

DIOCESE OF SPOKANE

CONTRACT REVIEW POLICY

PURPOSE: The purpose of this policy is to insure that all of the various entities that are part of the Diocese of Spokane are following the same procedures when making agreements with outside contractors.

In addition, to insure that the liability under the contract is assumed by the proper party and in particular that the Diocese does not agree to any unnecessary hold harmless provisions.

PROCEDURES: The following procedures will be followed by all Diocesan entities:

1. All contracts for \$10,000 or more will be reviewed by the Diocesan Building Commission and approved by the Bishop/Vicar for Finance.
2. All long-term lease agreements must be reviewed by the Vicar for Finance. The Addendum to Lease should be attached to all long-term lease agreements or the wording should be incorporated into the lease.
3. All contractors and service people are required to carry three types of insurance (regardless of the size of the contract) and provide proof to you that they have each type. The three types of insurance are:
 - a. General liability
 - b. Workers' Compensation
 - c. Automobile Liability
4. Certificates of Insurance MUST be obtained verifying all three of the above types of insurance and naming the parish/institution and the Diocese as an additional insured.
5. A standard contract AGREEMENT BETWEEN OWNER AND CONTRACTOR is to be used for small construction jobs including, renovations, small additions, etc. This avoids using different contracts for each contractor.
6. Professional service contracts should be used when contracting for the services of architects and engineers. Contracts should require professional liability insurance to be provided to the parish/institution. Professional service contracts must be reviewed even if their compensation is going to be less than \$10,000.00.
7. The attached contract (Exhibit A) may be used on jobs that involve less than \$10,000.00. If the contractor does not want to use this contract, the contract will have to be reviewed as stated in (1) above.
8. Small routine maintenance jobs do not require the use of contracts.
9. All contracts must be maintained in a central file specifically for certificates of insurance to monitor that the certificates are up to date.
10. All contracts must include a performance bond.

Rev. Brian Mee, Vicar for Finance
April 24, 2017

“DRAFT”

AGREEMENT BETWEEN OWNER AND CONTRACTOR

_____, hereinafter called the Owner, agrees to pay
Parish/Institution (understood to include the Diocese of Spokane)

_____, hereinafter called the Contractor, the sum of

\$ _____ (_____) dollars for the following work:

Partial payment requests will be considered based on a maximum of 90% of materials on the job or in place and labor already accomplished.

The work shall be completed by _____, and the Contractor shall provide the following warranties or other documents prior to payment:

The Contractor shall begin the work within seven (7) days of the date of this contract unless other provisions have been made. He shall carry the work forward expeditiously with adequate, qualified workers and shall achieve substantial completion within the contract time.

Neither the final certificate of payment, nor any provisions in the contract, nor partial or entire use of the project by the Owner shall constitute an acceptance thereof if not in accordance with the contract or relieve the Contractor of liability in respect to any express warranties or faulty workmanship/materials within a period of one year.

The Contractor shall indemnify and hold harmless the Owner, its agents, and employees from and against all claims, damages, losses, and expenses, including, but not limited to, attorneys' fees arising out of or resulting from the performance of the work, which is caused in whole or in part by the negligent act or omission of the Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them. In case any action is brought therefore against the Owner or any of its agents, employees or Subcontractors, the Contractor shall assume full responsibility for the defense thereof; upon Contractor's failure to do so on proper notice, the Owner reserves the right to defend such action and to charge all costs thereof to the Contractor. The carrying of the insurance required herein shall not relieve the Contractor of the duty of indemnity in the event that such insurance shall be inadequate, for any reason, to protect the Owner in full.

The Contractor shall at all times carry the following insurance coverage:

- A. Workers' Compensation insurance on all his/her employees; he/she will also require all the Subcontractors to carry Worker's Compensation on all their employees. Contractor will indemnify the Owner against any claims made by any employees, Subcontractors, or anyone employed directly or indirectly by any of them. This indemnification is not limited to compensation paid under any Worker's Compensation policy.
- B. General liability insurance in an amount of not less than \$2,000,000 per occurrence. Such insurance shall include the Owner, all Subcontractors, and anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Said general liability insurance shall include claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees, claims for damages insured by usual personal injury liability coverage which are sustained by any person as a result of an offense directly or indirectly related to the employment of such person by the Contractor or by any other person, and claims for damages, other than to work itself, because of injury to or destruction of tangible property, including loss of use resulting there from.
- C. Automobile liability insurance, covering any and all kinds of motor vehicles, in an amount of not less than \$2,000,000 per occurrence. Such insurance shall include any and all claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of a motor vehicle.

