

**STATE OF MARYLAND
DEPARTMENT OF NATURAL RESOURCES
SHORELINE CONSERVATION SERVICE
(410) 260-8786**

GENERAL CONDITIONS

1. SCOPE:

The work under this Contract includes all labor, materials, equipment and appurtenances required for the complete construction of all items of work necessary or required to make the installation complete and correct in every aspect. Only new materials will be acceptable for use on the projects.

2. GENERAL:

Whenever the words Property Owner appears in these documents, it shall mean the owner of the property _____ or their assigned authorized representative(s).

All materials and workmanship shall be of the best quality and shall be subject to the approval of the Property Owner. No deviation from the provisions of the detailed Specifications shall be made without written approval of the Property Owner.

3. CONTRACTORS PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE:

- A. The Contractor shall at all times maintain and keep in force such insurance as will protect him from claims under Workmen's Compensation Acts.
- B. The Contractor shall, at his own cost, obtain and maintain such insurance as will protect him and the Property Owner, from any claim for damages or bodily injury, including death, as well as from claims for damage to any property of the Property Owner or of the public, which may arise from the operations under this contract, whether such operations be by the Contractor or any Subcontractor retained by said Contractor or by anyone directly employed by them. He shall maintain comprehensive general liability insurance with limits of one million dollars (\$1,000,000) bodily injury liability with one hundred thousand dollars (\$100,000) property damage liability or equivalent combined single property damage liability or equivalent combined single limits, including independent contractor coverage, products and completed operations coverage, and with full coverage for the perils of collapse and underground. The Contractor shall furnish certificates of insurance with respect to the coverages referred to above, naming the Property Owner as additional insured under the policy. Each of the policies shall contain (10) days prior notice of cancellation to the Property Owner.
- C. If applicable, the Contractor shall obtain insurance for his workers as specified by the Longshoreman's and Harbor Workers' Compensation Act. In addition, the Contractor shall furnish a "Certificate of Insurance" for Marine Compensation Insurance.
- D. The Contractor shall, to the fullest extent permitted by law, indemnify and save harmless and defend the Property Owner and all of their representatives from all suits, actions or claims of any character, brought on account of any injuries or damage sustained by any person or property in consequence of any work performed under this Contract, either by the Contractor or any subcontractor, or their employees, agents or representatives. This responsibility is not to be deemed as a waiver of any immunity which may exist in any action against the Property Owner.
- E. No work shall be started at the site until appropriate Certificates of Insurance are filed with and approved by the Property Owner.

4. **LAWS AND REGULATIONS:**

The Contractor shall comply with all Municipal, County, State, and Federal Laws and Ordinances and also those of the local utility companies having jurisdiction.

5. **SITE INVESTIGATION:**

- A. The Contractor acknowledges that he has satisfied himself to the nature and location of the work, the general and local conditions, including but not restricted to those bearing upon transportation, disposal, handling and storage of materials, availability of labor, water, electric power, road and uncertainties of weather, tides or similar physical conditions at the site. Also, the conformation and conditions of the ground, the character of equipment and facilities needed preliminary to and during the prosecution of the work is the responsibility of the Contractor.
- B. The Contractor further acknowledges that he has satisfied himself as to the **CHARACTER, QUALITY AND QUANTITY** of surface and sub-surface materials or obstacles to be encountered insofar as the information is reasonably ascertainable from an inspection of the site, including all exploratory work, as well as, from information presented by the Drawing and Specifications made a part of this Contract. Any failure by the Contractor to acquaint himself with the available information will not relieve him from responsibility for estimating properly the difficulty or cost of successfully performing the work. The Property Owner assumes no responsibility for any conclusions or interpretations made by the Contractor on the basis of the information made available by the Property Owner. The Property Owner also assume no responsibility for any understanding or representations made by their representative(s) during or prior to the execution of this Contract, unless (i) such understanding or representations are expressly stated in the Contract and (ii) the Contract expressly provides that the responsibility therefore is assumed by the Property Owner. Representations which are not expressly stated in the Contract and for which liability is not expressly assumed by the Property Owner in the Contract shall be deemed only for the information of the Contractor.

