

Comprehensive Safety and Health Partnership Agreement

Indiana Department of Labor

And

**Meyer Najem Construction, LLC
Construction Manager**

For

Ortho-Indy/Indiana Orthopedic ASC & Clinic

July 8, 2009

1. Purposes and Scope

The Commissioner of the Indiana Department of Labor (hereinafter "IDOL") and Meyer Najem Construction, LLC ("Construction Manager") agree that it is in the best interest of both parties to enter into a strategic health and safety partnership for the Ortho-Indy/Indiana Orthopedic ASC & Clinic (hereinafter the "Project"). The goal of this partnership is the advancement of health and safety in the workplace, which encompasses the reduction of the number and severity of injuries, and the elimination of all fatalities on this construction project.

The Partnership refers to this Agreement, and the Partners are all parties collectively who are signatory to this Agreement.

It is understood that the agreement allows for a cooperative working environment between IDOL and the project Construction Manager and Project Subcontractors. The agreement allows for certain inspection deferrals. It does not waive any aspect of the Indiana Occupational Safety and Health Act (hereinafter the "IOSH Act") or IOSHA enforcement thereof in the event of complaint, serious injury, or death.

The agreement shall cover the Construction Manager and all Project Subcontractors. All elements of this Agreement shall be adopted by the Construction Manager and all Project Subcontractors.

2. Partners

The following are considered parties to this agreement:

1. Indiana Department of Labor, by its Commissioner (IDOL)
2. Indiana Department of Labor INSafe Division
3. Indiana Department of Labor IOSHA Division
4. Meyer Najem Construction, LLC (Construction Manager)

3. Goals and Measures

The overall goal of this partnership is to achieve zero injury with a focus on Subcontractor safety performance and education.

A. Workplace Safety Program

1. The Construction Manager shall implement a comprehensive workplace safety program. The program will be reviewed and approved by IDOL at the beginning of the Partnership. The program shall meet the requirements of ANSI A10.33 (2004). The program will be reviewed annually to evaluate effectiveness.
2. Upon signing of the agreement, IDOL shall conduct a review of the Construction Manager's safety program for the Project. That review shall determine how the Construction Manager will train and mentor Project subcontractors. The

Construction Manager shall act as a safety mentor for all Project Subcontractors working on site. The Construction Manager will assume mentoring and training roles sufficient to help the Project Subcontractors meet the overall performance goals.

3. The Construction Manager shall from time to time include INSafe Consultants to accompany the Construction Manager Safety Personnel on routine or random audits. It is understood these audit tours are non-enforcement in nature.
4. The Construction Manager, via its safety audit and inspection program, shall work to assure Project Subcontractors work to exceed minimal compliance with all applicable OSHA regulations
5. Workers onsite shall receive a project safety orientation. The Construction Manager shall keep documentation to demonstrate compliance.
6. The Construction Manager shall assure that Project Subcontractors have a designated competent person onsite with OSHA 10-Hour construction training. Project Subcontractors with (16) to (24) employees shall have a designated competent person onsite with OSHA 30-Hour construction training. Project Subcontractors with (25) or more employees or trades involving masonry, concrete, steel erection, mechanical and electrical, and drywall work shall have a designated qualified-competent safety representative who has completed OSHA-30-Hour construction training and has a minimum of five (5) years construction safety experience.
7. All designated competent persons and qualified safety representatives shall remain onsite during working hours. These persons shall report to and work with the Construction Manager. The Construction Manager shall assure that all Subcontractors document weekly safety audits/inspections, including weekly safety toolbox meetings.
8. The Construction Manager shall require a 100% fall protection for any activity over 6 feet above grade with the exception of platform ladders.
9. The Construction Manager shall assure all Project Subcontractors have a valid substance abuse testing program including a current annual valid substance abuse test utilizing the Construction SafeSite database system.

