

ARCHITECTURAL AGREEMENT

THIS AGREEMENT ("**Agreement**"), is entered into and effective this the ____ day of _____, ("**Effective Date**") by and between ROMAN CATHOLIC CHURCH IN THE STATE OF HAWAII ("**Owner**") and _____, a (enter state where registered and entity type) _____ ("**Architect**").

Recital 1. Owner is the property owner of the (enter name of Parish\Facility) _____ located at (enter full address of Parish\Facility) _____ the "**Parish\Facility**" or the "**Site**".

Recital 2. Owner desires to engage Architect for architectural services in connection with (enter brief description of the work) _____ (at the Parish\Facility), _____ ("**Project**").

1. CONTRACT DOCUMENTS: The contract documents shall consist of this Agreement, all exhibits attached hereto, all plans and specifications prepared pursuant to this Agreement, and all documents incorporated herein by reference ("**Contract Documents**"). The terms of this Agreement shall control in the event of any inconsistencies or conflicts with other Contract Documents, including any conflicting commercial terms and/or provisions stated in the exhibits.

2. SCOPE OF SERVICES: The Architect's scope of services shall consist of those activities identified in or reasonably inferable from the Contract Documents and as set forth and more particularly described in **Exhibit A** ("**Services**"), including without limitation the following:

.1 General Services.

.a Architect will respond in writing to all requests for information from Owner or Owner's construction contractor ("**Contractor**") within five (5) business days of such written request.

.b Architect shall submit monthly Project status reports to Owner detailing Architect's progress in achieving the interim milestone dates and maintaining the Contract Time, as defined in Paragraph 3.

.c Architect and Architect's Consultants, as defined in Paragraph 10, shall participate and assist Owner in the value engineering and budget process for the Project. In addition, Architect and Architect's Consultants shall provide all other services typically carried out by design consultants on similar projects.

.2 Coordination of Owner's Consultants.

.a Architect shall be responsible for coordination and internal review of all drawings and documents for the Project ("**Project Documents**") regardless of whether such Project Documents are prepared or performed by Architect, by Architect's Consultants, as defined in Paragraph 10, or by others, including the interior designer ("**Interior Designer**") or any other consultants retained

by the Owner. Architect's duty to coordinate shall include integration and incorporation of all Project Documents into final construction documents to be used by the Contractor in performing its work ("**Construction Documents**"). Architect shall be responsible for the accuracy of all dimensional and layout information contained in all Project Documents and the final Construction Documents as if such Project Documents and Construction Documents were prepared by the Architect itself.

.b To the extent necessary to achieve performance of the Services in accordance with the Contract Time, as defined in Paragraph 3, and all interim milestone dates, Architect shall be responsible for coordination of the activities of Architect's Consultants. Owner shall coordinate its other consultants, if any, to accept such coordination by Architect.

.3 Compliance with Laws. Architect shall comply with all applicable federal, state and local laws in preparing all drawings and specifications. Without limiting the foregoing, all Project Documents and Construction Documents are to be prepared in accordance with and shall reflect the requirements of the building, fire (NFPA - National Fire Protection Association), plumbing, mechanical, seismic, electrical and fire codes of the State of Hawaii. To the extent those codes shall also be incorporated into the Project Documents and Construction Documents as they are applicable to the occupancy type, equipment and systems required for the Project. The Project Documents and Construction Documents shall also comply with all applicable ADA requirements.

.4 Assistance with Permits. Architect shall assist Owner in obtaining building permits from governmental authorities having jurisdiction over the Project.

.5 Original Documents. Architect shall promptly furnish Owner with the originals of all Project Documents and Construction Documents.

3. PROJECT SCHEDULE: Owner has provided Architect with a schedule for the Project, which is attached hereto as **Exhibit B ("Project Schedule")**. Architect shall commence promptly and pursue diligently completion of its Services within the time parameters, including all interim milestone dates, set forth in the Project Schedule ("**Contract Time**"). Architect shall complete the (1) Concept Documents, as defined in **Exhibit A**, by no later than _____; (2) the Schematic Design Documents, as defined in **Exhibit A**, by no later than _____, (3) the Design Development Documents, as defined in **Exhibit A**, by no later than _____, and (4) the Construction Documents by no later than _____.

4. COMPENSATION: As compensation for performance of the Services in full accordance with the Contract Documents, Architect shall be paid a fixed fee in the amount of _____ **SSSSSSSSSSSSSSSS Dollars (\$_____)** ("**Contract Price**"). The Contract Price shall be paid in proportion to the percentage of Services completed in accordance with Project Schedule. Notwithstanding the performance of any Additional Services, as defined in Paragraph 5, Architect shall receive no additional compensation for any increase in the length of time in which its Services are required, unless such increase in time is caused by a substantial change in the scope of the Project. Except for Reimbursable Expenses, as defined below, the Contract Price shall compensate Architect for: (1) any and all costs of completing the Services; (2) any and all costs described as Non-Reimbursable Expenses; and (3) all federal, state, and local taxes applicable to the Services, including all sales and use taxes.

