated Damages - Any liquidated damages assessed and/or charged to the Contractor by the Owner on account of failure to complete the contract in the time specified shall be borne by all Subcontractors/Material Suppliers who have delayed completion of their work, in proportion to the delay caused by such companies. The decision of the Contractor shall be final in determining the cause of the delay, if any, and the allocation of the amount of any penalties Subcontractors/Material Suppliers causing delay.
22. Labor Agreements - Subcontractor shall comply with all the provisions of any collective bargaining agreement executed by them, specifically including the provisions of any such agreements providing (a) for the assignment of work or the settlement of jurisdictional disputes, (b) for the adjustment of any other disputes or grievances, (c) for hiring and union security and (d) for the making of payments under health and welfare or other fringe benefit plans, to the full extent that the terms and provisions of such agreement can legally be applied to the work.

Subcontractor shall Work in harmony with Contractor and all other Subcontractors to assure that no labor disputes of any kind involving the Contractor, Subcontractor or any other Contractors, Subcontractors or sub-Subcontractors, or their respective employees or agents shall occur or be manifested on the Project, and Subcontractor shall only employ persons on the Project who will Work at all times in harmony with other persons and trades on the Project. If Subcontractor has Labor Agreements with any organized labor unions, Subcontractor shall Work in harmony with any and all Contractors, Subcontractors or sub-Subcontractors who employ personnel that are not represented by an organized union. Subcontractor shall not be relieved of its obligations under this Subcontract by any jurisdictional dispute, Work stoppage, slowdown or any other circumstances involving its employees that cause, create or aggravate any interference, delay, suspension or other form of impairment to performance or completion of any work by any person on the Project. If any such Work stoppage, slowdown or any other action does occur due to any type of labor dispute or a picket line established for any reason, Subcontractor shall immediately adopt any and all measures (including, but not limited to, a separate gate) as necessary to eliminate and avoid delay or disruption to the Subcontractor's Work or any other Work of others at the Project.

Lower tier subcontractors shall comply with this Article 22 to the same extent as Subcontractor, and an express provision imposing such obligations upon lower tier subcontractors shall be included in their subcontracts. Subcontractor shall indemnify Contractor against any liability, claim, loss, damage or expense resulting in any way, directly or indirectly, from its failure to comply with the requirements of this article, including costs and fees incurred in enforcing this indemnity.

In the event HANNIG CONSTRUCTION, INC., suffers any damage (including, but not limited to acceleration, delay or recovery costs), claims, penalties, liabilities or liquidated damages as a result of the Subcontractor's (or anyone for whom Subcontractor is responsible) breach of any such agreement, then the Subcontractor shall indemnify and hold harmless HANNIG CONSTRUCTION, INC., from any such liability and it shall reimburse HANNIG CONSTRUCTION, INC., for all such damages and costs (including but not limited to acceleration, delay or recovery costs), claims, penalties, liabilities or liquidated damages and costs (including attorney's fee) occasioned thereby.

23. Limitation to General Conditions - Nothing set forth and contained in this Contract shall create or establish any contractual relationship or obligations between Contractor and any of Subcontractor/Material Supplier's employees, consultants, agents or representatives nor create a cause of action in favor of any third party against Owner or Contractor. There are no intended present or third party beneficiaries under this Contract, and any and all rights and remedies hereunder

are exclusively for the benefit of the parties hereto. The Work under this Contract is being performed solely for Owner's benefit and no other entity shall have any claim against Owner or Contractor because of this Contract or the performance or non-performance of Contractor's Work hereunder.

