

**CONSTRUCTION AGREEMENT**  
**(over \$500,000)**

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

Recital 1. Owner is the property owner of the (*enter name of Parish/Facility*) \_\_\_\_\_ located at (*enter full address*) \_\_\_\_\_.

Recital 2. Owner desires to engage Contractor for construction services; enter brief description of work at the Parish/Facility (the "**Project**"). Description;  
\_\_\_\_\_

**1. CONTRACT DOCUMENTS:** The contract documents shall consist of this Agreement, all exhibits attached hereto, the final construction drawings and specifications and any other documents that are specifically 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 WORK:** Contractor is responsible for completion of all, or a portion of, the Project which shall be carried out in or around all or part of the Parish/Facility ("**Site**"). Contractor's work shall include the performance of all things necessary and reasonably inferable from the Contract Documents to fully complete the tasks described in **Exhibit A** ("**Scope of Work**"). Contractor's Work shall be in strict accordance with the requirements of the Contract Documents, including the drawings and specifications described in **Exhibit B**.

**3. CONTRACT PRICE:** In consideration for the performance of the Work, Owner shall pay Contractor a fixed price of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) ("**Contract Price**"). The Contract Price shall be Contractor's sole and total compensation for all costs, overhead and profit, including without limitation, all permits, fees, federal, state, and local statutory benefit taxes, income taxes and sales and use taxes. Further, the Contract Price shall include all out-of-pocket expenses incurred in connection with the Work, including without limitation travel expenses, food, lodging and all office expenses.

**4. PROJECT SCHEDULE:**

.1 Contractor has submitted to Owner, and Owner has approved, a preliminary schedule for the Project, which is attached as **Exhibit C** ("**Preliminary Project Schedule**").

.2 Within thirty (30) days of execution of this Agreement, Contractor shall develop and provide to Owner, for Owner's review and approval, a critical path

method ("CPM") schedule for the Project that shall include all CPM activities necessary for timely completion of the Work ("**Project Schedule**"). Any Work activity that may affect the completion date of the Project is deemed critical under this Agreement. Once accepted, the Project Schedule shall replace the Preliminary Project Schedule and shall be attached hereto as **Exhibit C-1**. Contractor shall promptly commence and diligently pursue completion of the Work within the time parameters, including all interim milestone dates, set forth in the Project Schedule ("**Contract Time**"). The Project Schedule and all subsequent updates and revisions to the Contract Time shall be printed in a tabular bar chart format in a program acceptable to Owner. However, at a minimum, the Project Schedule shall include the following: (1) permit dates, (2) procurement dates, (3) dates and durations required for Owner's reviews and approvals, (4) dates by which Owner-furnished material and equipment must be supplied, and (5) other critical path items. The Project Schedule shall also include the start and finish dates for construction of all critical path activities, all interim milestone dates and the date of Substantial Completion, as defined in Paragraph 32.2.

**5. SCHEDULE OF VALUES:** Contractor has submitted to Owner, and Owner has approved, a schedule of values for the Work, allocated by either trades or by CSI Division 00 ("**Schedule of Values**") of the Masterformat. The Schedule of Values will be used by the Owner to evaluate Contractor's Progress Payments, as described in Paragraph 28. The Schedule of Values is attached hereto as **Exhibit D**. Owner shall have the right at any time to reject any portion of the Schedule of Values that does not accurately define the Work in reasonable detail, or if the detail provided does not accurately reflect an appropriate cost, allocation or proportion of the Work. Contractor will be required to revise promptly any rejected portion of the Schedule of Values upon demand by Owner.

**6. SCHEDULE OF SUBMITTALS:** Contractor shall prepare and submit to Owner, for Owner's review and approval, a schedule of shop drawings, product data, test reports, samples etc., required to be submitted for the Work ("**Schedule of Submittals**"). The Schedule of Submittals shall be in a format acceptable to Owner and the Project Architect/Consultant, as defined in Paragraph 20, and shall be attached hereto as **Exhibit E**. The Schedule of Submittals shall indicate all intended submissions, shall include the date by which each item will be submitted and the date by which final approval of the item must be obtained. Contractor shall consider the nature and complexity of each submittal item and shall allow ample time for review, revision or correction, re-submittal and approval sufficiently well in advance of the construction requirements. Owner will require the Project Architect/Consultant to use its best efforts to complete such reviews within ten (10) days, but the Project Architect/Consultant will be afforded fifteen (15) days from receipt of submittal for review and approval. The Project Schedule will not be extended if Contractor fails to provide the intended submittals in accordance with the approved Schedule of Submittals. Upon prior written approval of Owner, Contractor may revise the Schedule of Submittals to comply with any approved changes to the Project Schedule and any approved changes to the Work.

**7. CHANGE PROPOSALS:** Upon the Effective Date of this Agreement, any change involving the Work ("**Additional Work**") or an increase or decrease in the amounts stated in the Schedule of Values, the Contract Price or the Contract Time may be accomplished only by a written Change Proposal Request submitted by the Contractor to the Owner and

subject to Owner's approval ("**Change Order**"). No Change Order will be effective unless agreed to in advance and bearing the signature of both parties.

**.1 Initiation.** Change Proposals may be initiated either by an Owner Directive or a Change Proposal Request as each is hereinafter defined:

**.a Owner Directive.** Owner may direct Contractor to increase, decrease, alter or clarify the Work by written notice ("**Owner Directive**"). Owner Directives may or may not involve a change to the Contract Price or the Contract Time.

**.b Change Proposal Request.** Contractor may provide written notice to Owner requesting Owner's consideration of certain events that Contractor believes have or will result in a change in Contractor's Work ("**Change Proposal Request**"). No Change Proposal Request, including requests which are based upon Owner Directives, RFI's, verbal directives and/or issues that are pursued as Change Order Claims, as hereinafter defined, will be deemed complete until the Change Proposal Request has been finalized as an approved Change Order.

**.2 Owner's Pricing Option.** Subject to Owner's request, the Additional Work authorized by a Change Order shall either be performed on a fixed fee, unit price or time and materials basis as follows:

**.a Fixed Fee Proposal.** Contractor shall submit its fixed fee proposal within twenty (20) days after receipt of Owner's request therefore. Contractor's fixed fee proposal must be itemized and segregated by labor and materials for the various components of the Additional Work. As part of its proposal, Contractor must include signed proposals and supporting materials from the relevant subcontractors and vendors with sufficient breakdowns to enable Owner to verify actual costs of the Contractor and its subcontractors and vendors of every tier. Contractor shall be allowed a ten percent (10%) mark-up for costs of self-performed labor and for Contractor's direct material and equipment purchases attributable to the Additional Work ("**Contractor's Mark Up**"). Contractor's Mark Up is for all overhead and profit attributable to the Additional Work. In addition, Contractor will be allowed a five percent (5%) mark-up on the approved value of Additional Work performed by its subcontractors and vendors and Contractor will be allowed a five percent (5%) mark-up on overhead and profit on equipment rented in performing the Additional Work either by Contractor or its subcontractors and vendors of any tier. Subcontractors shall be permitted a ten percent (10%) mark-up for costs of self-performed labor and for the subcontractor's direct material and equipment purchases attributable to the Additional Work ("**Subcontractor's Mark Up**"). Subcontractor's Mark Up is for all overhead and profit attributable to the Additional Work. As described herein, overhead and profit includes all other costs whatsoever beyond those enumerated above.

**.b Unit Price.** Contractor shall submit its unit price proposal within twenty (20) days after receipt of Owner's request therefore. Contractor's written proposal shall itemize the quantities of each item of Additional Work that has been identified for unit price purposes unless such unit price is

already contained in the Agreement or has otherwise already been mutually agreed to between the parties. Contractor must itemize the estimated quantities that are already included within the Contract Price, if any, as well as the estimated quantities for Additional Work purposes for each requested unit price. The unit prices shall only be applicable to net quantities outside of the existing scope of Work for each item.

**.c Time and Materials.** Only in exceptional cases where time constraints so require, and only upon Owner's specific authorization, may Contractor perform Additional Work on a time and materials basis. In all other instances, the parties must mutually agree and finalize a Change Proposal before Contractor shall be authorized to proceed with any Additional Work. Any Change Proposals Requests submitted by Contractor under this Paragraph 7.2.c must be supported by such documentation so as to verify entitlement as Owner may require.