.1 Reimbursable Expenses. Architect shall invoice all reimbursable expenses at the actual cost, without mark-up, and limited to the following categories of costs ("**Reimbursable Expenses**"):

.a Reimbursable Expenses are, subject to Owner's approval. Architect shall use best efforts to obtain the lowest costs.

.b Costs of postage including the cost of air express mail and delivery services directly required by the Services.

.c Costs of long distance telephone communications including facsimile transmissions directly required by the Services.

.d All photocopying required in support of the Services.

.2 Non-Reimbursable Expenses. Architect shall not be entitled to receive reimbursement for any cost not specifically and expressly included as a Reimbursable Expense above, including, without limitation ("**Non-Reimbursable Expenses**"):

.a Costs of all transportation and subsistence expenses within the metropolitan area of the Project.

.b All local telephone communications.

.c Costs of computer-aided design software and drafting equipment ("**CADD**") time used in support of the Services.

.d Costs of all materials, computer time, data processing and similar expenses incurred in support of the Services.

.e Costs of Internet and e-mail access fees and charges.

5. ADDITIONAL SERVICES: Architect will be compensated separately for additional services not included in the Services or reasonably inferable from the Contract Documents ("**Additional Services**"). In no event shall Architect commence any Additional Services without Owner's express prior written authorization. Payment for all Additional Services shall be computed on either: (1) a time and expense basis measured by the hourly rates listed in **Exhibit C**, without mark-ups, plus Reimbursable Expenses directly related to such Additional Services, without mark-ups; or (2) on a fixed price basis as may be mutually agreed upon by the parties in advance and in writing.

6. OWNER'S RESPONSIBILITIES: Owner shall provide Architect with information regarding Owner's requirements for the Services and Architect shall be entitled to rely on the accuracy and completeness thereof. Notwithstanding the foregoing, Architect shall promptly report to Owner any error, inconsistency or omission that Architect discovers in any such information.

7. ARCHITECT'S REPRESENTATIONS:

.1 Architect represents that it is qualified and experienced in performing substantially the same Services for similar first class Parish\Facility's and has a current professional license to perform the Services contemplated by this Agreement in the State of Hawaii.

.2 Architect represents that it is knowledgeable of, and shall comply with, all applicable and non-conflicting federal, state and local laws, codes, ordinances, rules, regulations and current architectural standards applicable to the Project, including but not limited to zoning, environmental, fire and safety codes and ADA requirements.

.3 Architect acknowledges that preparation of the Construction Documents will be an evolutionary process, and as such, changes occurring from Owner's review and the Interior Designer's participation in the process, including detailed development of the operational program, the development of interior detailing and final selection of finishes, shall be a part of the Services.

.4 Architect represents that the Services performed pursuant to this Agreement shall be in accordance with Roman Catholic Church standards and applicable to architects who are regularly engaged in providing services for similar projects located in the State of Hawaii.

.5 Architect design shall incorporate Building Green and Sustainability best building practices as well as guidance provided for persons with disabilities by the *Pastoral Statement of U.S Bishops on People with Disabilities*. The complete document is available at http://www.ncpd.org/pastoral_statement_1978.htm.

8. DESIGN TO BUDGET: Architect will design the Project in accordance with Roman Catholic Church Standards and The Built of Living stones Art, Architect and Worship when a Worship space is the Project or part of a Project, within the budget approved by Owner and to be attached hereto as **Exhibit D ("Project Budget")** for each phase of the Services. Prior to the completion of each phase of Architect's Services, the Architect will develop a cost estimate of the Work Owner to ascertain whether the design meets the latest approved Project Budget. All redesign services required to meet the approved budget shall be performed at no cost to Owner.

9. CHANGES: Owner may, at any time, by written order ("**Change Order**"), make changes in the Services within the general scope of this Agreement. To be effective, a Change Order must be reflected on Owner's standard Change Order form and signed by both parties. Architect shall proceed as directed and such Additional Services shall be compensated as set forth in Paragraph 5.

10. CONSULTANTS: Architect shall retain such professional consultants as may be necessary to fully implement the Services ("**Architect's Consultants**"). The qualifications of Architect's Consultants shall be subject to Owner's review and approval. The consultants proposed by Architect and approved by Owner are listed in **Exhibit E**. All agreements between Architect and Architect's Consultants shall be subject to the requirements of this Agreement and such agreements shall state expressly the said requirements. Architect shall be fully responsible for the timely and proper performance of Services by Architect's Consultants to the same extent as if all such Services were performed by Architect's own

personnel. All costs of Services performed by Architect's Consultants and any subconsultants are included in the Contract Price and shall be paid directly by Architect.

11. INDEPENDENT CONTRACTOR: Architect shall act as an independent contractor in providing the Services hereunder. The means and methods Architect employs to provide the Services are matters entirely within its discretion and control in accordance with accepted industry practices. Architect has no authority to act as an agent of Owner, except as expressly provided otherwise herein. Architect acknowledges and agrees that as an independent contractor, it is solely responsible and liable for performance of all duties, obligations and responsibilities as an employer of individuals hired or retained by Architect to provide services to the Owner, including, but not limited to, recruitment, interviewing, hiring, maintenance of personnel records, compliance with Form I-9 Employment Eligibility Verifications, drug testing, payment of wages, setting wage rates and supervision.