24. Applicable Law - All matters relating to the validity, performance, interpretation or construction of this Agreement or the breach thereof shall be governed by the law of the State of Indiana. Any suit brought to enforce or interpret the provisions thereof shall be commenced or prosecuted only in Vigo County, Indiana.
25. Non Discrimination - If applicable, during the performance of this Agreement, Subcontractor/Material Supplier agrees to comply with all federal, state or local laws respecting discrimination in employment and non-segregation of facilities including but not limited to requirements set out in 41 C.F.R. § 60-1.4(a), § 60-4.3(a), § 60-300.5(a), and § 60-741.4(a), which equal opportunity clauses are herein incorporated by reference. Notification is hereby given that compliance with these clauses may require the Subcontractor/Material Supplier to annually file certain reports with the federal government and may require the Subcontractor/Material Supplier to develop written affirmative action programs for women and minorities, covered veterans and/or persons with disabilities.
26. Precedence - Subcontractor/Material Supplier shall promptly call to the attention of the Contractor, Owner and Architect any discrepancy or conflict in figures, Drawings, or Specifications that affect its Work. In the event of conflicts or discrepancies between and among the Contract Documents, Architect shall determine which takes precedence over the other. However, typed language, terms and conditions shall take precedence over printed language, terms and conditions, figure dimensions shall take precedence over scale measurements, large scale details shall take precedence over small scale drawings, and drawings of later date shall take precedence over those of earlier date. Any part of the Work shown on the Drawings but not specifically mentioned in the Specifications, or vice versa, shall be considered as part of the Work, the same as though included in both. In the event of an inconsistency or conflict between Drawings and Specifications, or within either document not clarified by addendum, the better quality or the greater quantity or scope of the Work shall be provided, and the provision of a Contract Document imposing the greater obligation upon the Subcontractor/Material Supplier or affording the greater right or remedy to the Contractor and/or Owner shall govern, in accordance with the Architect's interpretation. Likewise, the Work to be undertaken by Subcontractor/Material Supplier shall include all incidental work necessary as customarily done for the completion of the Project even though it may not be specifically described in the specifications or drawings.
27. Contractor's Own Equipment - In connection with Contractor granting use, whether implied or expressed, of certain equipment (including but not limited to scaffolding, conveyance, lifts and elevators) to Subcontractor to be used on the Project, the subcontractor agrees to hold harmless and indemnify Contractor all loss, liability, claims and demands on account of any loss or damage to persons or property which may be caused in whole or in part by the use of such property by the subcontractor and/or his employees. Contractor makes no warranties as respects the equipment and its condition and/or suitability, or has it inspected the subject equipment. Subcontractor assumes all damage, loss, liability or injury to the equipment of the Contractor.

APPENDIX C

CONSTRUCTION SCHEDULE AND PROJECT ACTIVITIES

The Subcontractor/Material Supplier agrees to perform and prosecute the work within the approved Contractor's Construction Schedule. If the Subcontractor/Material Supplier fails to meet the approved and established schedule dates and milestones, the Contractor by the rights of Paragraph 13 of Appendix "B" may, by written notice to the Subcontractor/Material Supplier, terminate the right to proceed and continue with all or any part of the work and terminate employment of the Subcontractor/Material Supplier, and the Contractor may take possession of all material, equipment, tools, and Construction equipment necessary to complete the work, accept assignment of subcontracts and finish the work by whatever reasonable method the Contractor may deem expedient.

If the contractor terminates the Subcontractor/Material Supplier's work for failure to prosecute the work within the approved Contractor's Construction Schedule, the Subcontractor/Material Supplier shall not be entitled to receive further payment until the work is finished. All claims costs, losses and damages incurred or sustained by Contractor in exercising any rights and remedies as provided in Paragraph 10 will be charged against Subcontractor/Material Supplier and Contractor may, with or without a Change Order being issued, deduct from payments then or thereafter due Subcontractor/Material Supplier the costs of correcting such default, neglect or deficiency. Such direct, indirect and consequential costs will include, but not be limited to fees and charges of the Owner, Architect, attorneys and other professionals, all court and arbitration costs and all costs of repair and replacement of work or property of Owner or others destroyed or damaged by correction, removal or replacement of Subcontractor/Material Supplier's defective Work. If payments then or thereafter due Subcontractor/Material Supplier are not sufficient to cover such amounts, Subcontractor/Material Supplier shall pay the difference to Contractor.

The mutually agreed to Construction Schedule Start date is _____, and the Construction Schedule completion date is on or before _____.

