



# The Diocese of St. Petersburg Construction Contract

**THIS AGREEMENT**, made this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_, upon the following terms and conditions between:

**OWNER:** **Gregory L. Parkes, as Bishop of the Diocese of St. Petersburg, a Corporation Sole** (hereafter "Owner"), having a mailing address of P.O. Box 40200, St. Petersburg, Florida 33743, and

**CONTRACTOR:** \_\_\_\_\_ (hereafter Contractor),

or

**VENDOR:** \_\_\_\_\_ (hereinafter Vendor),

**Mailing address:** \_\_\_\_\_

**PARISH/SCHOOL:** \_\_\_\_\_  
**ADDRESS:** \_\_\_\_\_

**DESCRIPTION OF WORK:** \_\_\_\_\_

## ARTICLE I. DEFINITION

### **Section 1.01 Contract.**

The term "Contract" means and includes all contract documents, including but not limited to the Specifications; Drawings; Bidding Instructions; Construction Contract; Change Orders; Addendum and Exhibits; Contractors Proposal and/or Vendor's Proposal or Purchase Order.

### **Section 1.02 Progress Payment**

The term "Progress Payment" means any installment of the Contract Price payable as specified herein.

### **Section 1.03 Work**

The term "Contractor's Work" means all labor, materials, goods, equipment and permitting necessary to be furnished by Contractor to fully perform the contract.

### **Section 1.04 Goods**

The term "Goods" means all things (including specially manufactured goods) which are movable at the time of identification to this Contract between the Owner and Vendor, including but not limited to furniture, furnishings and equipment.

## ARTICLE 2. CONTRACT DOCUMENTS

### **Section 2.01 Signing**

The Owner and Contractor or Vendor shall sign two (2) copies of each of the Contract.

### **Section 2.02 Order of Precedence**

The Order of Precedence within the Contract is as follows:

1. This Contract
2. Addendum
3. Specifications
4. Drawings

5. Bidding Instructions
6. Contractors Proposal and/or Vendor's Proposal or Purchase Order

### **ARTICLE 3. CONTRACT PRICE; PAYMENTS; WAIVERS OF LIENS**

#### **Section 3.01 Contract Price**

The total Contract Price shall NOT exceed \_\_\_\_\_ DOLLARS  
AND NO/100 (\$ \_\_\_\_\_).

#### **Section 3.02 Payments**

- a) Schedule for Payment (10% retainage is required for all closeout documents: Warranties, Final Unconditional Release of Lien, As-Build Drawings, Proof of Permit Closure/Final inspection, etc.):  
\_\_\_\_\_  
\_\_\_\_\_
- b) All monies paid to Contractor or Vendor shall immediately become and constitute a trust fund and shall be applied by Contractor for the benefit of all persons supplying labor, materials, or equipment in connection with the Contract and shall not be diverted to any other purpose until the claims of all such persons have been discharged.
- c) Payments, otherwise due the Contractor or Vendor, may be withheld on account of defective Work or Goods that are not remedied, or claims filed or evidence that claims will be filed: or if the owner believes that the Contractor or Vendor: (i) cannot complete the Work for the unpaid balance; or (ii) cannot perform within the time specified; or (iii) does not submit an itemized invoice for Goods with data substantiating a right to payment; or (iii) does not have the financial ability to perform; or (iv) lapses of insurance or failure to provide evidence of insurance.

#### **Section 3.03 Condition to Payments**

Except for any initial payment contained in Section 3.02, The Owner shall not be required to make any payments unless and until Contractor or Vendor submits with each invoice a duly signed and Notarized Waiver of Lien and an affidavit that Contractor has paid every worker employed by it and has received partial (in the case of progress payments) and final (in the case of final payment) Waivers of Lien from all subcontractors, sub-vendors, and material men supplying services, materials and/or Goods on the Project. **The Owner shall process all payment applications within 30 calendar days from receipt of all required payment document submittals.**

#### **Section 3.04 Notice of Completion**

Upon completion of the Work, Contractor or Vendor shall notify Owner that the Work is ready for final inspection. Thereafter, Owner or the Owner's approved representative shall promptly inspect the Work and, if it meets with the contracted specifications, make final payment to Contractor or Vendor.