6. **PAYMENT:**

- A. This is a lump sum Contract in which no extras are possible. The lump sum bid given by the Contractor in his bid shall be the only recompense for completing in place the work described in these Plans and Specifications.
- B. The Contractor may request progress payments at timely intervals. Such requests will be paid for the value of work completed less 10%. The Contractor may only request payment for completed work that has been inspected and approved by the Property Owner. No payment will be made to the Contractor until payment requests have been reviewed and accepted by the Property Owner and satisfactory to the DNR funding agent. The final payment will be made within 30 days after final approval and submission of the final invoice.
- C. Mobilization or setting up of equipment, construction and maintenance of access roads, site preparation or other items incidental to construction shall not be identified as items for separate partial payments to the Contractor. The cost of these items shall be included in the lump sum bid.
- D. The Contractor warrants that he and all of his subcontractors have and will have good title to all material and equipment otherwise listed in an Application of Payment, free and clear of all liens, claims, security interests and encumbrances; and he will not permit a Subcontractor to acquire any such material and equipment subject to an agreement under which an interest therein or encumbrances thereon is retained by the seller or otherwise imposed by the Contractor.

7. **WORK SCHEDULE:**

- A. The Contractor shall at the execution of the Contract, notify the Property Owner in writing of the names of any and all Subcontractors proposed for the principal parts of the work. The Property Owner may, within a reasonable amount of time, object to the employ of any Subcontractor determined incompetent or unfit.
- B. The Contractor will be required to commence work within 10 days after the date of receipt by him of the Notice to Proceed, to prosecute said work diligently and to complete the work within 180 calendar days thereafter. No extension of the working days will be permitted unless approved by the Property Owner.
- C. Before starting work, the Contractor shall submit to the Property Owner for approval an outline of his proposed methods and manner of executing the work, including the sequences of operation and a time schedule for performance of Contract work. The Contractor will be permitted to work Monday through Friday dawn to dusk. If the Contractor desires to carry on work outside these hours, including Saturday, Sunday and government holidays, he must provide written request to the Property Owner for permission, 24 hours prior to the requested work day(s). The work outside regular hours shall cause no additional costs to the Property Owner.

8. **UNSATISFACTORY PROGRESS - CONTRACT CANCELLATION:**

If the Contractor shall not properly man the job with the proper personnel and construction equipment in sufficient number so as to maintain a reasonable construction rate each and every working day until work is complete, the Property Owner shall so notify the Contractor. Thereafter, if Contractor still fails to meet rate of construction requirements or place work in accordance with these Specifications, this shall be sufficient cause for the cancellation of this Contract at date of such default. This decision is the sole discretion of the Property Owner. Ten (10) working days after written notice of Contract cancellation shall represent approval for the Property Owner to contact the next lowest responsible bidder to complete the work. All increased costs are to be defrayed by said Contractor, and/or his bonding company.

9. **SURVEY:**

Horizontal control for the project is shown on the Drawings. The Contractor will be responsible for all layout work. The cost of all survey work to be performed by the Contractor shall be included in the lump sum price bid.

10. **NECESSARY DETAILS NOT SPECIFICALLY MENTIONED:**

All work called for in the Specifications and not shown on the Plans, or shown on the Plans and not called for in the Specifications, shall be furnished and executed by the Contractor as if designated in both these ways. Should any work or materials be required which is not denoted on the Plans and Specifications either directly or indirectly, but which is, nevertheless, necessary for the proper carrying out of the intent thereof, it is understood and agreed that the same is implied and required. The Contractor shall perform such work and furnish such materials as fully as if they were completely delineated and described.

11. **NEATNESS:**

As the work progresses, all rubbish, refuse, and unused materials and tools shall be removed from the site and all work upon completion shall be left in a neat and orderly condition ready for use. Upon work completion, all work areas shall be carefully cleaned up and all excess materials shall be removed from the site by the Contractor as directed.

