

DIOCESE OF WHEELING CHARLESTON -GENERAL TERMS AND CONDITIONS

January, 2022

CONTRACT REQUIREMENTS:

1. **General Requirements.** Prior to a Contractor moving on site and beginning any work pursuant to the Contract, the Project Contract must be signed by the Contractor and the Diocese of Wheeling-Charleston (hereafter “Owner”). Unless specifically provided in the Contract, the General Terms and Conditions, herein set forth, are incorporated in the Agreement of the parties. In addition, Contractor must provide all insurance, bonds and workers’ compensation requirements set forth below before any equipment can be moved onto the property or work of any type begins. Terms below may be modified on an individual basis in the Standard Form of Agreement Contract.

2. **Contract Security.** If stipulated by the Owner during the bid process, Contractor, within ten (10) days after receipt of the Notice of Award and Notice to Proceed, at the sole option of Owner, shall furnish to Owner a Performance and Payment Bond in an amount equal to the amount of the contract price conditioned upon the performance by the Contractor of all undertakings, covenants, terms, conditions and agreements set forth in the Contract and for the prompt payment by the Contractor to all persons or parties supplying labor and material in the prosecution of the work set forth by the Contractor.

3. **Workers’ Compensation.** The successful Contractor must comply with all rules and Regulations of the West Virginia Workers’ Compensation Division. The successful Contractor shall submit proof of Worker’s Compensation Insurance through the duration of the Contract. The successful Contractor must notify the Owner immediately in the event that its Workers Compensation Insurance coverage is cancelled or lapses.

4. **Insurance.** The successful Contractor shall furnish a Certificate of Insurance for Commercial General Liability Insurance and Automobile Liability Insurance prior to issuance of a contract. The Insurance Certificate shall name Bishop Mark E. Brennan, Bishop of the Roman Catholic Diocese of Wheeling-Charleston, as “Additional Insured”, for the duration of the Project. The minimum insurance coverage is \$2,000,000.00 unless otherwise approved.

5. **Indemnity.** The Contractor shall indemnify and save the Owner harmless from and against, any and all claims, damages, losses, fees and expenses arising out of, or resulting from the performance of the Contract; provided, however, that any such claims, damages, losses or expenses are attributable, in whole or in part, to any negligent, willful act or omission by the Contractor, or anyone directly or indirectly employed by any contractor or subcontractor, or anyone for whose acts any of the contractors or subcontractors may be liable.

6. **Subsurface Conditions.** In the event that the Contractor encounters during the progress of the work, subsurface conditions or latent physical conditions at the site that materially differ from those indicated on the Contract, or an unknown physical condition at the site is of an unusual nature differing materially from those ordinarily encountered and generally recognized as not inherent in the work of the character provided for in the Contract, the Contractor shall promptly notify the Owner, in writing, of such condition before it is disturbed. The Owner shall promptly investigate the condition to determine if it materially differs from the plans or expected conditions that would cause an increase or decrease in costs. Any increase or

decrease in the contract price or contract time must be approved and executed by a Contract Change Order from the Owner before the Contractor may proceed

7. **Dispute Resolution.** All disputes, claims and questions regarding the rights and obligations of the parties under the terms of this Agreement are subject to arbitration. Either party may make a demand for arbitration by filing such demand in writing with the other party within three (3) days after the dispute first arises. Thereafter, arbitration shall be conducted under the Rules of Commercial Arbitration of the American Arbitration Association.

8. **Progress Payments.** When requested by Owner, Contractor shall submit a fully executed Mechanic's Lien Waiver with the Application for Payment. Contractor shall submit an Application for Payment, setting forth the percentage of work completed, on or before the 28th day of each month. Owner shall, after review and approval, process said payment based upon the percentage of completion set forth on the Application for Payment. A retainage of ten percent (10%) may be withheld from each payment at the discretion of the Owner. Payment terms shall be Net 15 days.