#### **Section 3.05 Final Payment**

Neither Payment to Contractor or Vendor, nor any acceptance, occupation, or utilization of the Project or any part thereof by Owner shall relieve Contractor or Vendor of liability for funds owed to any subcontractors, sub-vendors or material men; for defective materials; Goods or workmanship used in the construction of the Project; or for failure to construct the Project according to the requirements of the Contract. The acceptance of final payment shall constitute a waiver of all claims that the Contractor or Vendor may have against the Owner except those previously made in writing and still unsettled and a Final Release of Lien shall be provided to the Owner.

#### **Section 3.06 Termination**

Owner shall be entitled to terminate this Contract upon giving written notice to Contractor or Vendor, if the Contractor or Vendor fails to perform in accordance with the terms of this Contract, or if the Owner is not satisfied with the progress or quality of the Work or the Goods. In the event of such termination, Contractor or Vendor shall be entitled to payment for services, labor, materials and Goods provided and accepted to date; provided however, Owner does not dispute such obligation in the notice of termination. Termination under this provision is not a waiver of any

remedies in law or equity that Owner has for breach of contract, tort or any other theory available under Florida law or this Contract. All such rights are reserved by owner. Nothing herein shall limit any rights contractor may have under this Contract.

#### **ARTICLE 4. PERMITS, TAXES, COMPLIANCE**

##### **Section 4.01 Permits and fees**

Contractor shall secure the building permit, if required, at Owner's cost. Contractor or Vendor shall secure at its own cost other such permits, inspections, licenses, and approvals as may be required under all applicable building codes, ordinances, laws or regulations for the Work. Should any patented article, design or process be used in the construction of the Project, Contractor shall obtain the right to use the same, shall pay all royalties and license fees chargeable or occurring because of such use, and shall defend and hold Owner and its property free and harmless from all cost, demands, suits and liabilities arising because of such use.

##### **Section 4.02 Taxes**

Contractor or Vendor shall pay employment and payroll taxes and contributions now or hereafter with respect to all persons employed by the Contractor or Vendor. On projects where the Owner is able to be exempt from sales tax on materials, Contractor will follow the Owner's Direct Purchase Order Procedures for Sales Tax savings. Vendor shall pay sales, consumer, use and other similar taxes that are legally enacted when this Contract is entered into, whether or not yet effective or merely scheduled to go into effect.

##### **Section 4.03 Compliance with the Law**

Contractor or Vendor shall comply fully with all Federal, State and Local laws, codes, and regulations applicable to the Work (including all safety requirements) and acknowledges that it has informed itself completely in this regard and agrees that it will comply fully therewith. Should Contractor or Vendor become aware that any provision of the Contract is at variance with any such law, rule, regulation, ordinance, or order, it shall promptly give notice in writing to Owner of such variance, and the necessary changes in the work required by the Contract shall be made and adjusted in the manner specified herein for changes in the Work. Contractor or Vendor shall maintain at all times such safeguards for the protection of persons employed on the Project as the conditions and progress of the Work on the Project may require; AND conspicuously post such signs as may be necessary to warn persons of all hazards as existing where the Project is being erected.

#### **ARTICLE 5. THE WORK**

##### **Section 5.01 Labor and Materials**

Contractor or Vendor shall provide and pay for all labor, materials, equipment, tools, machinery, and do all other things necessary for the proper performance in completion of the Work. Any Work performed or completed shall become the property of the Owner and shall not be removed without the consent of the Owner. **The Contractor is responsible for following Owner's Direct Purchase Order procedures for sales tax exemption process.**