**.3 Change Order Claims and Disputes.** Notwithstanding the dispute resolution terms of Paragraph 45, for any unresolved issue between the parties pertaining to Additional Work, the Contract Price and/or the Contract Time, including issues where the parties are continuing negotiations on rejected Change Orders ("**Change Order Claim**"), Contractor shall have the burden of establishing entitlement to any Additional Work and increases in the Contract Price and/or the Contract Time. Contractor shall submit a notice of claim ("**Notice of Claim**") to Owner within ten (10) days of Contractor's receipt of Owner's rejection of a Change Order. Contractor shall submit all such documentation required by Owner in support of such Change Order Claim within twenty (20) days of Contractor's submittal of the corresponding Notice of Claim. Contractor's failure to submit a Notice of Claim within the required time frame shall constitute a waiver of Contractor's Change Order Claim. All increases or decreases in the Contract Price shall be determined by applying the provisions of Paragraph 7.2.a, to Contractor's direct, actual cost for the Additional Work and shall be limited strictly to those amounts which are solely attributable to the corresponding Change Order Claim. Contractor shall substantiate any Change Order Claim for a change in the Contract Time with a CPM delay analysis. Any Change Order Claim not resolved by the parties within thirty (30) days after Owner's receipt of the Notice of Claim shall be set aside pending completion of the Work or earlier termination of this Agreement and the provisions of Paragraph 45 shall apply. However, both parties expressly acknowledge and agree that the requirements and limitations set forth in this Paragraph 7.3 exclusively govern the final determination of the extent of Contractor's damages for any Change Order Claim during any legal proceeding. Under no circumstances shall Contractor be entitled to recover any amounts for lost productivity, inefficiency, out-of-sequence work, stacking of trades, idle equipment, lost profits, extended home office overhead, interest or any other indirect costs and Contractor hereby waives any right to claim such costs for a Change Order Claim under this Agreement.

**8. CONTRACTOR'S REPRESENTATIONS:** Contractor is being engaged by Owner in reliance upon Contractor's: (1) possession of all licenses and/or certifications as required in the local jurisdiction; (2) representations of professional expertise in the specific area of construction called for by this Agreement; and (3) ability to provide the required Work

independently without substantial direction by Owner. Contractor shall comply with all applicable laws, codes, regulations, ordinances and rules, whether local, regional or national, with respect to the Work to be performed and the equipment or materials to be furnished hereunder and shall cause the Work to be constructed in compliance with this Agreement.

**9. CONTRACTOR'S WARRANTY:** Contractor warrants that the Work performed hereunder shall be performed in a first-class workmanlike manner and the materials and equipment provided shall be new and free from defects in workmanship and/or materials and equipment and agrees that any damage arising from any breach of this representation and warranty shall be promptly remedied by Contractor at its sole expense. If Contractor defaults or neglects to correct defective Work within a five (5) day period after receipt of written notice from Owner, Owner may, without prejudice to other remedies, correct such deficiencies at Contractor's expense. Contractor's warranty shall apply during performance of the Work and shall extend for the later of: (1) a period of twelve (12) months after the date of Final Completion, as defined in Paragraph 33; or (2) the period of such manufacturer's warranties provided for materials and equipment ("**Warranty Period**"). During the Warranty Period, Contractor shall be responsible for correcting any and all defects in workmanship, materials or equipment or other damages arising from a breach of this warranty at Contractor's sole cost and expense.

**10. COOPERATION: (Renovation)** Contractor acknowledges that the Work is being performed in a fully operational Parish/Facility that is open to the public. Further, Contractor acknowledges that Owner may engage other contractors to provide work or services relating to the Project which may be carried out concurrently with Contractor's Work and that some interference from other contractors is anticipated. The Contractor shall coordinate its Work with the Parish/Facility and other contractors as follows:

- .1 Contractor shall schedule and conduct progress meetings on a weekly basis at which its subcontractors, the Project Architect/Consultant, Parish/Facility Project Director, and Parish/Facility's other contractors and consultants may jointly discuss such matters as Work procedures, progress, scheduling and coordination.
- .2 Contractor shall schedule and coordinate its Work with the Parish/Facility to minimize disruption to Parish/Facility operations. Further, Contractor acknowledges that it has reviewed and shall abide by Parish/Facility house rules ("**House Rules**"), which are attached hereto as **Exhibit F**. Contractor agrees that the Parish/Facility may revise the House Rules at any time and Contractor agrees to adhere to any changes. The Parish/Facility will provide Contractor with a copy of any revised House Rules.
- .3 If any part of Contractor's Work depends upon the proper execution of work and services performed by another contractor, Contractor shall, prior to proceeding with its Work, inspect such other work and promptly report to the Project Director any apparent discrepancies or defects in such other work. Failure to comply with these requirements shall bar any claims thereafter that defects in Contractor's Work are due to defects, delays, or disruptions in the work performed by others.
- .4 Contractor shall coordinate its construction activities with the activities of the other contractors. Contractor shall provide the necessary personnel to connect

and coordinate its Work with others at the proper time and in a manner not to delay others or increase costs.

.5 Contractor shall remedy promptly damage wrongfully caused by Contractor to Parish/Facility's existing property or completed or partially completed construction work performed by other contractors.

-----OR-----

**10. COOPERATION: (New Build)** Contractor acknowledges that Parish/Facility may engage other contractors to provide work or services relating to the Project which may be carried out concurrently with Contractor's Work. Contractor further acknowledges that some interference from other contractors is anticipated. Contractor shall coordinate its Work with any work being performed by other contractors as follows:

.1 If any part of Contractor's Work depends upon the proper execution of work and services performed by another contractor, Contractor shall, prior to proceeding with its Work, inspect such other work and promptly report to the Parish/Facility Project Director any apparent discrepancies or defects in such other work. Failure to comply with these requirements shall bar any claims thereafter that defects in Contractor's Work are due to defects, delays, or disruptions in the work performed by others.

.2 Contractor shall at all times coordinate its construction activities with the activities of the other contractors in a manner not to delay others or increase costs.

.3 Contractor shall remedy promptly any damage wrongfully caused by Contractor to Parish/Facility's existing property or to any completed or partially completed construction work performed by other contractors.

.4 Contractor shall schedule and conduct progress meetings on a weekly basis at which its subcontractors, the Project Architect/Consultant, Project Director, Parish/Facility Project Director and Parish/Facility's other contractors and consultants may jointly discuss such matters as Work procedures, progress, scheduling and coordination.

.5 Contractor acknowledges that it has reviewed and shall abide by the Parish/Facility's house rules ("**House Rules**"), which are attached hereto as **Exhibit F**. Contractor agrees that the Parish/Facility may revise the House Rules at any time and Contractor agrees to adhere to any changes. The Parish/Facility will provide Contractor with a copy of any revised House Rules.

**11. SITE CONDITIONS:** Contractor has examined the Site and the Contract Documents and has familiarized itself fully with the conditions under which the Work shall be performed. Contractor assumes the risk of such conditions and shall complete fully the Work within the Contract Time and for the Contract Price. Any information about the Site that is furnished by Parish/Facility shall be for the convenience of Contractor and without any guarantee by Parish/Facility. Contractor shall not be responsible for latent defects or hidden conditions which are not reasonably discoverable by means of due diligence. However, Contractor must notify Parish/Facility in writing within ten (10) days after the

first observance of such latent defects or hidden conditions or any claim for additional compensation shall be waived by Contractor.

**12. ALTERNATES AND SUBSTITUTIONS:** The following terms and conditions shall apply to any Contractor request for alternates or substitutions ("**Substitutions**"):

.1 By requesting a Substitution, Contractor represents that the Substitution meets or exceeds the specifications and warranty of the originally specified item.

.2 All requests for Substitutions shall be made through a written Change Proposal Request allowing sufficient time for evaluation by the Architect/Consultant and written response by Parish/Facility without jeopardizing the Contract Time.