12. EMPLOYEES: Owner may, from time to time, establish reasonable rules and regulations relating to standards to be met by Architect regarding the appearance or conduct of employees or agents of Architect employed in connection the Services provided to Owner. Architect will remove, or cause to be removed, from the Site any persons to whom Owner may reasonably object and will ensure that such person(s) shall not thereafter be employed by Architect in connection with the Services to be provided hereunder.

13. AUTHORIZED REPRESENTATIVES:

.1 Owner's Project Director or Project Manager. Owner has designated _____, Telephone; _____, Facsimile: _____ as its project director ("**Project Director**") authorized to represent Owner with respect to the Project. -OR- Owner has hired _____ as its project manager ("**Project Manager**") to represent Owner to the extent specified in the Contract Documents, Telephone; _____, Facsimile: _____.

.2 Architect's Project Representative. Architect has appointed _____, Telephone; _____, Facsimile: _____ to be its representative, who is assigned solely to this Project, and is authorized to act on Architect's behalf with respect to the Project and whose decisions, notices and directives shall be binding upon Architect with respect to this Agreement.

.3 If Required; Interior Designer. The Interior Designer for the Project is: _____ with an office at _____, Telephone; _____, Facsimile: _____.

14. TIME OF THE ESSENCE: Performance of Architect's Services shall commence timely and shall continue until Architect satisfactorily performs its Services and Owner duly accepts the Services as complete. Architect acknowledges that **TIME IS OF THE ESSENCE** of this Agreement. In this regard, Architect hereby accepts and confirms that the time allowed in the Project Schedule is a reasonable time period for completing its Services with professional skill and care and hereby agrees to dedicate sufficient professional staff as may be necessary to guarantee that the Services are performed in accordance with the Project Schedule and within the Contract Time.

15. APPLICATIONS FOR PAYMENT: Architect will be paid monthly, based upon the progress of the Services ("**Progress Payments**") and within thirty (30) days of Final Completion, as defined in the Construction Contract ("**Final Payment**"). On or before the twentieth (20th) day of each month, Architect shall submit its monthly application for payment

for the preceding month ("**Application for Payment**") to Project Director in a format and supported by such documentation to verify entitlement as Owner reasonably may require, including lien waivers from Architect's Consultants and any subconsultants in a format approved by Owner. Each such monthly Application for Payment shall identify clearly, itemize and attribute all cost items in a manner that facilitates review by Owner and shall itemize separately the following:

- .1** The amount due for Services provided during the preceding month.
- .2** The amount of Reimbursable Expenses related to the Services performed during the preceding month.
- .3** The amount of approved additional Services completed during the preceding month.

Progress Payments shall be paid within thirty (30) days after Owner's receipt of Architect's approved Applications for Payment if the Application for Payment is received by the Project Director on or before the twentieth (20th) of each month.

16. JOINT PAYEE CHECKS: If Architect fails to make timely payments to any of Architect's Consultants or any other subcontractor or vendor, Owner may elect to issue one or more checks which are payable jointly to Architect and the relevant Architect's Consultant, subcontractor or vendor of any tier. Such checks shall be forwarded to Architect for further handling. Owner may also elect to issue jointly payable checks in circumstances where a dispute exists between Owner and Architect.

17. OWNER'S RIGHT TO WITHHOLD: Notwithstanding anything to the contrary herein, Owner may withhold from any Progress Payment or the Final Payment, the amount which, in Owner's reasonable opinion, is necessary to protect Owner from any overpayment, claims, damages, lawsuits or losses which may result from Architect's failure to perform the Services in accordance with the requirements of this Agreement or under any other circumstance that Owner deems such withholding necessary.

18. INDEMNIFICATION: Architect shall defend, indemnify and hold harmless Owner and the Parish\Facility and each of their respective subsidiary, affiliated and parent companies, their respective successors and assigns and each of their directors, officers, employees, agents, representatives and assigns (collectively referred to as the "**Indemnitees**") from and against any and all claims, causes of actions, damages, liabilities, losses, costs and expenses, including reasonable attorneys' fees, arising out of or connected with the performance of Architect's Services, including the acts, errors or omissions by the Architect, its employees and agents, or others for whom the Architect is responsible in the performance of its Services under this Agreement. In the event that any claim is made or an action or proceeding is brought against Indemnitees, arising out of Architect's Services, any such Indemnitee may, by notice to Architect, require Architect, at Architect's expense, to resist such claim or take over the defense of any such action or proceeding and employ counsel for such purpose. Any counsel chosen by Architect is subject to Indemnitees prior written approval, which approval shall not be unreasonably conditioned, delayed or denied. In the case of counsel acting for the Architect's insurance underwriters, Indemnitees approval is deemed to have been given. Architect's obligations under this Paragraph 18 shall survive termination of this Agreement.

~~%- ".....=BGI F 5B79.~~ Architect shall procure and maintain at its expense policies of insurance of the types and amountss no less than the minimum coverage specified in 91 \Vjh: attached hereto. Architect shall maintain such policies of insurance for the duration of the Services and for a period of at least two (2) years thereafter if no other time period is specified herein.