##### **Section 5.02 Representations of Contractor and Vendor:**

Contractor or Vendor represents and warrants that before performing work and/or purchasing or ordering Goods: (1) it has read all of the terms and conditions of this contract; (i.e. all contract documents) for the purpose of performing the Work or procuring, delivering or installing Goods; (ii) it has physically inspected the job site and is aware of all of the conditions and limitations of the site that might affect the work contemplated by this agreement and/or the Goods to be provided; (iii) it is aware of the equipment needed to perform the Work based upon the type and character of the facilities at the job site; and (iv) it is not relying upon any representation or opinions of Owner that are not otherwise contained in this Contract. Based upon these representations and warranties, Contractor or Vendor shall fully perform every detail of the requirements of the Contract and Contractor or Vendor assumes full risk of any difficulties that it might occur in performing the work. The failure of performance of the Contractor or Vendor will not be excused on the basis of ignorance of job site conditions or limitations which give rise to difficulties in doing the Work; nor will it be the basis for extension of time to complete work. This paragraph shall not be applicable to any reports to be procured by Owner for the use of the Contractor or Vendor in performing the Work, until such time as Owner provides such reports to the Contractor or Vendor,

who shall then have ten (10) days to review the same. If Contractor or Vendor fails to object to any information in such reports, then the provisions of this paragraph shall become applicable.

### **Section 5.03 Quality of Materials and Goods.**

Contractor or Vendor warrants that all Goods and materials used in the construction of the Project shall be new and of good quality and all workmanship, free from faults and defects and in conformity with the Contract documents unless otherwise specified in the Contract. All Goods and Work not conforming to these standards shall be considered defective.

### **Section 5.04 Duties of Contractor**

Contractor shall have full and complete responsibility for the Work until final acceptance. Contractor shall take reasonable steps to protect the workmen, property, and equipment of other contractors against injury or damage arising out of or connected with the operations conducted by Contractor hereunder. Contractor waives all rights it might have against Owner for loss or damage to the Work, property or materials arising out of or connected with the operations of the Owner or any other contractors hired by Owner, unless caused by the Owner.

### **Section 5.05 Duties of Vendor**

Vendor shall have full and complete responsibility for the Goods and the Work until final acceptance. Risk of loss for all Goods provided by the Vendor shall rest with the Vendor until the Goods have been accepted by the Owner and Vendor shall be responsible for insuring same prior to Owner acceptance. Vendor shall take reasonable steps to protect the workmen, property, and equipment of other contractors against injury or damage arising out of or connected with the operations conducted by Vendor hereunder. Vendor waives all rights it might have against Owner for loss or damage to the Work, property or materials unless the loss or damage is caused by the Owner. Vendor shall be responsible to the Owner for acts and omissions of the Vendor's employees, sub-vendors, and their agents and employees and other persons or entities providing Goods or performing portions of the Work for or on behalf of the Vendor or any of its sub-vendors. Vendor shall be responsible for inspection of any work performed by Owner or any other contractors hired by Owner, to determine that such portions of work are in proper condition for delivery of the Goods or performance of the Work.

### **Section 5.06 Submittals for Goods**

Vendor shall review for compliance with the Contract Documents and submit to the Owner or the Owner's approved representative, shop drawings, product data samples, and similar submittals required by the Contract Documents within a reasonable time for review. By submitting shop drawings, product data, samples and similar submittals, Vendor represents to Owner that the Vendor has: (1) reviewed and approved them; (2) determined and verified materials, field measurements and field installation criteria related thereto; (3) checked and coordinated the information contained within the submittals with the requirements of the Work and the Contract Documents. The Goods provided and the Work performed by Vendor shall be in accordance with approved submittals.

### **Section 5.07 Access to Work**

Contractor or Vendor shall provide Owner with ready access at any time to the Work, whether it be in preparation or progress, for the purpose of inspection.

### **Section 5.08 Changes in Work**

a) The Owner reserves the right by written order to make any change including additions, reductions or deletions in the Work, materials or Goods to be furnished hereunder or may order additional work or Goods not shown in the Contract Documents. If Contractor or Vendor shall claim that any such change shall increase the cost or time of performance of the Work, it shall be within ten calendar days of receipt of such order, give written notice of a claim for additional compensation or for an extension of time and the parties shall agree upon an equitable adjustment. Contractor or Vendor shall not delay proceeding with the Work or providing Goods as a change pending such agreement.

b) Neither Contractor nor Vendor shall not be entitled to additional compensation whether for modifications or additions to the Work not covered in the Contract Documents or for extra labor or materials furnished unless performed or furnished pursuant to a prior written order signed by Owner.

- c) Any changed or additional work performed by Contractor or Vendor as ordered by Owner, shall be performed pursuant to, in accordance with, and subject to all terms and conditions of the Contract.