.3 The acceptance of any Substitution shall be at the Parish/Facility's sole discretion. Any decrease in the cost of the Work resulting from such Substitution shall be treated as a reduction in the Contract Price.

.4 All Substitutions shall be evidenced by a Change Order as described in Paragraph 7.

**13. TOOLS, EQUIPMENT, MATERIALS AND SUPPLIES:**

.1 **Tools and Equipment.** Contractor shall provide at its expense, without remuneration or reimbursement of any kind, all equipment, materials, tools, construction equipment, machinery and supplies necessary to complete the Work in accordance with this Agreement.

.2 **Materials and Supplies.** Title to all Work, materials and equipment shall pass to Owner upon Contractor's receipt of payment for the same. Parish/Facility may enter upon the location where any material or equipment is manufactured or stored for purposes of inspection, checking, testing or for any other purpose Parish/Facility deems reasonably necessary. The parties acknowledge that certain materials will be supplied and delivered to the Project by Owner and that Contractor will assume responsibility for such materials at the time they are unloaded from the truck at the Project or other location where they may be delivered by Parish/Facility.

**14. SUBCONTRACTORS AND VENDORS:** Contractor may engage subcontractors and vendors to perform all or any portion of the Work, provided that Contractor shall be responsible for payment to any and all such subcontractors and vendors. Contractor shall be responsible for the performance of its subcontractors and vendors of every tier to the same extent as if such subcontracted work was performed by Contractor directly. Prior to entering into subcontracts, Contractor shall provide Owner with a written list of the names of Contractor's proposed subcontractors and vendors for each portion of the Work for review and consent by Owner, which consent shall not be unreasonably withheld, conditioned or delayed. Contractor acknowledges that all duties and responsibilities set forth in this Agreement flow-down and shall be an integral part of each and every subcontract entered into by Contractor.

**15. FACILITIES AND TEMPORARY CONTROLS:** Contractor shall be responsible solely for the design, transport, erection, inspection and maintenance of all temporary supports and structures, including but not limited to: electricity and lighting, heat, telephone and fax, water, sanitary facilities, fire protection, hoisting equipment and machinery, staging and scaffolding, temporary equipment and materials, all shoring and bracing, all cranes, hoists, derricks and supports, barriers and fencing, water control, field office, storage facilities and all other types of temporary supports and structures required for the Work and provided by Contractor or its subcontractors of every tier while performing the Work.

**16. INDEPENDENT CONTRACTOR:** Contractor shall act as an independent contractor in providing the Work. The means and methods Contractor employs to provide the Work are matters entirely within its discretion and control in accordance with accepted industry practices. Contractor has no authority to act as an agent of Owner. Contractor 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 Contractor to provide services to the Owner hereunder. Those duties, obligations and responsibilities shall include, but are 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.

**17. EMPLOYEES:** Parish/Facility may, from time to time, establish reasonable rules and regulations relating to standards to be met by Contractor regarding the appearance or conduct of employees or agents, including all subcontractors and vendors performing Work at the Site. Contractor shall be responsible at all times for the conduct of all such persons. Contractor 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 Contractor in connection with the Work hereunder. Contractor shall not be required by Parish/Facility to engage in any personnel action which is, or may be deemed to be, against public policy or contrary to local, state or federal ordinance, rule or statute or to any collective bargaining agreement or other labor or employment contract.

**18. SAFETY:** Contractor shall be responsible at all times for the safety of its employees, the employees of its subcontractors and vendors of any tier, and their respective representatives and agents who are engaged in providing Work at the Site or in or around the Parish/Facility. Contractor shall fulfill all notice and reporting requirements and otherwise strictly comply with, and shall require all of its subcontractors and vendors to likewise comply with, all local, municipal, state and Federal laws and regulations of public authorities pertaining to health and safety. Further, Contractor shall institute the following safety measures:

- .1 Install "*Caution – Work in Progress*" signs in areas wherever and whenever Work is in progress;
- .2 Store all tools, construction debris and materials out of sight of parishioners in areas not being used;
- .3 Organize and broom clean areas daily;

- .4 Require all of Contractor's personnel to wear uniforms identifying them as such;
- .5 Notify Parish/Facility immediately whenever unsafe conditions existing outside of Contractor's area of control are observed by Contractor or by any subcontractor or vendor;
- .6 Comply with any other reasonable safety measures that are required by the Parish/Facility;
- .7 Comply with any other safety requirements provided for in the Supplementary Conditions attached hereto as **Exhibit G**.

**19. SITE CLEAN UP:** Work performed under this Agreement shall comply with all laws, ordinances and regulations, whether local, regional or national, governing applicable noise, dust and pollution control requirements. Contractor shall at all times and on a daily basis during the course of the Work keep all Work areas in a clean and safe condition by removing promptly and disposing properly of all debris and rubbish generated by Contractor's operations and by all other contractors on the Project.

**20. AUTHORIZED REPRESENTATIVES:**

.1 **Architect/Consultant.** The Architect/Consultant for the Project is: \_\_\_\_\_ with an office at \_\_\_\_\_  
 (Telephone: (\_\_\_\_\_) (Facsimile: (\_\_\_\_\_) ("Project Architect/Consultant").

.2 **Owner's Project Director.** Owner has designated \_\_\_\_\_  
 (Telephone: (\_\_\_\_\_) (Facsimile: (\_\_\_\_\_) as its project director ("Project Director") authorized to represent Owner with respect to the Project

.3 **Contractor's Project Representative.** Contractor has appointed \_\_\_\_\_ (Telephone: (\_\_\_\_\_) (Facsimile: \_\_\_\_\_) to be its representative, who is assigned solely to this Project, and is authorized to act on Contractor's behalf with respect to the Project and whose decisions, notices and directives shall be binding upon Contractor with respect to this Agreement.

**21. TIME OF THE ESSENCE:** Contractor acknowledges that **TIME IS OF THE ESSENCE** of this Agreement. In this regard, Contractor hereby accepts and confirms that the time allowed in the Project Schedule is reasonable for completing the Work and hereby agrees to dedicate such personnel and other resources as may be necessary to guarantee that the Work is continuously managed and performed in a diligent, skilled and workmanlike manner in accordance with Owner's objectives of cost, time and quality.

**22. COMPLETION GUARANTY:** Subject to any approved Change Order authorizing an extension to the Project Schedule, Contractor hereby guarantees to (1) achieve each of the interim milestone dates shown on the Project Schedule; and (2) achieve Substantial

Completion of the Work, as defined in Paragraph 32.2, within the Contract Time. Contractor's failure to achieve Substantial Completion within the Contract Time, except pursuant to a mutually agreed Change Order, shall constitute a breach of this Agreement. In the event that Contractor falls significantly behind the interim milestone dates or the Contract Time, Parish/Facility shall be entitled to require Contractor to implement a recovery schedule ("**Recovery Schedule**") within five (5) days, which Recovery Schedule shall only be effective if approved by Parish/Facility.

**23. EXTENSIONS OF TIME:** If Contractor is delayed at any time in the progress of the Work by an act or omission of Parish/Facility, Parish/Facility's employees, or separate contractors employed by Parish/Facility, or by changes ordered in the Work, or by Force Majeure, as defined in Paragraph 24, or by other causes which Parish/Facility and Contractor agree may justify delay ("**Excusable Delay**"), and Contractor has provided written notice to Parish/Facility within ten (10) days of the event causing the delay, then the Contract Time shall be reasonably extended by Change Order if such Change Order is approved by Owner in accordance with Paragraph 7 of this Agreement. Contractor's failure to submit written notice within ten (10) days of the event causing the delay shall constitute a waiver of Contractor's right to assert that an Excusable Delay justified an extension of time hereunder.

**24. FORCE MAJEURE:** In the event that Contractor is prevented from performing the Work hereunder by reason of any labor disputes, fire, unusual delay in deliveries, adverse weather conditions not reasonably anticipatable, unavoidable casualties or other causes beyond Contractor's and Parish/Facility's control ("**Force Majeure**"), resulting in delays to the Project Schedule, Contractor shall be entitled to an extension of time as provided in Paragraph 23.