20. TERMINATION: Owner shall have the right to terminate this Agreement as follows:

.1 Owner may terminate this Agreement if Architect violates or breaches any of the terms, conditions or covenants hereof and does not remedy such violation or breach within ten (10) days after written notice by Owner to Architect of such violation or breach. Upon the effective date of termination, Architect will be paid for Services satisfactorily completed, subject to Owner's rights to any offsets or damages.

.2 Owner may terminate this Agreement in whole or in part solely for Owner's convenience upon written notice to the Architect ("**Convenience Notice**"), without regard to any fault or failure to perform by Architect or any other party. In the event of a termination for convenience, Architect shall be paid for all Services satisfactorily performed up to the date of such Convenience Notice, plus an additional amount for reasonable, unavoidable and direct costs of demobilization for a maximum of ten (10) days following receipt of the Convenience Notice.

.3 Owner shall have no liability to Architect for compensation, expenses, additional fees or anticipated profits for unperformed Services, lost business opportunities, impaired bonding capacity, or any overhead or general conditions costs attributable to a termination by Owner, except as provided in Paragraphs 20.1 and 20.2 hereof. All amounts payable by Owner shall be subject to Owner's right of audit and offset.

21. ASSIGNMENT: The Services to be provided by Architect hereunder are personal in nature and accordingly, Architect may not assign or encumber this Agreement or any rights or obligations of Architect hereunder.

22. OWNERSHIP AND USE OF DOCUMENTS: Architect agrees that its Services are personal to Owner and considered work for hire and that title to all original drawings, specifications, estimates, field notes and other documents prepared by Architect and Architect's Consultants pursuant to this Agreement shall belong to Owner. To the fullest extent permitted by law, Architect hereby assigns or shall cause to be assigned to Owner, all proprietary rights which Architect or any of Architect's Consultants may have in such documents, including all copyrights. Upon completion of the Services or upon earlier termination, Architect shall promptly deliver to Owner the originals of all such drawings and documents. Architect may retain reproducible copies for its own information and reference purposes. Owner agrees that any re-use of such documents for purposes other than the Project shall be at Owner's sole risk and Architect shall be relieved of any liability hereunder.

23. PROPRIETARY INFORMATION: Owner considers all information pertaining to the Services or the Project to be confidential and proprietary unless otherwise stated to Architect in writing. Architect shall refrain from disclosing any such information without Owner's prior written consent, including any information which is prepared or developed by or through Architect, Architect's Consultants, other consultants, Owner, or contractors.

24. ADVERTISING AND USE OF NAME: Architect shall not display or distribute any advertising signs or notices of any kind whatsoever at the Parish\Facility, except caution

and work in progress signs, without the prior written permission of Owner in each instance. Any such permission given shall be revocable at any time thereafter without prior notice to Architect and at the sole discretion of Owner.

25. OWNER'S AUDIT RIGHTS: Architect shall maintain all Project-related records ("**Project Records**") for a period of two (2) years after the Contract Time has ended ("**Retention Period**"). Owner shall have the right to audit, copy and inspect all such Project Records, including all electronic records, files and renderings which are retained in computers or on diskettes, at all reasonable times during the course of the Services and during the Retention Period. Project Records shall be made available to the Owner at all times to assist Owner in the resolution of any issues pertaining to Change Orders based on time and expense, claims, other issues pertaining to an increase or decrease in the Contract Price and/or the Contract Time, or compliance with Owner's business ethics policies.

26. OWNER'S RIGHT TO SUPPLEMENT: If Architect violates or breaches any of the terms, conditions or covenants hereof, then Owner may, without prejudice to any other remedy it may have, provide any such labor and materials as are necessary to remedy such violation or breach, and Owner may deduct the cost thereof from any money due or thereafter becoming due to Architect.

27. CLAIMS AND DISPUTES:

.1 General. The validity, interpretation and effect of this Agreement shall be governed by laws of the State. The existence of any claim, dispute or legal proceeding shall not relieve Architect from its obligation to properly perform its Services as set forth herein. In the event of a dispute with respect to amounts payable under a request for payment from the Architect, Owner shall pay all undisputed amounts and Architect shall continue performing any remaining Services hereunder. Neither party shall initiate a legal proceeding and the applicable statute of limitations shall not commence to run until the Services are fully performed or until this Agreement is terminated, whichever occurs first.

.2 Mediation. In the event of any claim, dispute or other matter arising out of or relating to this Agreement, the parties shall attempt to resolve any dispute amicably at a meeting to be attended by persons with decision-making authority. If, within thirty (30) days after such meeting, the parties have not resolved the dispute, they shall submit the dispute to mediation by written demand in accordance with the Construction Industry Mediation Procedures of the American Arbitration Association ("**AAA**") and bear equally the costs of the mediation.