Each of the above listed policies will contain a requirement that, in the event of change or cancellation, ten (10) days' prior written notice will be sent by mail to the Owner.

The contractor shall provide Owner with bonds covering faithful performance of the contract and payment of obligations arising thereunder. The amount of each bond shall be equal to 100% of the contract sum.

Said bond must be executed by a company authorized to do business in the State of Washington. The bond will be given to the Owner prior to any work being started.

The contractor will present a list of all the Subcontractors prior to beginning construction. At the conclusion of the job, the Contractor will provide lien waivers from his/her company and from each of the Subcontractors. If any Subcontractor refuses to sign the lien waiver, then the Contractor will provide an invoice from the Subcontractor. This invoice must show that it is the total balance owed on the job and be signed by both the Contractor and the Subcontractor. The Owner will then issue a check payable jointly to the Contractor and the Subcontractor and deduct the amount from the balance owed to the Contractor.

The Contractor shall be responsible for initiating, maintaining, planning, and supervising all safety precautions and programs in connection with the work.

The Contractor will not discriminate against any employee, applicant for employment, or Subcontractor because of race, creed, color, sex, handicap, or national origin.

If the Contractor:

- is adjudged a bankrupt;
- makes a general assignment for the benefit of his creditors;
- has a receiver appointed on account of his insolvency;
- persistently or repeatedly refuses or fails, except in cases for which extension of time is provided to supply enough properly skilled workers or proper materials;
- fails to make prompt payment to Subcontractors or for materials or labor,
- persistently disregards laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction;
- or otherwise is guilty of a substantial violation of a provision of the Contract documents,

then the Owner may, without prejudice to any right or remedy, and after giving the Contractor and his surety, if any, seven days' written notice, terminate the employment of the Contractor and the contract will be deemed null and void.

Miscellaneous Provisions:

Owner

Date

Contractor

Date

ADDENDUM TO CONSTRUCTION CONTRACT

When to use:

- when a parish/institution enters into a construction, renovation, or remodeling contract in excess of \$10,000 with a contractor or architect. For small contractor jobs that are under \$10,000, it is not a requirement for a parish/institution to utilize the Addendum to Construction Contract. However, the parish/institution must still verify that these contractors have liability insurance covering their construction operations at the parish/institution.
- when a contractor is performing an unusual or dangerous construction procedure at a parish/institution. An example of this could be a job involving the use of scaffolding or a job that involves handling hazardous materials.

Purpose:

By attaching the Addendum to Construction Contract to the contract or incorporating its wording into a contract, your parish/institution will satisfy insurance requirements. If the Addendum to Contract is not attached to the contract with a contractor, the wording of the addendum must be incorporated into the contract developed by the parish/institution and the contractor. The parish/institution should always verify that the contractor has named the parish/institution and the Diocese as an additional insured on their general liability insurance policy. It is not adequate for the parish/institution to obtain a certificate of insurance that names the parish/institution as a "certificate holder."

Parishes/institutions often obtain a certificate of insurance, which names the parish/institution as a "certificate holder." It is not adequate to be named as a "certificate holder." As a "certificate holder," the parish/institution has no legal rights under a contractor's insurance policy.

The insurance certificate furnished to the parish/institution by the contractor must indicate in writing that the parish/institution and the Diocese are named as an **additional insured**. When a parish/institution and the Diocese have been named as an additional insured, the insurance policy of the contractor must defend the parish/institution against claims, which resulted from the contractor operations at the parish/institution.

Since a contractor will have to make a specific request to their insurance company to get the parish/institution and Diocese named as an **additional insured**, it is important to inform them of this requirement well in advance.