**25. LIMITED DAMAGES FOR OWNER DELAYS:** To the extent that any delay is caused solely by Parish/Facility, its agents, consultants or separate contractors, which independently affects the critical path of the Project, it shall be deemed a compensable delay ("**Compensable Delay**"). All other delays, including Force Majeure delays, shall be non-compensable. Contractor agrees that any compensation for Compensable Delay shall be limited to the following costs when actually paid by Contractor: (1) direct costs of craft labor; (2) direct costs for materials and equipment; (3) direct rental charges for machinery and equipment; (4) direct sales and use taxes; and (5) extended project overhead. Under no circumstances shall Contractor be entitled to recover any amounts for lost productivity, inefficiency, out-of-sequence work, stacking of trades, idle equipment, lost profits, extended home office overhead, interest or any other indirect costs and Contractor hereby waives any right to claim such costs under this Agreement. Any compensation to Contractor for a Compensable Delay shall be documented in a Change Order in accordance with Paragraph 7 of this Agreement.

**26. CONCURRENT DELAYS:** Any delay in the Work caused by any act or omission of Contractor or any subcontractor or vendor of any tier, which independently affects the Contract Time will not entitle the Contractor to an extension of time as provided in Paragraph 23 ("**Contractor Delay**"). Accordingly, Contractor is only entitled to an extension of time to the extent that an Excusable Delay exceeds a Contractor Delay when they are concurrent.

**27. ACCELERATION:** In the event Owner desires to accelerate the Project Schedule, or any revisions thereof, for reasons other than delays caused by Contractor, Parish/Facility shall notify Contractor in writing. Upon receipt of such written notification, Contractor shall require its personnel and its subcontractors and vendors to work such overtime hours and/or to increase their respective work forces as may be reasonably necessary to meet Parish/Facility's acceleration goals. In the event that such acceleration is ordered by Parish/Facility, Contractor's sole remedy shall be an adjustment in the Contract Price for Contractor's direct costs, as described in Paragraph 25, incurred in performing the accelerated Work.

**28. APPLICATIONS FOR PAYMENT:** Contractor will be paid monthly, based upon the progress of the Work ("**Progress Payment**") and within thirty (30) days of Final Completion, as defined in Paragraph 33.2 ("**Final Payment**"). On or before the twentieth (20<sup>th</sup>) day of each month, Contractor shall submit its application for payment for the preceding month ("**Application for Payment**") **Exhibit D** to the Parish/Facility Project Director in a format acceptable to Architect/Consultant and Owner and supported by such documentation to verify entitlement, including lien waivers, in the format approved by Owner. Each such monthly Application for Payment shall be based upon the approved **Schedule of Values** and shall identify clearly and itemize the percentage of Work satisfactorily completed by Contractor in a manner which facilitates review by Owner. Progress Payments shall be paid within thirty (30) days after Parish/Facility's receipt of Contractor's approved Application for Payment if the Application for Payment is received and approved by the Architect/Consultant by on or before the twentieth (20<sup>th</sup>) of each month. Ten percent (10%) of the approved value of all Progress Payments shall be retained by Parish/Facility. Such retention shall be released as part of the Final Payment.

**29. JOINT PAYEE CHECKS:** If Contractor fails to make timely payments to any subcontractor or vendor, Parish/Facility may elect to issue one or more checks which are payable jointly to Contractor and the relevant subcontractor or vendor of any tier. Such checks shall be forwarded to Contractor for further handling. Parish/Facility may also elect to issue jointly payable checks in circumstances where a dispute exists between Parish/Facility and Contractor.

**30. OWNER'S RIGHT TO WITHHOLD:** Notwithstanding anything to the contrary herein, Parish/Facility may withhold from any Progress Payment or the Final Payment, up to one hundred percent (100%) of the amount which, in Parish/Facility's reasonable opinion, is necessary to protect Parish/Facility from any overpayment, claims, damages, lawsuits or losses which may result from Contractor's failure to perform the Work in accordance with the requirements of this Agreement or under any other circumstances that Parish/Facility deems such withholding necessary, including but not limited to the following situations:

- .1 The overall percentage of Work satisfactorily completed by Contractor is less than the overall percentage of payments determined by adding: (a) all amounts previously paid by Parish/Facility; and (b) the pending invoice to be paid;
- .2 Contractor has failed to perform the Work in accordance with the Project Schedule, any revisions thereof, or any Recovery Schedule;

- .3 Contractor has failed to perform the Work in accordance with the Contract Documents and the non-conforming Work has not been remedied in a timely manner after receipt of notice from Owner;
- .4 Parish/Facility has reasonable evidence that Contractor has not made timely or proper payments to subcontractors or vendors;
- .5 Contractor has failed to submit lien waivers as required by Paragraph 34 of this Agreement;
- .6 Contractor or any of its subcontractors or vendors of any tier have filed a mechanic's lien against the Project and Owner is not in default of its obligations to make payments to Contractor of undisputed amounts;
- .7 Contractor has failed to expeditiously take steps to post a bond or otherwise remove any mechanic's lien filed against the Project by any subcontractor or vendor of any tier;
- .8 Contractor has failed to provide timely access to Contractor's books and records for audit purposes to the extent described in Paragraph 43.

**31. DISPUTED PAYMENTS:** In the event of a dispute with respect to amounts payable under an Application for Payment, Parish/Facility shall pay all undisputed amounts and Contractor shall continue performing any remaining Work hereunder. Any amounts in dispute withheld by Parish/Facility shall be promptly paid after the earlier of: (1) settlement of the dispute by execution of a Change Order pursuant to Paragraph 7; or (2) a resolution of the dispute pursuant to Paragraph 45. It is provided, however, that the payment of any undisputed amounts shall not waive or otherwise limit Parish/Facility's rights with respect to any failure of the Work to comply with the requirements of the Contract Documents or Owner's audit rights as set forth in Paragraph 43.

**32. SUBSTANTIAL COMPLETION:**

**.1 Substantial Completion Punchlist Procedures.** Contractor's required punchlist procedures prior to substantial completion shall be as follows:

**.a** Prior to any request by Contractor for a certificate of substantial completion, Contractor and Parish/Facility shall develop a proposed list of punchlist items for purposes of determining substantial completion ("**Substantial Completion Punchlist**"). Contractor shall be responsible for completing, or causing to be completed, all items on the Substantial Completion Punchlist.

**.b** Contractor shall notify Parish/Facility in writing when the items on the Substantial Completion Punchlist have been completed so that Parish/Facility may inspect the items to determine full completion. If Parish/Facility disagrees that the Substantial Completion Punchlist has been completed, Parish/Facility shall provide Contractor with a directive of the items that should be completed or corrected for purposes of substantial completion ("**Parish/Facility's List**"). Parish/Facility's failure to advise

Contractor of any items specified in the Contract Documents shall not alter Contractor's responsibility to complete all Work necessary for Substantial Completion in accordance with the Contract Documents.

.c Upon receipt of Parish/Facility's List, Contractor shall complete and/or correct all listed items. Contractor shall then submit its request to Parish/Facility for another inspection to determine whether the Substantial Completion Punchlist has been completed. Such subsequent inspections or re-inspections shall be made jointly by Parish/Facility and Contractor.

.d Following completion of the Substantial Completion Punchlist, but prior to the issuance of a certificate of substantial completion, the parties shall develop a final punchlist that must be completed prior to Final Completion, as defined in Paragraph 33.2 ("**Final Punchlist**"). Parish/Facility's review and written acceptance of the Final Punchlist shall be a condition precedent to the issuance of the certificate of substantial completion.

**.2 Substantial Completion.** In order for Parish/Facility to consider whether substantial completion has been accomplished, the following conditions must be met ("**Substantial Completion**"):

.a But for the items listed on the Final Punch list, the Agreement has been fully performed and completed consistent with the terms of the Contract Documents.

.b Contractor has submitted its application for Final Payment.

.c Contractor has obtained all necessary certificates of compliance from the appropriate jurisdiction.

.d Contractor has provided a certificate listing all subcontractors and vendors involved in providing labor and material in the completion of the Work.

.e Contractor and all subcontractors have delivered to Owner complete and final conditional lien waivers in a form acceptable to Owner.

.f Contractor has delivered to Owner an indemnification, in form acceptable to Owner and signed by Contractor, from any and all claims filed by subcontractors and vendors retained by Contractor in its performance of the Work.