.3 Arbitration. If, within thirty (30) days after mediation is initiated, the mediation does not result in settlement of the dispute, then the same shall be settled by arbitration administered by the AAA in accordance with its Construction Industry Arbitration Rules ("**AAA Rules**"), and not by litigation. Either party may submit such unresolved dispute to arbitration, which shall be conducted by a sole arbitrator. The arbitrator shall be selected in accordance with the AAA Rules, provided, however, that the arbitrator must have experience in construction disputes and must not have any conflict of interest. The arbitrator's compensation and all related expenses shall be borne equally by the parties, unless otherwise awarded by the arbitrator. Unless otherwise agreed, the arbitration shall be conducted in the State of Hawaii. The prevailing party shall be entitled to recover its reasonable attorneys' fees, costs and disbursements in any action brought to enforce its rights under this Agreement.

.4 WAIVER OF JURY TRIAL. THE PARTIES HERETO, AFTER CONSULTING WITH COUNSEL, HEREBY KNOWINGLY AND VOLUNTARILY WAIVE THEIR RIGHTS TO TRIAL BY JURY, AND ACKNOWLEDGE THAT THEY UNDERSTAND AND ACCEPT THE DISPUTE RESOLUTION PROCEDURE SET FORTH IN THIS AGREEMENT.

28. NOTICES: All notices and other communication to be given hereunder shall be in writing and be deemed to have been received either: (1) immediately upon personal delivery or confirmed fax receipt; (2) one (1) business day after having been sent by confirmed overnight courier; or (3) three (3) days after mailing, if mailed by certified mail, return receipt requested, postage prepaid:

If to Owner:

Owner's Name: _____
Owner's Address: _____
Owner's Address: _____
Attn: Owner's Rep: _____
Facsimile No.: _____

If to Parish\Facility:

Parish\Facility Name: _____
Parish\Facility Address: _____
Parish\Facility Address: _____
Attn: Parish\Facility Rep: _____
Facsimile No.: _____

If to Architect:

Name of Architect: _____
Address of Architect: _____
Address of Architect: _____
Attn: Architect's Rep: _____
Facsimile No.: _____

The parties hereto shall be responsible for notifying each other of any change of address or facsimile number in accordance with this Paragraph 28.

29. SEVERABILITY: The invalidity or unenforceability of any one of the terms, conditions, covenants or provisions of this Agreement, or any portion thereof, shall not affect the remaining portions thereof, and the Agreement shall be construed and enforced as if such invalid term, condition, covenant or provision had not been included herein.

30. ENTIRETY OF THE AGREEMENT: This Agreement, together with the attached Exhibits, contains the full and complete understanding of the parties as to the subjects contained herein and supersedes any and all prior written or oral agreements or understandings between the parties. This Agreement may not be modified except by a subsequent writing executed by both parties. Waiver from time to time of any provision hereunder will not be deemed to be a full waiver of such provision or a waiver of any other provisions hereunder. The terms of this Agreement are mutually agreed to be clear and unambiguous, shall be considered the workmanship of all of the parties and shall not be construed against the drafting party.

31. DAYS: For the purposes of this Agreement and unless stated to the contrary, the term "days" shall refer to calendar days.

32. COUNTERPARTS: This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

33. WITNESS WHEREOF, the parties have duly executed this Agreement as of the day and year first written above.

ROMAN CATHOLIC CHURCH IN THE STATE OF HAWAII

By: _____
Name: _____
Title: _____

PARISH

By: _____
Name: _____
Title: _____

NAME OF ARCHITECT

By: _____
Name: _____
Title: _____

Diocesan form reviewed by:

ASHFORD & WRISTON

A Limited Liability Law Partnership LLP

By: _____
Name: _____
Title: _____

EXHIBIT A

Scope of Services

SCOPE OF SERVICES:

METHOD OF OPERATION:

- 1. Conceptual Design Phase:** The concept design Phase ("**Concept Design Phase**") shall include the following items:
 - a.** A concept design will be provided by Owner. Architect shall review the concept design along with other the program information furnished by Owner to ascertain the requirements of the Project and Architect shall review its understanding of such requirements with Owner.
 - b.** In order to properly perform its Services, Architect shall perform a visual inspection of the Site conditions and/or existing conditions to make a professional assessment of said conditions and shall perform an assessment of the Site documents provided by Owner. Architect's inspection shall include whatever ground testing may be viable without penetrating the surface. In preparing all design documents, Architect shall take into account (i) all information which can be obtained through the investigation described above, and (ii) all information regarding the Site furnished by Owner. Architect shall report promptly to Owner all discrepancies in information furnished to Architect by Owner which are discoverable upon examination of such information. This shall include reporting omissions in the information provided by Owner which are generally recognized as necessary for design purposes.
 - c.** Architect shall develop and review with Owner alternative design concepts ("**Conceptual Documents**") for the design and construction of the Project which may be beneficial to the Project Schedule and/or the Project Budget.

d. Prior to starting the Schematic Design Phase, as defined below, Architect shall provide Owner with written confirmation of Architect's understanding of Owner's program requirements, the overall Project Schedule and Project Budget. Further, Architect shall obtain Owner's approval of the Conceptual Documents to be developed into Schematic Design Documents, as defined below.