B. Partnership Communication

1. The Construction Manager shall provide monthly progress reports to the Deputy Commissioner of INSafe. It is understood that these reports may require up to (30) days for data collection and processing. These monthly progress reports will include a summary of leading indicators outlined below in Section C – Measures, man-hours, injury statistics (including TCIR and DART) and any other useful information. Thus the January report is not due until March 1. Any incident of

significance shall be reported within (24) hours via the IOSHA Duty Officer (317-232-2693) or by directly calling the Deputy Commissioner of IOSHA.

2. The Partnership shall include INSafe staff personnel in all safety meetings or program reviews. Non-attendance by IDOL or her staff shall not be construed as waiving this privilege.
3. The Partnership shall set a minimum of four (4) quarterly on-site consultations per year by INSafe consultants. Additionally, INSafe reserves the right to appear onsite without prior notice.
4. The Partnership shall allow for the Construction Manager and its Project Subcontractors on the construction to request INSafe consultants to consult, train, or advise outside of the four (4) quarterly meetings as needed. Consultation requests can be sent in at www.in.gov/dol/insafeconsultation.
5. The Construction Manager shall provide contact persons for the Deputy Commissioner of INSafe, including telephone numbers and email addresses. The Deputy Commissioner of INSafe shall provide the same to the Construction Manager.
6. Any injury of significance shall be reported with (24) hours, deaths within eight (8) hours to IOSHA. An INSafe designee reserves the right to accompany IOSHA investigators on significant incident investigations. Any catastrophe or deaths shall be investigated by IOSHA following standard IOSHA protocols.

C. Measures

IDOL and the Construction Manager agree that the overall goal of the partnership, to achieve zero injury and superior safety performance, will be best served by focusing on various metrics.

GOAL 1: Achieve an annual TCIR Rate of less than 4.0

METRIC: Annual average of TCIR Rate

DOCUMENTATION: Monthly Injury Statistic reports (see section B)

GOAL 2: Achieve 100% zero injury each month through proactive safety measure until completion of the project.

METRIC 1: Employer certified verification of required employee training shall be provided to the Construction Manager and be kept on the project site on applicable training necessary for their scope of work; i.e. orientation, aerial/scissor lift, forklift, hot work, fall protection, electrical, scaffolding user/erector. The Construction Manager at its discretion may supplement worker specialized training at the project site.

DOCUMENTATION: Employer certifications maintained in Project Subcontractor Safety File.

METRIC 2: 95% of open safety issues are closed within (24) hours.
DOCUMENTATION: Monthly report summarized by the Construction Manager.

METRIC 3: Mandatory participation of Construction Manager management at weekly safety audits
DOCUMENTATION: Names documented on Construction Manager audit reports.

METRIC 4: Mandatory participation of Project Subcontractor safety management at scheduled monthly safety audits.
DOCUMENTATION: Names documented on Construction Manager audit reports.

METRIC 5: Monthly data analysis and trending of safety data inspections.
DOCUMENTATION: Monthly report generated and distributed.

METRIC 6: Apply root cause analysis to negative trends/events including near miss events.
DOCUMENTATION: Monthly report generated and distributed.

METRIC 7: Safety Incident meetings are held with Project Subcontractors identified in root cause analysis.
DOCUMENTATION: Attendance and meeting minutes from Safety Incident meeting.

METRIC 8: Safety violation notices are issued to Project Subcontractors for any serious safety violation detailed in Subcontract Agreement Exhibit B-Safety in the Project Specification Manual.
DOCUMENTATION: Written safety violation notices and change orders for fines are documented.