.g Contractor has filed and published notice of completion consistent with the requirements of the applicable laws of the State of Hawaii.

.h Notwithstanding anything in the Contract Documents which may indicate otherwise and unless waived by Owner in writing, Substantial Completion of either the Work in its entirety or a designated portion thereof shall not occur earlier than the date of issuance of a Temporary Certificate

of Occupancy ("TCO") by the relevant governmental authority. However, issuance of the TCO does not, in and of itself, meet the requirements of Substantial Completion.

.i Parish/Facility shall have the final decision as to whether or not Contractor has achieved Substantial Completion. When Parish/Facility determines that the Work in its entirety, or a designated portion thereof, is substantially complete and a TCO has been obtained therefore, Parish/Facility shall prepare and issue a certificate of Substantial Completion, which shall certify the date of Substantial Completion.

.j At all times prior to Final Completion, Parish/Facility shall be entitled to withhold from Contractor funds equal to 200% of the reasonable value of all outstanding Substantial Completion Punchlist items and the Final Punchlist Items.

### **33. FINAL COMPLETION:**

**.1 Final Completion Punchlist Procedures.** Contractor's required punchlist procedures prior to final completion shall be as follows:

.a After Contractor satisfies all remaining items on the Final Punchlist developed prior to obtaining Substantial Completion, Contractor may submit written notice to Parish/Facility stating that the Work is ready for inspection.

.b In the event that Parish/Facility disagrees with Contractor's claim that all items on the Final Punchlist have been completed and that final completion has been achieved, Parish/Facility shall promptly advise Contractor in writing of the remaining items to be completed for purposes of final completion. All re-inspections to determine if the Work is acceptable for purposes of final completion shall be made jointly by Parish/Facility and Contractor.

**.2 Final Completion.** The Contractor has achieved final completion for all purposes when the following conditions are met ("**Final Completion**"):

.a Issuance of Final Payment by the Parish/Facility;

.b Completion of all items on the Substantial Completion Punchlist and the Final Punchlist by Contractor and acceptance by Parish/Facility,

.c Submittal of satisfactory proof by Contractor that all claims or liens previously filed or recorded, including those for taxes, arising out of the Work have been released or bonded or funds have been retained by Parish/Facility to cover the same;

.d If requested by Owner, Contractor has submitted to Owner a written statement from a title company, satisfactory to Owner, that no mechanic's liens appear of record arising out of the Work performed under the Contract Documents that are not released or bonded;

.e As-built drawings have been submitted to Owner and Parish/Facility in accordance with Paragraph 40 of this Agreement;

.f Contractor and all subcontractors have delivered to Owner complete and final unconditional lien waivers in a form acceptable to Owner and its lender (if any); and

.g Parish/Facility shall have the final decision as to whether or not Contractor has achieved Final Completion. When the Parish/Facility agrees that the Work and all items on the Final Punchlist have been completed. The Owner shall prepare and issue a certificate of Final Completion, which shall set forth the date of Final Completion.

**34. LIENS:** Contractor covenants and agrees to keep the equipment and property of Parish/Facility and the premises of the Parish/Facility free and clear from any and all liens for Work performed or materials and equipment furnished hereunder and Contractor agrees to indemnify Owner and Parish/Facility against any and all costs, expenses, losses and all damage resulting from the filing of any such liens against Owner or the Parish/Facility. If a lien is filed by a subcontractor or vendor of Contractor, Contractor will immediately take whatever action is necessary to remove such lien at Contractor's expense. Contractor shall, upon request by Owner, furnish waivers of such liens or receipts in full for all claims for such Work or materials and equipment and an affidavit that all such claims have been fully satisfied. Contractor's obligations under this Paragraph 34 shall apply unless Parish/Facility has failed to pay Contractor any undisputed amount after thirty (30) days written notice of such non-payment.

**35. INDEMNIFICATION** Contractor shall indemnify, defend with counsel approved by Owner, and hold harmless the Owner and the Parish and their respective officers, directors, agents and employees (collectively, the "Indemnitees") from and against any and all claims, injuries, liabilities, damages, losses, costs and expenses of any nature or kind including reasonable attorneys' fees (collectively, "Claims"), arising out of or resulting from performance of the Work or this Agreement, but only if such Claims are attributable to bodily injury, sickness, disease or death or to damage, injury or destruction of tangible property (other than the Work itself) and only to the extent caused by the negligent or intentional acts or omissions of the Contractor, a subcontractor, anyone directly or indirectly employed by the Contractor or a subcontractor or vendor to the Contractor or by anyone for whose acts the Contractor or such a subcontractor or vendor may be liable, regardless of whether or not such Claims are caused in part by one or more persons indemnified hereunder. Contractor's obligations under this paragraph shall survive termination of this Agreement. Such obligations shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person under this Agreement and shall not include indemnity for the established negligence or willful misconduct of the Indemnitees.

**36. INSURANCE:** Contractor shall procure and maintain at its expense policies of insurance of the types and in amounts no less than the minimum coverages specified in **Exhibit H** attached hereto. Contractor shall maintain such policies of insurance for the

duration of the Work and for a period of at least two (2) year thereafter if no other time period is specified herein.

**37. PERFORMANCE AND PAYMENT BONDS:** Contractor shall furnish performance and payment bonds ("**Performance and Payment Bonds**") in a form and issued by a company satisfactory to Owner. The Performance and Payment Bonds shall cover both the faithful performance of all obligations set forth herein and the payment of Contractor's obligations arising out of performance of the Work. The Performance and Payment Bonds shall be itemized and requested in the full amount of the Contract Price. The cost thereof shall be reimbursed to Contractor as an addition to the Contract Price, up to 1.25% of the Contract Price and reflected in the Schedule of Values. Any cost in excess of the reimbursement from Owner shall be borne by the Contractor unless otherwise agreed to in writing by Owner.

**38. TERMINATION, SUSPENSION AND STOP WORK ORDERS:**

**.1 General.** Owner shall have the right to terminate this Agreement as follows:

**.a Termination for Cause.** Owner may terminate this Agreement if Contractor: (i) 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 Contractor of such violation or breach ("**Default Notice**"); or (ii) makes an assignment for the benefit of creditors or is a party to a voluntary or involuntary bankruptcy proceeding ("**Termination for Cause**").

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

**.2 Limitation of Owner's Liability.** Owner shall have no further liability to Contractor for compensation, expenses, additional fees or anticipated profits for unperformed Work, lost business opportunities, impaired bonding capacity, or any overhead or general conditions costs attributable to a termination by Owner. All amounts payable by Owner shall be subject to Owner's right of audit and offset.

**.3 Owner's Rights Upon Termination for Cause.** If all or a portion of Contractor's Work is terminated pursuant to Paragraph 38.1.a, Contractor shall not be entitled to receive any payment until after Final Completion is achieved by others and after Owner has assessed its additional costs and damages arising out of such Termination for Cause. If Owner's costs to achieve Final Completion of the Work are in excess of the Contract Price, Contractor shall pay Owner for all costs in excess of the Contract Price, plus reimbursement for all of Owner's additional costs for remedial design services, managerial and administrative services, attorney's

fees and court costs arising out of such Termination for Cause. Upon such Termination for Cause, Contractor shall immediately undertake all necessary steps to mitigate Owner's damages, including but not limited to the following:

- .a Cease operations and vacate the Site to the extent specified in the Default Notice;
- .b Upon Owner's request, terminate all subcontracts and purchase orders which relate to the terminated Work;
- .c Upon request and as directed by Owner, assign all Contractor's right, title and interest to all subcontracts, purchase orders, rental agreements, materials, supplies and equipment using forms satisfactory to Owner and otherwise assist Owner in the orderly and expeditious transfer of such rights;
- .d Turn over to Owner the originals of all documents that may be needed to facilitate completion of the Work by others;
- .e Proceed to complete the performance of all Work not terminated;
- .f Take such actions that may be necessary, or that Owner may direct, for the protection and preservation of the terminated Work;
- .g Remove all of Contractor's property from Parish/Facility's premises. Any property not so removed may be removed by Parish/Facility at Contractor's expense.