12. **INSPECTION OF WORK:**

- A. All work shall be subject to inspection by the Property Owner. The Contractor shall perform all work requested and required for this inspection and shall make all work accessible to the Property Owner at all times.
- B. The work of the Inspector will not include any supervisory duties. Supervisory duties will remain the sole responsibility of the Contractor at all times. The Inspector shall not be responsible for insuring the Contractor follows all applicable safety regulations. This responsibility remains the sole responsibility of the Contractor.
- C. The Contractor shall be responsible for carrying out the provisions of the contract at all times, regardless whether an authorized Inspector is present or not.
- D. It shall be solely the responsibility of the Contractor to see that the Plans and Specifications are being followed. Failure of the Property Owner to immediately reject any unsatisfactory materials or workmanship or to notify the Contractor of his deviation from the Specifications shall not relieve the Contractor of his responsibility to replace the unsatisfactory work.
- E. Any material or finished work which, in the opinion of the Property Owner, does not comply with these Specifications shall be removed by the Contractor and replaced at his own cost and expense.

13. **SANITARY PROVISIONS:**

Sanitary conveniences for the use of all persons employed on the work shall be provided and maintained by the Contractor in sufficient manner, in such manner, and at such places as shall be approved. The Contractor shall vigorously prohibit the committing of nuisances at the site of the work. Any employee found violating these provisions shall be discharged and not again employed. Such sanitary conveniences shall be constructed in compliance with all laws, ordinances, or regulations governing the same.

14. **UTILITIES:**

- A. Any utilities encountered during the work shall be maintained and protected in their existing location unless otherwise provided. The Contractor shall cooperate in every way with the owning companies or agencies to make it possible for them to provide uninterrupted service. The Contractor shall contact Miss Utility (1-800-257-7777) at least two (2) days prior to construction to allow for marking of existing utilities.
- B. Excavations shall not be started until all gas mains, water mains, and other service mains have been located and flagged by a utility inspector or Engineer. A gas inspector shall be present on the project at all times whenever excavations are in close proximity to gas mains and/or service lines.
- C. Any existing utilities, including individual house services, in the way of proposed construction, shall be readjusted by the supplying utility company; except where the utility is publicly owned. The Engineer shall, whenever possible, allow for minor field adjustments in order to expedite the Contract and to prevent unnecessary hardship and expense to any utility company. The Contractor shall notify the utility companies sufficiently in advance of construction to permit ample time to do such work as necessary to provide clearance for the proposed construction. The Contractor shall be responsible for any costs associated with utility relocation and/or protection.
- D. All known private or public utility lines within or adjacent to the Contract are shown in their approximate existing locations on the Plans. The Contractor is, however, cautioned that these locations shown are not guaranteed nor is there any guarantee to the Contractor that all lines actually in existence within the Contract limits have been shown on the Plans. The Contractor shall satisfy himself as to the exact locations and extent of all utilities that he may encounter in the work.

15. **TEMPORARY WATER AND ELECTRIC SERVICE:**

It is the Contractor's responsibility to provide electricity and water as he may require them during construction at the job site. In all cases the Contractor shall provide all necessary temporary facilities and equipment from point of supply to and about the project.

16. **PROTECTION OF WORK AND PROPERTY:**

- A. The Contractor shall at all times safely guard the public against, and the Owner's property from injury or loss in connection with the Contract. He shall at all times safely guard and protect the public, his own work and that of adjacent property from damage, loss or injury. All passageways, guard fences, lights, and other facilities required for protection by all authorities or local conditions must be provided and maintained.
- B. It is further understood and agreed that loss or damage arising out of the nature of the work to be done under this Contract or from any unforeseen obstruction or difficulties which may be encountered in the performance of the same or from the action of the elements, public or from encumbrances on the line of work or from any injury done in consequence of acts or omissions on the part of the Contractor, Subcontractor, their employees, or agents in carrying out any of the provisions or requirements of this Contract shall be borne and assumed by the Contractor.