ADDENDUM TO CONSTRUCTION CONTRACT

Builder's Risk Insurance: Builder's Risk and Boiler and Machinery Coverage will be obtained by OWNER to cover the project. Any payment under Builder's Risk or Boiler and Machinery Coverages will be made jointly to OWNER and CONTRACTOR. Further, OWNER and CONTRACTOR agree that any payment under Builder's Risk or Boiler and Machinery Coverages will be placed into a joint account until such funds are reinvested in the construction project.

General Liability Insurance: While CONTRACTOR is performing operations at PARISH/INSTITUTION, CONTRACTOR shall maintain general liability insurance in the amount of not less than two million dollars (\$2,000,000.00) per occurrence. It is further agreed that the CONTRACTOR agrees to protect, defend, indemnify, and hold harmless the PARISH against and from any claim or cause of action arising out of or from any negligence or other actionable fault of the CONTRACTOR, or its employees, agents, members, or officers.

Automobile Liability Insurance: CONTRACTOR shall maintain automobile liability insurance for any owned autos, hired autos or non-owned autos used in connection with the contractor's business. Automobile liability coverage should be maintained by the CONTRACTOR in the minimum amount of two million dollars (\$2,000,000) combined single limit.

Worker's Compensation Insurance: CONTRACTOR shall maintain worker's compensation insurance as required by law.

Additional Insured: CONTRACTOR agrees to provide a certificate of insurance to the PARISH/INSTITUTION which will name the PARISH/INSTITUTION as an additional insured on CONTRACTOR'S liability policy for claims arising out of CONTRACTORS, subcontractors or sub-subcontractors operations or made by CONTRACTORS, subcontractors or sub-subcontractors employees, agents, guests, customers, invitees or subcontractors. CONTRACTOR must verify its liability insurance policy is primary in the event of a covered claim or cause of action against PARISH/INSTITUTION

Subcontractors: CONTRACTOR shall be required to verify that all subcontractors maintain general liability insurance, worker's compensation insurance and automobile liability insurance. Furthermore, CONTRACTOR agrees to indemnify and defend the PARISH/INSTITUTION for any claim or cause of action, whatsoever which was caused by the negligence, or other actionable fault of an uninsured subcontractor.

No Waiver of Subrogation: OWNER does not waive any rights of recovery against the CONTRACTOR, subcontractor or sub-subcontractor for damages. OWNER and CONTRACTOR, subcontractor, and sub-subcontractor do waive the right of recovery against each other for any damages covered under Property, Builder's Risk or Boiler and Machinery coverage for which either party is responsible if that party does not have liability insurance to cover such damages and liability insurance has been maintained as required by this document.

Contract Override and Severability Provision: CONTRACTOR and PARISH agree that this addendum overrides any and all portions of previous agreements between CONTRACTOR and PARISH that contain language in contradiction with this contract. If any portion of this Addendum to Construction Contract is deemed or is determined to be in conflict with local or state or national statutes, both CONTRACTOR and PARISH agree that the portion of the Addendum to Construction Contract which is in conflict with the statute will be stricken from the Addendum to Construction Contract with the remainder of the Addendum of Construction Contract remaining binding for both parties.

CONTRACTOR:

PARISH/INSTITUTION:

(PARISH/INSTITUTION is understood to include the Diocese of Spokane)

BY: _____
Name Date

BY: _____
Name Date

START DATE OF CONTRACT (Understood to be dated signed if left blank): _____

Instruction to parish/institution: This Addendum to Construction Contract stands on its own as a legal contract between PARISH/INSTITUTION and CONTRACTOR should this addendum not be incorporated or attached to a contract.

AIA DOCUMENTS

Necessary deletions to various construction contracts:

What they are:

When parishes/Institutions enter into a contract for a major renovation or remodeling project of parish/institution facilities or for the construction of a new building, a contract is signed with the general contractor. In most instances, the contract required is a standard contract prepared by the American Institute of Architects, (AIA). Two of the most common standard contracts are the AIA Document A201 and the AIA Document A107. There are many other AIA contracts.