**.4 Suspension.** Owner may at any time, with or without cause, suspend performance of all or any portion of the Work by giving Contractor notice specifying which portion of the Work is to be suspended and the effective date of such suspension. Contractor shall continue to perform diligently any remaining Work that is not suspended and shall take all actions necessary to maintain and safeguard all materials, equipment, supplies and Work in progress affected by the suspension. In the event of a suspension, Parish/Facility shall pay Contractor an amount equivalent to the portion of the Contract Price earned by Contractor for Work satisfactorily performed prior to the effective date of the suspension.

**.5 Stop Work Orders.** In the event of any breach of this Agreement, and in lieu of declaring a Termination for Cause, Owner may elect to stop any operations of Contractor or any affected subcontractors or vendors until such default or failure is removed ("**Stop Work Order**"). No part of the time lost due to Stop Work Orders arising out of such breaches shall be made the subject of a claim for extension of time or for increased costs or damages by Contractor. The issuance of a Stop Work Order shall not prejudice Owner's right to subsequently institute a Termination for Cause.

**39. ASSIGNMENT:** The Work to be provided by Contractor hereunder is personal in nature and accordingly, Contractor may not assign or encumber this Agreement or any rights or obligations of Contractor hereunder.

**40. PROJECT DOCUMENTS:** Contractor shall maintain the following documents at the Site during the course of the Work: (1) one (1) record copy of all drawings, specifications and revisions thereto; (2) the Project Schedule (inclusive of any updates or revisions thereto); (3) Change Orders and other modifications; (4) Change Order logs; (5) approved material lists, brochures, technical data submissions and RFI's; (6) RFI responses; (7) RFI logs; (8) Owner or Parish/Facility Directives; (9) a daily log of events affecting the Contract Price and/or the then current Project Schedule, including the actual start/finish dates of all critical path schedule activities; (10) all correspondence and transmittals pertaining to the Work; and (11) all other records relating to the status of all Work-related materials, equipment and construction activities. Prior to Final Completion Contractor shall be responsible for providing Owner with five (5) fully completed and accurate sets of all as-built drawings on reproducible Mylar, as well as soft copies in AutoCAD Format (Release 14 or higher). The completed sets of all as-built drawings shall be submitted to Owner as Contract Documents for Owner's permanent records prior to Final Completion and before Final Payment will be made.

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

**42. ADVERTISING AND USE OF NAME:** Contractor 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 Parish/Facility in each instance. Any such permission given shall be revocable at any time thereafter without prior notice to Contractor and at the sole discretion of Parish/Facility. In the event of such approval, Contractor may use the name of the Parish/Facility only in the manner and at such times as prescribed in such approval.

**43. OWNER'S AUDIT RIGHTS:** Contractor shall maintain all Project-related records, including but not limited to the following: (1) all correspondence; (2) books of account (kept in accordance with generally accepted accounting procedures); (3) electronic files, change order and claim files, subcontract files, vendor files; (4) daily reports; (5) RFI and change order logs; (6) shop drawings, schedules, schedule updates; and (7) all other schedule-related data, minutes of meetings, monthly reports and all other supporting documentation pertaining to Work performed by Contractor under this Agreement (the "**Project Records**"). Contractor shall maintain all Project Records for a period of two (2) years after Final Completion ("**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 Work and during the Retention Period to the full extent as may be necessary to assist Owner in the resolution of any issues pertaining to Change Orders based on time and expense, Claims, or any other issues pertaining to an increase or decrease in the Contract Price and/or the Contract Time. Further, Owner shall have access at all reasonable times to records necessary for evaluation and verification of cost or pricing data with respect to the following: (1) all negotiated Change Orders to this Agreement; (2) instances where the parties are unable to resolve cost data or scheduling

issues pertaining to pending Change Orders (3) instances where the parties are unable to resolve cost data or scheduling issues pertaining to any pending Change Order Claims; and (4) compliance with Owner's business ethics policies.

**44. OWNER'S RIGHT TO SUPPLEMENT:** If Contractor 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 Contractor.

**45. CLAIMS AND DISPUTES:**

**.1 General.** The validity, interpretation and effect of this Agreement shall be governed by laws in the State of Hawaii. The existence of any claim, any unresolved Change Order Claim, any dispute or any legal proceeding ("**Claim**") shall not relieve Contractor from its obligation to properly perform its Work as set forth herein. In the event of a dispute with respect to amounts payable under a request for payment from the Contractor, Owner shall pay all undisputed amounts and Contractor shall continue performing any remaining Work hereunder. Neither party shall initiate a legal proceeding and the applicable statute of limitations shall not commence to run until the Work is 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.**

**46. NO THIRD PARTY BENEFICIARY:** Except as may be expressly provided otherwise herein, this Agreement and the obligations of the parties are intended for the sole benefit of the parties and shall not create any rights in any other person or entity whatsoever except Owner and Contractor.

**47. 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;    Roman Catholic Church in the State of Hawaii  
Owner's Address; 1184 Bishop Street  
Owner's Address; Honolulu Hawaii 96813  
Attn: Project Manager; \_\_\_\_\_  
Facsimile No.        808 521-8424

If to Parish/Facility:        Parish Name; \_\_\_\_\_  
Parish Address; \_\_\_\_\_  
Parish Address; \_\_\_\_\_  
Attn: Project Manager; \_\_\_\_\_  
Facsimile No. \_\_\_\_\_

If to Contractor:              Name of Contractor; \_\_\_\_\_  
Address of Contractor; \_\_\_\_\_  
Address of Contractor; \_\_\_\_\_  
Attn: Contractor's Representative; \_\_\_\_\_  
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 47.

**48. 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.

**49. 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.

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

**53. 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.

**IN 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 CONTRACTOR**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Diocesan form reviewed by:  
**ASHFORD & WRISTON**  
**A Limited Liability Law Partnership LLP**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT A**  
**Scope of Work**

**EXHIBIT B**  
**Drawings and Specifications**  
(See Attached)

**EXHIBIT C**  
**Preliminary Project Schedule**  
(See attached)



**EXHIBIT C-1**  
**Project Schedule**  
(To Be Attached)

**EXHIBIT D**  
**Pay Application and Schedule of Values**

# PAY APPLICATION

TO OWNER: PROJECT: PAY APPLICATION NO: Distribution to:  
 FROM CONTRACTOR: VIA ARCHITECT/ PERIOD TO:  OWNER  
 PROJECT MANAGER: PROJECT NOS:  ARCHITECT  
 CONTRACTOR  
 PROJECT MANAGER  
  
 CONTRACT FOR: CONTRACT DATE:

## CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract. Schedule of Values Sheet attached (SofV SHEET)

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Pay Application has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Pay Applications were issued and payments received from the Owner, and that current payment shown herein is now due.

- 1. ORIGINAL CONTRACT SUM \$ \_\_\_\_\_
- 2. Net change by Change Orders \$ \_\_\_\_\_
- 3. CONTRACT SUM TO DATE (Line 1 ± 2) \$ \_\_\_\_\_
- 4. TOTAL COMPLETED & STORED TO DATE (Column G on G703) \$ \_\_\_\_\_
- 5. RETAINAGE:
  - a. \_\_\_\_\_ % of Completed Work (Column D + E on (SofV)) \$ \_\_\_\_\_
  - b. \_\_\_\_\_ % of Stored Material (Column F on (SofV)) \$ \_\_\_\_\_
  - Total Retainage (Lines 5a + 5b or Total in Column I of (SofV)) \$ 0.00
- 6. TOTAL EARNED LESS RETAINAGE (Line 4 Less Line 5 Total) \$ 0.00
- 7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate) \$ \_\_\_\_\_
- 8. CURRENT PAYMENT DUE \$ 0.00
- 9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less Line 6) \$ 0.00

CONTRACTOR:

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

State of: \_\_\_\_\_ County of: \_\_\_\_\_  
 Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_  
 Notary Public:  
 My Commission expires: \_\_\_\_\_

## ARCHITECT'S/PROJECT MANAGER'S CERTIFICATION

In accordance with the Contract Documents, based on on-site observations and the data comprising the application, the Architect/Project Manager certifies to the Owner that to the best of the Architect's/Project Managers' knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED . . . . . \$ \_\_\_\_\_

(Attach explanation if amount certified differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are changed to conform with the amount certified.)  
 ARCHITECT:

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

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner		
Total approved this Month		
TOTALS	\$0.00	\$0.00
NET CHANGES by Change Order	\$0.00	



**EXHIBIT E**  
**Schedule of Submittals**

## **EXHIBIT F** **House Rules**

The following is a code of conduct with which all construction related personnel (“**Construction Personnel**”) shall comply with while on Site. Contractor shall provide a copy of these rules to each of its subcontractors, suppliers and delivery companies. All references to Construction Personnel hereinafter shall apply to Contractor, its subcontractors, subconsultants and vendors and each of their respective employees (as applicable). Contractor shall be responsible for assuring that all Construction Personnel abide by these rules. Owner or Parish/Facility shall not have any responsibility whatsoever for delays in the Work caused by violations of these rules by Construction Personnel.