9. **Final Payment.** The final payment shall be made when the project is complete and the work is accepted by Owner. Upon substantial completion of the work, the Project Director may elect to reduce the retention to five percent (5%) until the final inspection and acceptance of the Project is completed. All work must be in compliance with the Contract Documents and must be complete before the Final Retention payment shall be made to the Contractor. Any certifications or assurances in reference to final disposition of material disposed, fully executed Certificates of Completion or Abatement and Waiver of Liens shall be submitted to the Owner prior to the release of the final retention amount.

10. **Additional Work.** Additional work shall not be invoiced or acknowledged without a written Change Order that has been properly issued and executed by Contractor and Owner.

11. **Time For Completion.** The beginning date and the completion date for the work to be performed are essential conditions of the Contract. All work shall be commenced on the date specified in writing in the Notice to Proceed or other correspondence such as a letter or email. Contractor shall proceed with the work at such a rate of progress to insure the full completion of the work to be performed within the time specified in the Contract. It is expressly understood and agreed by and between Owner and Contractor that the contract time for the completion of the work described herein is a reasonable time, taking into consideration the average climatic and economic conditions and other factors prevailing in the locality of the work. In the event the Contractor fails to complete the work within the contract time, or any extension of time granted by the Owner, then, the Contractor shall be in default after the time stipulated in the Contract, unless such delay is due to unforeseeable circumstances and causes beyond the control of the contractor without the fault or negligence of the Contractor. This default can be justification in the Owner terminating the contract or withholding additional funds until the contractor advances the schedule satisfactorily to the Owner.

12. **Change Orders.** A Change Order is any change to the original plans and/or specifications. All Change Orders must be agreed upon in writing and approved by the Contractor and Owner, and must include the cost, additional time considerations, approximate

dates when the work will begin and be completed, a legal description of the location where the work will be done and signed by all parties. If Owner requests that Contractor perform additional work, Contractor must first submit a written proposal for the additional work. If the work and cost of the additional work is approved, a Change Order generated by the Owner will be issued. Upon execution of the Change Order, Contractor can begin the extra work. Upon completion of the work, Contractor shall invoice the owner for the extra work performed in accordance with the Progress Payments Section. Additional time needed to complete Change Orders shall be taken into consideration in the project completion date. If at any time during the Work the Contractor encounters what he believes to be extra work, or he is impacted adversely by any conditions he deems different than what was the basis of their original bid, he must notify the Owner/Architect in writing within seven days of such event. Failure to do so will result in the Contractor forfeiting any all rights to additional or future claims arising out of such events or conditions. When Change Order work is to be performed by a Subcontractor, the Contractor must specify the name of the Subcontractor, a description of the work to be performed, and must separately state the overhead and mark-up for said work and materials. Said markup percentages on the Change Order work shall be as follows, unless otherwise negotiated:

- a. General Contractor – self performed work – Ten percent (10%) on all Labor and Materials.
- b. Subcontractors – Ten percent (10%) on all Labor and Materials.
- c. General Contractor – Seven percent (7%) on total cost of Subcontractors.

13. Workmanship. Unless otherwise specified within the specifications or scope of work, all work shall be performed in a professional, workmanlike manner. The Contractor shall guarantee the integrity, durability and quality of both the work performed and the materials used to be reasonably and foreseeably free from defect, degradation, malfunction, or unusual wear for at least a period of one (1) calendar year from the date of acceptance of the contract work by Owner.

14. Re-inspection/Warranty. Eleven (11) months after the completion of the Project, Contractor will meet with Owner at the Project at an agreed time and date to re-inspect the work performed by contractor and subject to the One Year (1) Warranty. If any repairs or replacement of prior work is required to be performed by Contractor, the check list items and work to be performed will be identified. Contractor shall then complete said work forthwith. Any items identified as a result of the re-inspection shall remain under warranty until accepted by Owner.

End of General Conditions