From an insurance and indemnification standpoint, the standard documents are written in favor of the contractor and/or sub-contractor. Fortunately, the contracts can be altered to make them more equitable for parishes/institutions.

Attached is a contract that allows for changes to be made to various AIA contracts. Please note the changes are only intended to address insurance and indemnification concerns. Other areas of the contract should be reviewed on behalf of the parish/institution by a qualified attorney and the Diocesan Building Commission.

Please check the box next to the document which is being utilized. Checked boxes will denote the deletion and/or modification of the corresponding AIA or AGC contract as shown below.

ADDENDUM/CHANGES TO AIA or AGC CONTRACT

Owner and Contractor agree that the deletions and/or changes outlined below will be binding and alter the corresponding AIA or AGC contract that is referenced. Both Owner and Contractor agree the Addendum will supersede any other contractual language.

- AIA Document A201 – 1987 edition
General Conditions of the Contract for Construction
 - 10.1.4 Delete second from last sentence (beginning with “regardless of whether or not...”)
 - 11.3.1 Delete second half of first sentence (beginning after semicolon with “This insurance shall...”)
 - 11.3.2 Delete entire paragraph
 - 11.3.3 Delete entire paragraph
 - 11.3.5 Delete entire paragraph
 - 11.3.7 Delete entire paragraph

- AIA Document A201 – 1997 edition
General Conditions of the Contract for Construction
 - 10.3.3 Delete the word “sole” from the last sentence
 - 11.3.3 Delete entire paragraph
 - 11.4.1 Delete last sentence only (beginning with “This insurance shall...”)
 - 11.4.2 Delete second half of first sentence (beginning after semicolon with “This insurance shall...”)
 - 11.4.3 Delete entire paragraph
 - 11.4.5 Delete entire paragraph
 - 11.4.7 Delete entire paragraph

- AIA DOCUMENT A201-2007 edition
General Conditions of the Contract for Construction
 - 11.3.1 Add sentence to end “While the interests of all parties are covered, only the Owner will be named as an insured”
 - 11.3.2 Delete second half of last sentence “and the Owner and Contractor shall be named insureds”. Add sentence to end of paragraph “Owner and Contractor agree only the Owner will be an insured on the policy”
 - 11.3.3 & 11.3.5 Add sentence to end of each “This paragraph does not apply to the extent Owner, Contractor, subcontractor, sub-subcontractor, architect, architects consultants, or an agent of any of the above has liability insurance to cover damages sustained by Owner or Contractor.”

11.3.7 Add sentence to end “This paragraph does not apply to the extent Owner, Contractor, subcontractor, sub-subcontractor, architect, architects consultants, or an agent of any of the above has liability insurance to cover damages sustained by Owner or Contractor.”

15.1.6 Delete entire paragraph

- AIA DOCUMENT A107 – 1987 edition
Abbreviated Form of Agreement Between Owner and Contractor
for Construction Projects of Limited Scope
 - 17.2 Delete last sentence only (beginning with “The Contractor shall...”)
 - 17.3 Delete last sentence only (beginning with “This insurance shall...”)
 - 17.6 Delete entire paragraph

- AIA Document A107 – 1997 edition
Abbreviated Standard Form of Agreement Between Owner and Contractor for Construction
Projects of Limited Scope
 - 15.2.2 Delete the word “sole” from the last sentence
 - 16.3.3 Delete entire paragraph
 - 16.4.1 Delete last sentence only (beginning with “this insurance shall...”)
 - 16.5.1 Delete entire paragraph

- AIA Document A107 – 2007 edition
Standard Form of Agreement Between Owner and Contractor for a Project of Limited Scope
 - 17.3.1 Replace last sentence with “While the interests of all parties are covered, only the Owner will be named as an insured”
 - 17.3.3 Add sentence to end of paragraph “This paragraph does not apply to the extent Contractor, subcontractor, sub-subcontractor, architect, architects consultants, or an agent of any of the above has liability insurance to cover damages sustained by Owner”