**1. PARISH/FACILITY OPERATIONS.** The Project may be performed in a Parish/Facility that will continue to conduct normal Parish/Facility operations. Accordingly, Contractor shall perform its Work in such a manner that the operations, character and atmosphere of the Parish/Facility are not materially impaired, except as may be reasonably necessary for execution of the Work. Contractor shall ensure that Construction Personnel conduct themselves in an appropriate manner so as not to impair the parishioners’ experience at the Parish/Facility.

**2. SAFETY.** Contractor shall exercise good judgment and practice safety at all times for the protection of the Construction Personnel, as well as that of Parish/Facility employees, parishioners, pedestrians, vehicles and other property. Contractor shall conduct safety meetings weekly and maintain records of these meetings. Such records shall be made available to the Parish/Facility and the Project Director upon request.

**3. PARISH/FACILITY SECURITY.** All Construction Personnel must enter and leave the premises from the entrance designated for such purpose. Construction Personnel shall dress consistently with their occupational needs, craftsman status and the Parish/Facility’s reasonable requirements. All Construction Personnel are subject to inspection by Parish/Facility whenever they leave the Parish/Facility premises.

**4. WORK AREA.** The presence of Construction Personnel shall be restricted to those areas in which Work is being performed, unless they have prior approval. Failure to comply with these requirements will first result in a warning and, upon the second occurrence, removal of offending personnel from the premises for the duration of the Project.

**5. GENERAL CONDUCT.** Construction Personnel shall exhibit conduct befitting the Parish/Facility and shall show deference to Parish/Facility parishioners and employees. All Construction Personnel shall refrain from the use of profanity on Parish/Facility property. Radios are not allowed. Construction Personnel shall be evicted from the Parish/Facility premises permanently if found to be using, possessing or under the influence of alcohol or narcotics. Contractor shall ensure that none of Parish/Facility’s personal property (e.g., furnishings, fixtures and/or equipment) will be removed from the Parish/Facility unless property passes are issued by Parish/Facility management. Contractor shall be responsible for providing restroom facilities and the maintenance and sanitation of this restroom. Use of other toilet facilities is prohibited. Parish/Facility telephones are not to be used unless prior written authorization has been granted by Parish/Facility.

Construction Personnel shall exercise particular care in order to avoid damaging phones, phone wires, and TV cables. Lunch and coffee breaks will be taken in areas designated by Contractor and approved by Parish/Facility.

**6. FIRE PREVENTION.** Smoking shall be allowed only in designated smoking areas in accordance with State Law. Failure to comply with this requirement will result in the offending individual's eviction from the premises by Parish/Facility. Contractor shall provide sand buckets and fire extinguishers for use in the designated smoking areas. Contractor shall use appropriate care and caution in the execution of the Work to prevent building fires. All heat-producing work shall be closely supervised, and Contractor will provide a fire watch and appropriate a fire detection and extinguishing equipment in addition to that provided by Parish/Facility, if reasonably necessary. Contractor shall ensure that all areas where heat-producing Work is being performed are properly ventilated. Personnel performing fire watch duties should be informed of alarm box locations and fire hose cabinet locations.

**7. STORAGE.** Contractor shall supply a lock box or boxes for the safekeeping of construction equipment (e.g., tools). There will be no storage area supplied by the Parish/Facility other than the designated work areas and lock box area. Contractor shall restore all areas used for on-site storage and construction activities to their pre-construction condition, excluding ordinary wear and tear.

**8. CLEAN-UP.** Contractor shall keep all Work areas clean and orderly and shall remove debris on a daily basis. Contractor shall provide containers in each work area for empty cartons and debris. All debris removal shall be Contractor's responsibility (or that of its subcontractors, as applicable).

**9. COMMUNICATION.** It is Contractor's responsibility to keep Parish/Facility reasonably apprised of the activities being performed each day.

## **EXHIBIT G**

### **Supplementary Conditions**

**These conditions supplement and clarify terms and conditions in the Agreement. The terms of the Agreement shall control in the event of a conflict or inconsistency.**

1. Contractor shall supply all materials, labor, tools, equipment, and supplies required to complete the total Project in accordance with the drawings, specifications and other Contract Documents. In addition, Contractor shall provide all labor, tools and equipment for installation of all Owner supplied items. Prior to beginning an area, Contractor shall list any deficiencies, (i.e., damaged or missing items) and report to Project Director. Contractor shall be responsible for replacing/repairing all items not noted at its sole cost and expense.
2. Contractor shall provide all coordination required for completion of the Project including provision of a full time, on-site Project superintendent and a Project manager. Contractor shall be responsible for conducting, taking and distributing minutes of weekly Project meetings.
3. Required submittals shall be made in accordance with the drawings, specifications and other Contract Documents. In the event of conflict between documents provided by Owner's Architect/Consultant or designer and this Agreement, the Agreement shall take precedence. Parish/Facility's Project Director shall be provided with complete copies of all submittals made directly to Parish/Facility's, Architect/Consultant or designer .
4. The Work shall include the receiving, unloading, checking, counting, storing if required, signing for, handling, hoisting, safe keeping and distributing of any and all items furnished by Owner for installation by Contractor. Contractor shall dispose of any crates, boxes, and/or debris generated by Parish/Facility furnished items that are installed by this Contractor.
5. If required or directed by Parish/Facility , Contractor shall be responsible for liquidation of all existing Furniture Fixtures and Equipment (FF&E) designated to be liquidated in the construction documents.
6. The Parish/Facility Certificate of Occupancy will remain in force and will be valid during the entire construction phase, therefore, Contractor will take extreme care in maintaining all existing life safety systems, such as (but not limited to) sprinklers, stand pipes, alarm panels and devices, Fire Department connections, elevator in readiness emergency power, required means of egress, and all fire lane access. Contractor will reconnect expeditiously any such system, which is put out of order by Contractor, or any of Contractor's subcontractors at no cost to Owner. Contractor's proposal includes any necessary temporary and/or permanent connections of new life safety systems included in the scope of this Agreement into existing systems. Contractor will notify Parish/Facility in writing at least seven (7) days in advance of any system shutdown.
7. Contractor will develop a comprehensive phase plan for all activities that affect Parish/Facility operations. This plan shall be submitted to Project Director and shall be

continuously maintained to reflect current Parish/Facility operation requirements through the course of the Work.

8. Subject to the terms of the Agreement, Contractor is responsible for all shift work, overtime and out of sequence work due to discontinuous operations required to meet schedule dates and the logistical requirements of the Project. All costs associated with this Project are included in the Contract Price. Absolutely no claims will be entertained for shift work, overtime or out of sequence work required to meet overall schedule and interim milestone dates.

9. Contractor shall be responsible for providing any and all required lodging and meals at its sole cost and expense.

10. Contractor shall secure and pay for a dumpster for all refuse and waste material. The dumpster location will be determined by Parish/Facility .

11. All finishes are to be protected during Contractor's Work.

12. If required for the Project (as reasonably determined by Parish/Facility) Contractor shall erect and maintain dust-barriers (as reasonably directed by Owner) to separate occupied and public areas from areas of construction. Barriers shall remain in place during construction unless otherwise directed by Project Director. Contractor shall provide necessary protection for phased work as required by Parish/Facility operations. Contractor shall provide adequate protection for guests, existing finishes and Owner furnished equipment.