**Section 5.09 Time**

- a) All time limits stated in the Contract Documents are of the essence of the Contract.
- b) Contractor or Vendor shall begin Work and/or deliver Goods, on or before the date established, to be not less than fourteen (14) days from issuance of the building permit or such other date as the parties agree in writing and shall carry the work forward expeditiously with adequate forces and complete it on \_\_\_\_\_ (or within number of days).

**Section 5.10 Warranties; Guarantees**

- a) The Contractor or Vendor warrants and guarantees that all materials, Goods, equipment and systems shall be installed in accordance with the Contract Documents in a workman-like manner as specified herein.
- b) At any time during or after installation Contractor or Vendor shall repair and replace immediately any and all Work and/or Goods together with any adjacent work which may be displaced by so doing, that may be defective in material, installation, or workmanship.
- c) Contractor or Vendor warrants and guarantees all materials, Goods, equipment and systems furnished or installed by Contractor or Vendor for a period of \_\_\_\_\_ from the date of acceptance, or for such longer warranty periods as may be accorded by the manufacturer thereof or law against defective materials, design and workmanship.
- d) In the event Contractor or Vendor fails to initiate corrective measures within ten (10) days after being notified in writing by the Owner and complete such corrections promptly therefore, the Owner is authorized to proceed to have said defect repaired and Contractor or Vendor shall pay all costs and charges therefore upon demand.
- e) With regard to any warranties to be furnished for the Work, services, equipment, materials of Goods under this Contract, Owner shall not be obligated to waive any express or implied warranties as a condition to accepting the written warranty to be provided.
- f) Contractor or Vendor shall provide Owner with all available manufacturer's warranty documents, product data and material safety data sheets for all materials and Goods that the Contractor or Vendor furnishes or installs.

**Section 5.11 Use of Project**

The use by the Owner of any portion of the Project shall not affect the dates and times when Progress Payments become due to Contractor or Vendor and shall not prejudice Owner's rights under the Contract.

**Section 5.12 Cleaning Up**

Contractor or Vendor shall confine its operation at the site to area permitted by law, ordinances and the Contract Documents and shall keep the property of the Owner free of all of the accumulated rubbish and waste materials. Upon completion of the Project, Contractor or Vendor shall promptly remove all rubbish and waste materials all temporary structures, and all equipment used by it in performing the Contract. If Contractor or Vendor fails to clean up, Owner may do so and the cost thereof shall be charged to the Contractor or Vendor.

**ARTICLE 6. SUBCONTRACTORS**

**Section 6.01 Payments to Subcontractors**

To the extent that Contractor or Vendor shall use any subcontractors or sub-vendors, Contractor or Vendor shall pay each subcontractor or sub-vendor, in an amount equal to the percentage of completion allowed to Contractor

or Vendor on account of such subcontractor or sub-vendor's work. Contractor or Vendor shall also require subcontractor or sub-vendor to make similar payments to its sub-subcontractors or sub-sub-vendors. Owner shall not have any obligation to pay or to see the payment of any monies to any subcontractor or sub-vendor. Nothing contained in the Contract Document shall create any contract relation between Owner and any subcontractor or sub-vendor.

## **ARTICLE 7. INDEMNITY AND INSURANCE**

### **Section 7.01 Indemnification**

Contractor or Vendor shall defend, indemnify, and hold free and harmless the Owner and its affiliated entities, directors, officers, employees and agents, from any and all claims, losses, damages, injuries, liabilities and expenses, including but not limited to attorneys' fees, arising from the death or injury of any person or persons, including employees of Contractor or Vendor and its subcontractors or sub-vendors, or from damage or destruction of any property caused by or connected with, in whole or in part, performance of the Contract by Contractor or Vendor, its subcontractors, sub-vendors or their agents or employees.

Contractor or Vendor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorneys' fees and litigation expenses arising out of any lien claim, or other claim for payment from any laborer, material supplier, subcontractor, sub-vendor of any tier. Owner shall have the right to transfer any such lien to a cash or surety bond and all costs associated with doing so shall be the responsibility of the Contractor or Vendor as part of the of the Contractor or Vendor's indemnity and defense obligation to the Owner herein.