17. **NO WAIVER OF LEGAL RIGHTS:**

The Property Owner shall not be precluded or stopped by any measurement, estimate, or certificate made either before or after the completion and acceptance of the work and payment, therefore, from showing the true amount and character of the work performed and materials furnished by the Contractor, nor from showing that any such measurement, estimate or certificate is untrue or incorrectly made nor that the work or materials do not, in fact, conform to the Contract. The Property Owner shall not be precluded or stopped notwithstanding any such measurement, estimate or certificate any payment in accordance therewith, from recovering from the Contractor or his sureties, or both, such damages as it may sustain by reason of his failure to comply with the terms of the Contract. Neither the acceptance of the Engineer, or any other representative of the Property Owner, nor any payment for or acceptance of the whole or any part of the work, nor any extension of time, nor any possession taken by the Property Owner shall operate as a waiver to any portion of the Contract or any power herein reserved, or of any right to damages.

18. **FINAL ACCEPTANCE OF WORK:**

When the Contractor is of the opinion that the project is ready for final inspection, and the Property Owner concurs, he shall request of the Property Owner, in writing, that this final inspection be made. The Property Owner and the Contractor shall then inspect the site and within approximately one week, shall provide in writing to the Contractor a final "punch list" if required. In the event that punch list repairs are required, the Contractor will complete this work in a diligent manner acceptable to the Property Owner.

If no punch list work is required, or upon the satisfactory completion of this work, the Property Owner shall recommend acceptance of the work and after receipt of signed labor and material affidavit, the Property Owner shall, by letter, notify the Contractor of such final acceptance.

19. **WARRANTY:**

- A. Except to the extent that the contract documents impose greater warranty obligations on the Contractor for all or any part of the work, the contractor warrants for a two (2) year period (unless another period is specified) commencing on the date of substantial completion of the project as a whole or on such other date agreed between the parties:
 - 1. that the work contains no faulty or imperfect material or equipment or any imperfect, careless, or unskilled workmanship;

2. that all mechanical and electrical equipment, machines, devices, etc. shall be adequate for the use to which they are intended, and shall operate with ordinary care and attention in a satisfactory and efficient manner;
 3. that he will re-execute, correct, repair, or remove and replace with proper work without cost to the Owner, any work found not to be as guaranteed by this section or otherwise not in conformity with contract and that he will make good all damages caused to other work or materials in the process of complying with this section;
- B. This Section provides for a period during which the contractor is bound to replace work in addition being liable for failure to perform the contract in accordance with its terms. Nothing herein release or limits the contractor's liability for latent defects or for any substantial failure to perform the work in accordance with the contract, even if such defects or failure are discovered after the expiration of the warranty period provided by this section.

21. **PERMITS AND LICENSES:**

- A. When required by law or the contract, the Property Owner or their authorized representative will file with the appropriate local authority, drawings and specifications and any pertinent data reasonably proper for information. The contractor will be required to pay all necessary fees to local authorities for inspection or for the privilege or right to execute the work as called for in the contract documents and he shall include the cost of said fees in his base bid. The Property Owner shall not be responsible for actions or interpretations of county, municipal, or other local agencies or officials respecting the application of Federal, State, or local laws, rules, ordinances, regulations, codes, or policies to the work.
- B. The contractor must be licensed as required by the Home Improvement Law amendment effective July 1, 2008, which requires the contractor to hold a home improvement contractor license from the Home Improvement Commission to control erosion control projects along the shoreline of residential property.
- C. In accordance with Chapter 286 of the 2010 Laws of Maryland, all marine contractors performing or soliciting marine contractor services in the State of Maryland are required to be registered with the Maryland Department of the Environment (MDE) to become a licensed marine contractor, as of December 31, 2010. The Contractor shall provide proof of registration.

22. **CONTRACT SECURITY (PERFORMANCE AND PAYMENT BONDS)**

Within ten (10) calendar days after receiving the Notice of Acceptance, the successful bidder shall deliver to the Property Owner an executed Performance Bond and Payment Bond, each in an amount at least equal to one hundred percent (100%) of the accepted bid as security for the faithful discharge of the requirements of the contract, when the total bid price is in excess of \$100,000. The sureties of all bonds shall be such surety company or companies as are approved by the Property Owner and as are authorized to transact business in the State where the proposed project is located. The bonds shall be approved by the Property Owner prior to execution of the formal contract.