4. Evaluation

IDOL shall conduct an annual review of the site, the Partnership and all relevant data. The review shall be done ten (10) months from the date of inception for the agreement. IDOL shall then determine, annually, if continuing in the Partnership is in the best interests of the State of Indiana and the Department of Labor. The evaluation shall be conducted in cooperation with the Construction Manager, and an annual report shall be filed by IDOL with federal OSHA on standard federal forms. This review will be largely administrative in nature, but can include site tours and employee interviews as deemed appropriate by IDOL. IDOL will include in her evaluation whether or not the Project experienced an annual OSHA Total Case Incidence Rate of less than 4.0. The

evaluation shall also be based upon input from the Deputy Commissioner of INSafe based on the quarterly on-site consultations and any other information gathered. If IDOL finds the performance does not meet the partnership goals, then the Construction Manager shall submit a (60) day action plan to IDOL. The Construction Manager may seek the advice and consultation of INSafe in the development and execution of this action plan. Upon completion of the (60) day period, IDOL shall again review the program and make a determination if continuation of the agreement is in the best interests of all parties.

The partnership may be terminated at any time by any Partner with (15) day's written notice. Should OSHA Total Case Incidence Rates exceed 150% of the agreed target for one year, the Agreement can be subject to an automatic termination 15 days after all Partners are advised in writing of the non-compliance with terms of the Agreement.

IDOL may recommend changes or amendments to the partnership at the time of the annual evaluation. All such changes require the agreement of the Partners, and shall be in writing and signed by each Partner to the Partnership Agreement.

5. Benefits

- A. Special recognition from IDOL may include press releases and printed materials that identify the Construction Manager as a valued safety and health partner of IDOL.
- B. Project Subcontractors working on the Project shall receive priority when seeking assistance from INSafe.
- C. It is understood that this Agreement shall not limit IOSHA's investigation of any complaint or serious injury or fatality report. IOSHA grants a conditional deferral of all general schedule inspection of this site as part of this agreement.
- D. If an inspection of the Project and subsequent citation are warranted, Project Subcontractors shall receive an additional 10% reduction above the good faith reductions outlined in the applicable OSHA FOM or FIRM. This shall apply in all formal inspections of the Project except those involving a fatality or repeat or knowing violations.

6. Employer and Employee Rights and Responsibilities

This Partnership does not preclude employees and/or employers from exercising any rights provided under statute nor shall it abrogate any responsibility to comply with any rule adopted under the IOSH Act (Indiana Code 22-8-1.1 et seq.). IOSHA may enter the site at any time when it believes a serious compliance issue exists. No part of this agreement shall be construed as limiting IOSHA enforcement authority or the rights of workers to protections afforded by the IOSH Act.

7. Term

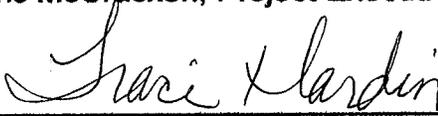
The term of this agreement shall be in effect from the date of the signing of the Partnership until the completion of the project and is subject to termination rights outlined in Section 4.

8. Signatories

MEYER NAJEM CONSTRUCTION, LLC

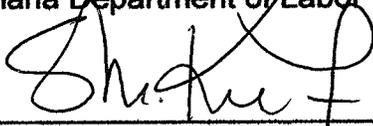
By:  _____ Date: 7/8/09
Tim Russell, President

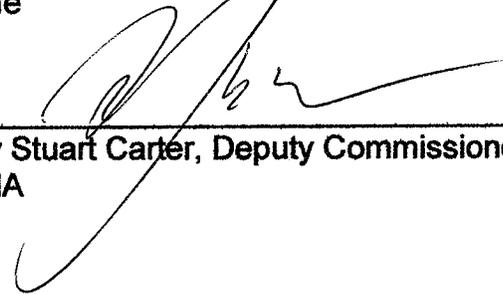
By:  _____ Date: 7/8/09
Chris McCracken, Project Executive

By:  _____ Date: 7-8-09
Traci Hardin, Safety Director

INDIANA DEPARTMENT OF LABOR

By:  _____ Date: 7-8-09
Lori Torres, Commissioner
Indiana Department of Labor

By:  _____ Date: 7-8-09
Sean M. Keefer, Deputy Commissioner
INSafe

By:  _____ Date: 7/8/09
Jeffrey Stuart Carter, Deputy Commissioner
IOSHA