### **Section 7.02 Insurance**

- a) Contractor or Vendor, at its own expense, shall procure, carry and maintain for all of its operations hereunder insurance in companies approved by the Owner which shall include the following:
  - 1. Worker's Compensation and Employer's Liability Insurance for him/her and all those performing work under this Contract.
  - 2. Comprehensive General Liability Insurance with at least One Million Dollars (\$1,000,000.00) for liability coverage with the Owner added as an "additional insured" under the subject policies and a certificate stating such supplied to the Owner.
- b) Before Contractor or Vendor shall commence Work, Contractor or Vendor shall give to owner a Certificate of Insurance and continue to maintain and provide proof of insurance during the duration of this Contract.

## **SECTION 8. MISCELLANEOUS**

### **Section 8.01 Litigation**

- a) Should any litigation be commenced between the parties concerning the Project, any provision of the Contract or the performance thereof, the prevailing party shall be entitled to court costs and attorney fees in such litigation.
- b) The venue for any litigation shall be Pinellas County, Florida.
- c) The parties agree that prior to undertaking any litigation, they will first mediate the dispute using a Circuit Court Mediator from the Sixth Judicial Circuit. Further, arbitration may be used to settle Contract matters but is not mandatory to either party.

### **Section 8.02 Assignment**

Any assignment, by operation of law or otherwise, in whole or in part, by Contractor or Vendor of the Contract, the Work to be performed, the Goods to be provided, or any right to payment or claims arising hereunder without the prior written consent of the Owner shall be void. Any attempt of an assignment shall be deemed a default under the terms of this agreement and the owner shall be entitled to cancel the same and exercise any and all other rights and remedies that Owner may have.

### **Section 8.03 Severability**

If any provision of the Contract shall be held invalid, in whole or in part, then the remaining provisions, or portions thereof, shall nevertheless be and remain in full force and effect.

**Section 8.04 Asbestos**

The Contractor shall certify that asbestos-containing building materials were not used on this project. Further, should Contractor encounter any ACM during the performance of the Contractor’s duties, Contractor is required to suspend any Work and immediately report such findings to Owner, and shall cooperate with Owner as to the appropriate remedial action to be taken. Contractor represents and warrants that any demolition and removal of ACM will be done according to all applicable codes, ordinances, and law, whether Federal, State, or local.

**Section 8.05 Coordination**

The Contractor shall coordinate its activities with those of the Owner and with the Owner's other direct Contractors who may be on the site. The Owner reserves the right to change the date to one mutually agreed upon in the event that a special occasion prevents vacancy of the facility. A pre-construction meeting must take place at least five (5) days before Work commences.

The Vendor shall coordinate its activities with those of the Owner and any other contractors or vendors performing Work for the Owner.

**Section 8.06 Safe Environment**

Contractor or Vendor acknowledges and agrees that Owner is committed to providing for the safety and well-being of its youth, its elderly and aged, and its disabled. Contractor or Vendor represents and warrants that all persons affiliated or associated with the Contractor or Vendor who have access to the Premises by virtue of this Agreement, shall meet the minimum level 2 screening requirements of Section 435.04, Florida Statutes, and Contractor or Vendor shall perform all necessary background investigations to endure such compliance. If Owner is not satisfied that this requirement has been met, Owner may request that Contractor or Vendor or any person affiliated with Contractor or Vendor be prohibited from accessing the Premises, and Contractor or Vendor shall immediately vacate the Premises or prohibit such person in violation from accessing the Premises. Contractor or Vendor shall be strictly liable for any injury, loss and/or damage to any person, and shall indemnify and hold Owner harmless from any claims, resulting from Contractor or Vendor’s failure to comply with these requirements.

**Contractor or Vendor:**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Owner:**

Approved by the fee title owner:  
Gregory L. Parkes, as Bishop of the Diocese of  
St. Petersburg, a corporation sole

By: \_\_\_\_\_

Dr. Lois T. Locey, Chancellor for  
Administration/C.O.O.

**Diocesan Entity:**

Entity Name: \_\_\_\_\_

Address: \_\_\_\_\_

Leasehold Owner/Parish/School

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Pastor/Principal/Executive Director

HQP