2. Schematic Design Phase

a. Based upon Owner's program requirements, all directions received during Conceptual Design Phase, the overall Project Schedule and the Project Budget requirements, Architect shall prepare a set of schematic design documents ("**Schematic Design Documents**") for the Project, based upon the approved Conceptual Documents, which Owner shall review and approve ("**Schematic Design Phase**").

b. The Schematic Design Documents shall be in sufficient detail to develop budget construction pricing and preliminary approvals required by governmental agencies and any other design review boards or commissions.

c. As part of its Schematic Design Document submittal, Architect shall also provide Owner with the following:

i. A written synopsis of applicable zoning laws, building code requirements and all other laws and regulations applicable to Project, including structural requirements and parking requirements;

ii. Written reports of the status of all building permit filings and reviews by other governmental design review agencies, if any, including fee costs;

iii. A written description of Architect's quality control program including procedures for ascertaining: (a) coordination and control of all Project-related documents; (b) code and regulatory approvals and compliance; (c) single discipline and multi-discipline coordination; and (d) constructability; and **iv.** All Schematic Design Documents required by Owner.

3. Design Development Phase:

a. Based upon the approved Schematic Design Documents and any adjustments thereto authorized by Owner, Architect shall prepare, for review and approval by Owner, design development documents ("**Design Development Documents**") which shall consist of drawings, specifications and other documents which fix and describe the anticipated final size and character of the Project, including all architectural, structural, mechanical, electrical systems materials and all other elements necessary to describe the Project ("**Design Development Phase**").

b. As part of its Design Development Phase submittal, Architect shall also provide Owner with the following:

i. Verification from all local authorities, including but not limited to fire, zoning and permit officials, that the Design Development Documents are in compliance with all local ordinances and safety codes;

- ii. A review of all functional relationships contained in the Design Development Documents with Owner; and
- iii. All Design Development Documents required by Owner.

4. **Construction Document Phase:**

- a. Based upon the approved Design Development Documents and any further adjustments in the scope or quality of the Project and/or in the Project Budget authorized by Owner, Architect shall prepare final Construction Documents, for review and comment by Owner, setting forth in detail all of the requirements for the construction of the Project in compliance with all applicable codes and regulations and that are suitable for bidding ("**Construction Document Phase**"). In the event the Project Schedule contains milestone dates for separate construction work packages, Architect shall prepare and complete all final Construction Documents for such work packages as part of its Services.
- b. The Construction Documents shall be so designated when the Architect deems that its drawings and specifications are complete and comprehensively coordinated for purposes of competitive bidding and construction of the Project facilities on a definitive lump-sum or guaranteed maximum cost basis.
- c. As part of its Construction Document Phase submittal, Architect shall provide Owner with all Construction Documents required by Owner.
- d. Construction Documents, for purposes of bidding and construction, will either physically incorporate or incorporate by reference, drawings and specifications received from Owner and Owner's separate consultants, to include but not be limited to, technical specifications, manuals, Site reports and other documents (collectively referred to as "**Other Documents**") reasonably necessary to obtain competitive bids to construct the Project. The Other Documents are incorporated into the Construction Documents to assist Owner in obtaining competitive bids and to construct the Project.

5. **Bidding Phase:** Architect shall assist Owner or the Project Manager with: (a) the preparation of all bidding documents required by Owner to obtain competitive bid proposals, including instructions to bidders and bidding forms, and (b) the evaluation of bids for award of the Construction Contract ("**Bidding Phase**"). At Owner's election, bids will be solicited on either a lump-sum, guaranteed maximum price or a cost-plus basis, or any combination thereof. Architect's Services during the Bidding Phase shall include, but not be limited to, the following:

- a. Assist Owner or Project Manager in responding to bidder's inquiries, including inquiries pertaining to the identification of cost elements to be included in bids;
- b. Assist Owner or Project Manager in coordination of the instructions to bidders, the Construction Documents and the agreement between Owner and the Contractors ("**Construction Contract**") to avoid inconsistencies and conflicts, and in verifying consistent use of defined terms, compatible numbering systems and document identification numbers;
- c. Attend, and conduct, when required by Owner or Project Manager, all pre-bid conferences with bidders and prepare necessary addenda and written responses to requests for clarifications from bidders;

d. Assist Owner or Project Manager in reviewing the bids received with Owner for the purpose of ascertaining whether the bids conform to the requirements of the instructions to bid, the Construction Documents and the Construction Contract;

e. Assist Owner or Project Manager in reviewing the bids received for the purpose of evaluating and ascertaining the lowest responsive bidder from both the standpoint of overall technical superiority and lowest responsive contract price, including evaluations of bidder's alternatives. When the project is over budget conduct Value Engineering meetings with Owner, Project Director, and Contractor to determine costs savings to meet the budget.

f. Supplement, interpret and clarify the Construction Documents to the extent necessary to assist Owner or Project Manager in negotiations with the bidders.