13. In the event of a utility shutdown, Contractor will diligently schedule work with the Parish/Facility operations staff through the Project Director. Contractor will give the Project Director at least seven (7) days advance notice of any proposed utility shutdown to occupied areas. Utility shutdowns may be permitted only after normal working hours at discretion of the Parish/Facility operations staff.

14. Contractor is to provide security as reasonably required by Parish/Facility and Project Director. Contractor shall maintain strict security of all Parish/Facility supplied material (furniture and hardware) and existing materials. Contractor will replace, at its sole cost and expense, all lost, stolen, damaged and misplaced items.

15. Contractor shall comply with all of the legal regulations, including, but not limited to, OSHA safety regulations and regulations of municipal, city, local, and other government agencies having jurisdiction concerning the Work. Contractor shall give all notices and comply with all laws, ordinances, codes, rules and regulations bearing on the conduct of the Work. If Contractor performs any Work that is contrary to such laws, ordinances, codes, rules, and regulations, it shall make all changes to comply therewith and bear all costs arising there from.

16. All permits, except the actual building permit, required for any part of Contractor's Work, including those to be obtained in the Owner's name, shall be procured and paid for by Contractor.

17. Contractor shall do pre-punch prior to the Substantial Completion Punchlist and shall complete back-punch list items to maintain schedule. Back punches shall be signed off by Contractor, with a written copy provided to Project Director.
18. Contractor shall provide a list of all items remaining when the job is completed, including quantities and sizes.
19. Contractor shall thoroughly clean, vacuum and dust areas of construction prior to turnover.

## **EXHIBIT H** **Insurance Requirements**

**REQUIRED INSURANCE:** At Contractor's expense, Contractor shall maintain insurance coverage of the following types continuously throughout the term of this Agreement or during any period Work is performed relating to this Agreement (and such further periods if required below):

**WORKERS COMPENSATION AND EMPLOYER'S LIABILITY:** Contractor shall carry Workers Compensation fulfilling the requirements of any and all applicable workers' compensation laws. Contractor shall also carry Employers Liability insurance with a limit not less than \$1,000,000 each accident for bodily injury, \$1,000,000 each employee for bodily injury by disease, and \$1,000,000 policy limit for disease. Contractor waives, on its behalf 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 the Workers Compensation and Employers Liability or Commercial Umbrella Liability insurance obtained by Contractor pursuant to this Agreement. Contractor shall obtain an endorsement equivalent to ISO form WC 00 03 13 to affect this waiver.

**COMMERCIAL GENERAL AND UMBRELLA LIABILITY INSURANCE:** Contractor shall carry commercial general liability ("CGL") and, if necessary, commercial umbrella insurance with a limit of not less than \$2,000,000 each occurrence subject to the following:

- If such CGL insurance contains a general aggregate limit, it shall apply separately to the Work under this Agreement.
- The CGL insurance shall be written on ISO occurrence form CG 00 01 01 96 (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract including the tort liability of another assumed in a business contract.
- Owner and Parish/Facility shall be included as an insured using ISO additional insured endorsement CG 20 10 or a substitute providing equivalent coverage.
- This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to Owner. There shall be no endorsement or modification of the CGL to make it excess over other available insurance. Alternatively, if the CGL states that it is excess or pro rata, the policy shall be endorsed to be primary and neither excess of nor contributory with any insurance or self insurance carried by Owner.
- Contractor 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 insurance maintained pursuant this Agreement regardless of deductibles, if any.

**COMMERCIAL AUTO INSURANCE:** If Contractor's scope of Work under this Agreement requires or involves the ownership, maintenance or use of an auto, Contractor shall carry Commercial Auto Insurance with a limit of insurance no less than \$2,000,000 each accident subject to the following:

- The insurance shall be on a form no less broad than ISO form CA 00 01 10 01.
- Coverage shall apply to "any auto" whether owned, scheduled, leased, hired or other.
- Coverage shall extend to Owner for its vicarious liability, if any.
- The required Commercial Umbrella insurance may be used to meet the required limit.

**COMMERCIAL PROPERTY INSURANCE:** Contractor 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 Contractor, whether or not it is insured, even if such loss is caused by the negligence of Owner, its employees, officers, directors, or agents.

**BUILDER'S RISK:** Prior to the start of construction, Contractor shall purchase or cause to be purchased Builder's Risk insurance covering the entire Work at the jobsite. This insurance shall be on a 100% completed value (replacement cost) form. For renovation projects, the 100% completed value may be achieved through a combination of property policy and/or builder's risk insurance. This insurance shall cover the perils covered under a special cause of loss ("all-risks") form and include cold testing, windstorm, and collapse, including collapse resulting from design error. Flood Insurance with a limit as close to the amount of the Builder's Risk as is reasonably available shall be obtained if the location is in the special flood hazard areas. The Builder's Risk shall also include earthquake coverage with a limit as close to 75% of the Builder's Risk limit if the location is in a zone with a hazard rating of 24 or higher according to the 1996 US Geological Survey Shaking Hazard maps Flood and earthquake requirements are subject to annual review and modification in recognition of changes in the insurance marketplace and reasonableness of premium.

This insurance shall apply to property intended for incorporation into the Work for the entire duration of the Agreement including:

- property in the course of construction, reconstruction, or repair
- property while in transport to the site
- property stored at the site or off premises
- scaffolding, staging, shoring, formwork, fences, false work, and temporary buildings and any similar items commonly referred to as construction equipment located at the site
- furniture, fixtures, and other personal property typical to a Parish/Facility located on premises or in storage or at any other temporary location

The policy shall cover the cost of removing debris, including demolition as may be made legally necessary by the operation of any applicable law, ordinance or regulation.

Permission to occupy or a partial occupancy clause or definition must be included and shall allow occupancy without qualification.

This insurance shall include Business Interruption coverage on behalf of Owner only for full recovery of continuing expenses of the Parish/Facility projected for 12 months following a covered loss. Such limit shall be sufficient to avoid a coinsurance penalty.

The deductible portion of any covered property loss however caused shall be borne by Contractor and subject to the approval of Owner, such approval not to be unreasonably withheld.

This insurance shall be maintained in effect, unless otherwise provided for in the Contract Documents, until the earliest of either the date on which all persons and organizations who are insureds under the policy agree that it shall be terminated, or the date on which the insurable interests in the property of all insureds other than Owner have ceased.

This insurance shall name Owner, Parish/Facility of the premises, agents of the Owner, contractors and subcontractors of any tier as insureds. The policy shall include a waiver of subrogation which states that all owners, contractors and subcontractors waive their rights of subrogation against one another with respect to losses covered by this policy.

**EVIDENCE OF INSURANCE:** Prior to the execution date of this Agreement or commencement of any activity contemplated under this Agreement, whichever is earlier, Contractor 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. Thirty (30) days written notice to Owner prior to cancellation or material change is required. Contractor shall further provide certified copies of all insurance policies required above within ten (10) days of Owner's written request for said copies.

Failure of Owner to demand evidence of compliance with these insurance requirements or failure of Owner to identify a deficiency from evidence that is provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

**INSURANCE COMPANY RATING:** Insurance companies affording the coverage required above shall have an AM Best Rating of no less than A- VII.

**FAILURE TO MAINTAIN INSURANCE:** Failure to maintain the required insurance may result in termination of this Agreement at Owner's option. If Contractor fails to maintain the insurance as set forth herein, Owner shall have the right, but not the obligation, to purchase said insurance at Contractor's expense. If Owner is damaged by the failure of Contractor to maintain insurance as required in this Exhibit, then Contractor shall bear all costs attributable to that failure.

**NO REPRESENTATION OF COVERAGE ADEQUACY:** By requiring insurance herein, Owner does not represent that coverage and limits will be adequate to protect Contractor.

**NO LIMITATION:** The requirements contained herein shall not be construed in any manner to relieve or limit Contractor's indemnification obligations for any loss or claim arising out of this Agreement.

**CROSS-LIABILITY COVERAGE:** If Contractor's liability policies do not contain the standard ISO separation of insured's provision, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.