- AIA Document A201/CMA – 1992 edition
Standard Form of Agreement Between Owner and Architect where the Construction Manager is
NOT a Constructor
 - 10.1.4 Delete the phrase “in whole or in part” in the second line from the bottom of paragraph
 - 11.3.1 Delete last sentence only
 - 11.3.2 Delete “this insurance shall include interests of the Owner, Construction Manager, Contractor, Subcontractors and Sub-subcontractors in the Work and the Owner and Contractor shall be named insureds” beginning in the fifth line of the paragraph
 - 11.3.5 Delete entire paragraph
 - 11.3.7 Delete entire paragraph
 - 11.3.8 Delete entire paragraph
 - 11.3.9 Delete entire paragraph
 - 11.3.10 Delete entire paragraph

- AGC Document 410 – 1993 edition
Standard Form of Design – Build Agreement and General Conditions
Between Owner and Contractor
 - 11.5.1 Delete second sentence only (beginning with “This insurance shall...”)
 - 11.5.3 Delete entire paragraph
 - 11.5.4 Delete entire paragraph
 - 11.6.1 Delete entire paragraph
 - 11.7.1 Delete entire paragraph
 - 11.7.2 Delete entire paragraph

- AGC Document 415 – 1993 edition
Standard Form of Design – Build Agreement and General Conditions
Between Owner and Contractor
 - 10.1.2 Delete entire paragraph
 - 10.5.1 Delete Contractor, Architect/Engineer, Subcontractors and Subsubcontractors from the second sentence in lines two and three
 - 10.5.4 Delete Contractor, Architect/Engineer, Subcontractors and Subsubcontractors from the first sentence in lines one and two and the entire last sentence (beginning with “Exposures of the...”)
 - 10.5.5 Delete last sentence only (beginning with “If the Contractor...”)
 - 10.7.1 Delete entire paragraph
 - 10.7.2 Delete entire paragraph

- AIA Document A191 – Electronic Format – 1996 edition
Standard Form of Agreements Between Owner and Design/Builder
 - 7.2.1 Delete last sentence only (beginning with “The Design/Builder shall...”)
 - 7.3.1 Delete last sentence only (beginning with “This insurance shall...”)
 - 7.3.3 Delete entire paragraph
 - 7.3.4 Delete last two sentences (beginning with “This insurance shall...”)
 - 7.3.8 Delete entire paragraph
 - 7.4.1 Delete entire paragraph

- AIA Document B101 – 2007 edition
Standard Form of Agreement Between Owner and Architect
 - 8.1.2 Delete entire paragraph
 - 8.1.3 Delete entire paragraph
 - 8.2.4 Add the following: Both parties agree the method of binding dispute resolution will be “Litigation in a court of competent jurisdiction.”

- AIA Document B141 – 1987 edition
Standard Form of Agreement Between Owner and Architect
 - 9.4 Delete entire paragraph

- AIA Document B141 — 1997 edition
Standard Form of Agreement Between Owner and Architect with
Standard Form of Architects Services
 - 1.3.6 Delete entire paragraph
 - 1.3.7.4 Delete entire paragraph
 - 1.4.2.1 Add at end of paragraph. “This paragraph does not apply to the extent Architect or any sub-consultants have liability insurance to cover negligence errors or omissions.”

- AIA Document B151-1997 edition
Abbreviated Standard Form of Agreement Between Owner and Architect
 - 9.4 Delete entire paragraph

- AGC Document 250 – 2000 edition
Standard Form of Agreement and General Conditions Between Owner and Contractor
 - 11.1.1 Delete the phrase “other than to the work itself and other property insured under Subparagraph 11.4” from the first sentence (beginning in the third line)
 - 11.1.2 Owner will not be responsible to indemnify for any act or omission of an Architect/Engineers or Others
 - 11.2 Delete entire paragraph
 - 11.4.1 Delete the second sentence (beginning with “This insurance shall also name...”) and delete the fourth sentence (beginning with “This policy shall provide for a waiver...”)
 - 11.4.3 Delete entire paragraph up to the word “more” in the eighth line. The rest of the paragraph (beginning with “the Contractor shall indemnify”) remains intact

CONTRACTOR:

PARISH:

_____ (PARISH is understood to include the Diocese of Spokane)

BY:

BY:

NAME

NAME

DATE

DATE

(Revised 06/13)