6. Construction Phase: Architect's responsibility to provide Services for the construction phase of this Agreement shall commence with the award of the Construction Contract and terminate at the earlier of the issuance by Owner or Project Manager of the Certificate of Final Completion or sixty (60) days after the date of Substantial Completion of the Work, as each is defined in the Construction Contract (**Construction Phase Services**). The Construction Phase Services shall include the following:

a. Architect shall provide administration of the Construction Contract to the extent set forth in this Agreement. In the event of a conflict between this Agreement and the Construction Contract, the provisions of this Agreement shall control.

b. Architect shall be a representative of, and adviser to, Owner and shall have authority to act on behalf of Owner only to the extent provided in this Agreement.

c. Promptly upon Owner's notice to the Contractor to proceed pursuant to the Construction Contract, Architect shall commence performance of the following activities:

i. Review Contractor's proposed Schedule of Values, as defined in the Construction Contract, and advise Owner or Project Manager of its suitability for measuring progress payments;

ii. Submit written reports to Owner and the Project Manager every week recording its observations at the construction Site as to the progress and quality of the Work, as defined in the Construction Contract. In particular, Architect shall promptly inform Owner in writing of any deficiencies in the Work and/or deviations from the requirements of the Construction Contract which come to Architect's attention; and

iii. Assist Owner, Project Manager and/or the Contractor in obtaining all necessary building permits, including assisting with "plan check" activities and any inspections required by building permit authorities.

d. Architect shall, at a minimum, visit the Site once a week to become familiar with the progress and quality of the Work and to determine, in general, if the Work is being performed in accordance with the Construction Documents. Architect's Consultants shall visit the Site as necessary to properly perform their portion of the

Services. Architect shall not, however, be required to make exhaustive or continuous on-Site inspections to check quality or quantity of the Work.

e. Architect shall prepare and distribute all necessary bulletins, drawings, supplemental specifications and similar communications necessary to clarify or supplement the Construction Documents.

f. Except as may be otherwise provided in the Construction Contract, Owner shall require the Contractor to forward a copy of all communications to Architect. Communications by and with Architect's Consultants shall be through Architect. Communications by and with subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through Owner.

g. Architect shall review Contractor's Applications for Progress Payments, as defined in the Construction Contract, and recommend amounts to Owner or Project Manager for payment to the Contractor in accordance with the payment provisions of the Construction Contract. Architect's recommendation of amounts due for payment purposes shall be a representation to Owner that the Work has progressed to the point indicated and that, to the best of Architect's knowledge, information and belief, the quality of the Work is in accordance with the Construction Contract. Architect's certification shall include information regarding percentages of completion of all major components of the Work relevant to the amounts being applied for by Contractor.

h. Architect's certification of payments shall be subject to: (i) further evaluations of the Work for conformance with the Construction Contract upon Substantial Completion; (ii) results of subsequent tests and inspections; (iii) minor deviations from the Construction Contract which are correctable prior to Final Completion; and (iv) specific qualifications expressed by Architect.

i. Architect shall notify promptly Owner, for final decision by Owner, whenever Architect considers it necessary or advisable to perform additional inspection or testing to determine if the Work is in accordance with the provisions of the Construction Contract and/or in compliance with applicable laws; provided, however, that nothing herein shall make Architect liable to any extent for safety precautions or programs in connection with the Work, or for safety during construction, or for construction means, methods, sequences, techniques or procedures relating to the Project.

j. When professional certification of performance characteristics of materials, systems or equipment is required by the Construction Contract, Architect shall be entitled to rely upon such certification to establish that the materials, systems or equipment will meet the performance criteria required by the Construction Contract.

k. Architect shall review and approve, or take other appropriate action, on shop drawings, product data and samples submitted by Contractor for the purpose of checking for conformance with information given in the Construction Documents. Architect shall use its best efforts to complete any and all such reviews and actions within five (5) business days and Architect shall be liable for any delays pertaining to any and all such reviews and actions completed later than ten (10) days after receipt of Contractor's submittal. However, for submittals relating to the critical path or critical long lead procurement items, Architect shall respond in the time frame

requested by Owner. The Architect shall respond to Requests For Information from the Contractor. Clarifications to Drawings and Specifications are at no cost to the Owner

l. Notwithstanding Architect's approval of submittals, the Contractor shall remain responsible for determining the accuracy and completeness of details such as dimensions and quantities, for substantiating installation instructions, and for the performance of equipment or systems being provided by the Contractor. Likewise, Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

m. Architect shall assist the Project Manager in the preparation of all necessary Owner Directives and Change Orders, as each is defined in the Construction Contract, supplying supporting documentation and data as deemed necessary to comply with the Construction Contract. Such documents shall be for Owner's approval and for issuance in Owner's name.

n. Prior to Substantial Completion of the Work, as defined in the Construction Contract, Architect shall, after notice and upon written approval by Owner, arrange and observe tests and inspections required in the Construction Contract for check-out, start-up and performance testing of all major equipment and specialized building systems incorporated into the Work, including applicable heating, ventilating, refrigeration, air conditioning, plumbing, electrical, fire/life safety, security and energy management systems.

o. When Architect deems that Contractor has complied with all requirements for Substantial Completion, Architect shall recommend that Owner issue a Certificate of Substantial Completion, as defined in the Construction Contract. Further, Architect shall certify to Owner that to the best of Architect's knowledge and belief, the Contractor has complied with the Construction Documents in achieving Substantial Completion.