APPENDIX D

SAMPLE BILLING FORMAT

(to be billed on your letterhead)

Date

Re: PROJECT NAME
Scope of Work
HCI Project No.
Invoice No.
Progressive Billing No.
Period From: _____ to _____
HCI Purchase Order No.

| | | | | |
|----|--|----|----|-------|
| 1 | Original Contract Amount: | | \$ | _____ |
| 2 | Change Order Amount (to date): | | | _____ |
| 3 | Revised Contract Amount: | | | _____ |
| 4 | Total Completed & Stored to Date: | | | _____ |
| 5 | 10% Retainage (this billing): | \$ | | _____ |
| 6 | Retainage (previous billings): | | | _____ |
| 7 | Total Retainage: | | | _____ |
| 8 | Total Earned Less Retainage (Line 4 less Line 7): | | | _____ |
| 9 | Less Previous Certificates for Payment: | | | _____ |
| 10 | Current Payment Due: | | | |
| | a. Labor Value | | | _____ |
| | b. Material Value | | | _____ |
| | c. Total (a + b) | | | ===== |

YOUR COMPANY NAME

By _____

This form **must be** completed and submitted with each pay request. The amount reflected on this form in Item #4 below should be equal to the amount of the pay request with which it is submitted.

STATE OF _____)
) ss:
COUNTY OF _____)

AFFIDAVIT AND WAIVER OF LIEN

The undersigned, being first duly sworn on his oath, says as follows:

1. He is the _____ of _____ (hereinafter called "Company") located at _____ and is familiar with the facts herein stated and makes this affidavit for and on behalf of the Company, being duly authorized to bind the Company by the statements herein contained.
2. The Company has performed work and labor or furnished materials, supplies, or equipment in the construction of building(s) and improvements on the land owned by _____ (hereinafter called "Owner"), situated at _____.
3. Company has paid for all work, labor, materials, equipment and supplies performed or furnished by it and by its subcontractors, materialmen and suppliers upon such premises or in connection therewith up to _____, 20_____, and no person other than Company has any claim or right to a lien for any work, materials or services up to said date on account of any transaction undertaken by Company with respect to said premises.
4. The amount due from _____, for said project is in the sum of \$_____ (amount of attached billing). Upon payment to Company of such sum, Company will waive all liens and claims that Company now has or may have against the Owner and its representatives, any other equitable or legal interest holder in the Project, the Project itself (including without limitation the real property on which such Project is located and the improvements thereon), and Hannig Construction, Inc., for any and all labor performed, materials and equipment furnished, and services provided to or for the Project by or through Contractor as of the date of execution of this instrument, **excluding any Claims, Change Order Requests ("CORs") or Construction Change Directives ("CCDs") which have been submitted by Company for work performed or directed by Hannig Construction, Inc. and which are not yet reflected in any invoices or payment requests submitted to by Company, which are expressly identified and listed herein as follows:**

| | | |
|--------------|------------|--------------------------|
| <u>DATE:</u> | <u>NO.</u> | <u>CLAIM, COR OR CCD</u> |
| _____ | _____ | _____ |
| _____ | _____ | _____ |

(List any Additional Pending Claim, COR or CCD on an Attached Page, if necessary); and

This Contractor Affidavit and Waiver of Lien has been executed and tendered by the undersigned on behalf of Company to induce payment by Hannig Construction, Inc. and Owner of the above amount.

WITNESS the execution hereof this _____ day of _____, 20_____.

By _____
Name

Title

Name of Company

Subscribed and sworn to before me, a Notary Public, this _____ day of _____, 20_____.

(Seal) _____
Notary Public

Commission Expiration Date

APPENDIX E

INSURANCE 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 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.

APPENDIX F

OPERATING & MAINTENANCE MANUALS

At the time each Subcontractor's/Supplier's pay application reaches **60 percent (60%) complete**, each shall submit to the General Contractor **one (1) electronic copy** of their comprehensive Maintenance and Operating Manual (including notarized copies of all required warranties), presenting complete directions and recommendations for the proper care and maintenance of visible surfaces as well as maintenance and operating instructions for equipment/material items which he has provided. **No further payments will be processed until such time that the required information is received and approved by our office.**

Such manual shall be in accordance with guidelines set forth in the Contract Documents and Specification Sections relative to the Subcontractor's/Supplier's Scope of Work.

No further payments will be authorized until such information is received and approved.