p. Based upon information developed at the time of Substantial Completion, Architect shall assist Project Manager or Owner's representative in the preparation of a punchlist of all incomplete and/or unacceptable systems and/or construction items for all trades, which must be corrected prior to Final Completion, as defined in the Construction Contract.

q. Architect shall assist the Project Manager or Owner's representative in ascertaining the satisfactory completion by Contractor of all punch list items for purposes of Final Completion, including the submittal by Contractor of all documents required in the Construction Contract.

r. Upon Owner's or Project Manager's request, Architect shall receive, verify the completeness thereof and forward to Owner all records, warranties, manuals, lien waivers and related documents required in the Construction Contract to be assembled and delivered by the Contractor for purposes of Final Completion, as defined in the Construction Contract.

s. When Architect deems that Contractor has complied with all requirements for Final Completion, as defined in the Construction Contract, Architect shall recommend that Owner issue a Certificate of Final Completion, as defined in the Construction Contract. In addition, Architect shall certify to Owner that to the best of Architect's

knowledge and belief, the Contractor has complied with the Construction Documents in achieving Final Completion. Architect shall forward the documents delivered by the Contractor to Owner as part of such recommendation.

t. Upon the Contractor's compliance with the requirements of the Construction Contract and after Owner issues the Certificate of Final Completion, Architect shall promptly review the Contractor's Application for Final Payment and issue its certification to Owner recommending the amount of Final Payment due to the Contractor, including the disposition of retention.

EXHIBIT B
Project Schedule
(Attach Schedule)

EXHIBIT C
Hourly Rates

EXHIBIT D
Project Budget

EXHIBIT E
Architect's Consultants

EXHIBIT F

Insurance Requirements

At Architect's expense, Architect shall maintain insurance coverage of the following types continuously throughout the term of this Agreement or during any period Services are performed relating to this Agreement:

Architect shall carry Worker's Compensation per applicable laws and Employer's Liability insurance with a limit not less than \$500,000 each accident for bodily injury, \$500,000 each employee for bodily injury by disease, and \$500,000 policy limit for disease.

Architect shall carry Commercial General Liability (CGL) insurance on an occurrence form with a limit of not less than \$1,000,000 each occurrence covering liability arising from independent Architects, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract. Indemnitees shall be included as additional insureds under the CGL on form CG 20-10 or equivalent. This insurance shall apply as primary with respect to any other insurance or self-insurance available to Owner.

If Architect's Services require or involve the ownership, maintenance or use of an auto, Architect shall carry Commercial Auto Insurance with a limit of insurance no less than \$1,000,000 each accident covering "any auto" whether owned, scheduled, leased, hired or other.

Architect may, at its option, purchase insurance to cover its personal property. In no event shall Owner be liable for any damage to or loss of personal property sustained by Architect, whether or not it is insured, even if such loss is caused by the negligence of Owner, its employees, officers, directors, or agents.

Architect shall carry professional errors and omissions coverage in an amount of not less than One Million Dollars (\$1,000,000) per claim which shall include the coverage for attorney fees and investigation. Such policy shall cover claims arising out of negligent errors or omissions during the performance of professional services. The retroactive date of the policy must be shown on the certificate of insurance and must be before the date of this Agreement. If the coverage is canceled or not renewed and it is not replaced with another policy with a retroactive date that precedes the date of this Agreement, the Architect must provide extended reporting coverage for a minimum of two years after completion of this Agreement or the Services on the former policy. Architect shall keep such insurance in force during the course of this Agreement and for a period of not less than two (2) years after the date of substantial completion of the Services in accordance with the terms of this Agreement. Architect shall require its sub-consultants to provide the same Professional Liability Insurance coverage, unless otherwise agreed by Owner in writing.

Architect waives on behalf of itself and its insurers all rights against Owner and its agents, officers, directors, and employees for recovery of damages to the extent these damages are covered by its insurance regardless of deductibles, if any. Insurance companies affording the coverage required above shall have an AM Best Rating of no less than A- VII. Failure to maintain the required insurance may result in termination of this Agreement at Owner's option. By requiring insurance herein, Owner does not represent that coverage and limits will be adequate to protect Architect. The requirements contained herein shall not be construed in any manner to relieve or limit Architect's indemnification obligations for any loss or claim arising out of this Agreement.

Insurance policies shall contain a clause that the insurers will not cancel or change the insurance without giving the Roman Catholic Church in the State of Hawaii (30) days' prior written notice. Such notice shall name the Roman Catholic Church in the State of Hawaii and its parishes or schools, its officers, officials, employees and volunteers as an Additional Insured.¹

Prior to the execution date of this Agreement or commencement of any activity contemplated under this Agreement, whichever is earlier, Architect shall furnish Owner (the Roman Catholic Church in the State of Hawaii and [*enter name of parish and school*], its officers, officials, employees and volunteers are hereby named as an additional insured), with evidence of compliance with the above requirements. Architect shall further provide certified copies of all insurance policies required above within ten (10) days of Owner's written request for said copies.²

¹ Paragraph addition - November 17, 2008

² Paragraph addition - November 17, 2008