

ARCHITECTURAL AGREEMENT
(under \$50,000)

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 _____, (enter principal place of business and state where registered) _____ ("**Contractor**"). (and entity type) _____

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

Recital 2. Owner desires to engage Contractor for construction services in connection with work (enter brief description of work) _____ at the Parish/Facility (the "**Project**").

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

.1 Architect shall be responsible for coordination and internal review of all drawings, specifications and documents for the Project ("**Project Documents**") regardless of whether such Project Documents are prepared by Architect, by Architect's Consultants, as defined in Paragraph 8, 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 Owner's construction contractor ("**Construction Documents**"). Architect shall also be responsible for the accuracy of all dimensional and layout information contained in such Project Documents and the Construction Documents as if such Project Documents and Construction Documents were prepared by the Architect itself.

.2 To the extent necessary to achieve performance of the Services in accordance with the Contract Time, as defined in Paragraph 2, and all interim milestone dates, Architect shall be responsible for coordination of the activities of Architect's Consultants as well as any independent professional consultants. Owner shall require consultants, if any, to accept such coordination by Architect.

.3 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 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 Architectural 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.usccb.org/beliefs-and-teachings/what-we-believe/catholic-social-teaching/upload/Pastoral-Statement-of-U-S-Catholic-Bishops-on-Persons-with-Disabilities.pdf>

.5 Architect will design the Project in accordance with Roman Catholic Church Standards as referred to in the USCCB document Built of Living Stones: Art, Architect and Worship, within the approved estimated budget, provided by Owner, during each phase of the Services. All redesign work required to meet the approved budget will be performed at Architect's expense and with no additional cost to Owner.

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

.7 Upon substantial completion and final completion of the work by Owner's contractor, the Architect shall certify to Owner that to the best of Architect's knowledge and belief, contractor's work is in compliance with the Construction Documents.

2. **PROJECT SCHEDULE:** Owner has provided Architect with a schedule for the Project, which is attached hereto as **Exhibit A ("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**").

3. **CONTRACT PRICE:** In consideration for the Services, Owner shall pay Architect, in the amount not to exceed, _____ **Dollars** (\$_____) ("**Contract Price**"). The Contract Price shall be paid in accordance with **Exhibit A**. Except for Reimbursable Expenses described below, the Contract Price shall be Architect's sole and total compensation for all costs, overhead and profit, including all permits, fees and taxes.

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

.a Travel and subsistence expenses for out-of-town travel, 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.

4. ADDITIONAL SERVICES: Architect will be compensated separately for additional services not included in the Services or reasonably inferable from the Agreement ("**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 A** attached hereto, 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.

5. OWNER'S RESPONSIBILITIES: Owner shall reasonably 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.

6. ARCHITECT'S REPRESENTATIONS:

- .1** Architect represents that it is qualified and experienced in performing substantially the same Services for similar projects 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, 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, as referred to in paragraph 1.5, and the standards of care applicable to architects who are regularly engaged in providing similar services.

7. **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 4. Changes to the Drawings and Specifications because of a lack of sufficient detail are not reimbursable.

8. **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. All agreements between Architect and Architect's Consultants shall be subject to the requirements of this Agreement and such agreements shall expressly so state. 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 sub consultants are included in the Contract Price and shall be paid directly by Architect. Owner may assign a Liturgical consultant when a worship space is part of the design work.

9. **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. 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 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.

10. **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 with 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.

11. **AUTHORIZED REPRESENTATIVES:**

.1 **Owner's Project Manager:** Owner has designated _____, Telephone; _____ E-mail; _____, as its project director ("**Project Manager**") authorized to represent Owner with respect to the Project.

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

12. TIME OF THE ESSENCE: Performance of Architect's Services shall commence timely and shall continue until Architect satisfactorily performs its Services. 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.

13. INDEMNIFICATION: Architect shall defend, indemnify and hold harmless the Owner, 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. Architect's obligations under this Paragraph 13 shall survive termination of this Agreement.

14. INSURANCE: Architect 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 B** 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.

15. 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 15.1 and 15.2 hereof. All amounts payable by Owner shall be subject to Owner's right of audit and offset.

16. 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.

17. 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.

18. ADVERTISING AND USE OF NAME: Architect shall not display or distribute any advertising signs or notices of any kind whatsoever at the job site, 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 Architect and at the sole discretion of Owner.

19. 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.

20. CLAIMS AND DISPUTES:

.1 General. The validity, interpretation and effect of this Agreement shall be governed by laws of the State of Hawaii. The existence of any claim, dispute or legal proceeding shall not relieve Architect 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 Architect, Owner shall pay all undisputed amounts and Architect shall continue performing any remaining Work hereunder. Neither party shall initiate a legal proceeding nor shall the applicable statute of limitations commence to run until the Work is fully performed or until this Contract 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 Dispute Prevention and Resolution Inc., 1003 Bishop Street, Pauahi Tower Suite 1155, Honolulu, HI 96813 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 Dispute Prevention and Resolution

Inc., 1003 Bishop Street, Pauahi Tower Suite 1155, Honolulu, HI 96813 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 Dispute Prevention and Resolution Inc., 1003 Bishop Street, Pauahi Tower Suite 1155, Honolulu, HI 96813; however, the arbitrator must have experience in construction disputes and must not have any conflict of interest. The compensation of the arbitrator 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. 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.

21. 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: _____
E-mail: _____

If to Parish\Facility:

Parish\Facility Name: _____
Parish\Facility Address: _____
Parish\Facility Address: _____
Attn: Parish\Facility Rep: _____
E-mail: _____

If to Architect:

Name of Architect: _____
Address of Architect: _____
Address of Architect: _____
Attn: Architect's Rep: _____
E-mail: _____

hereto shall be responsible for notifying each other of any change of address or facsimile number in accordance with this Paragraph 21.

22. 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.

23. 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 here under. 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.

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

25. 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.

PARISH

By: _____
Name: _____
Title: _____

NAME OF ARCHITECT

By: _____
Name: _____
Title: _____

Diocesan form must be reviewed by the Diocesan Attorney when there are suggested modifications to this agreement:

ASHFORD & WRISTON

A Limited Liability Law Partnership LLP

By: _____
Name: _____
Title: _____

EXHIBIT A

I. DESCRIPTION OF SERVICES. The Services to be provided by Architect are as follows:

II. HOURLY RATES. Architect's hourly rates shall be as follows:

III. PAYMENT TERMS.

The Contract Price shall be due and payable as follows, unless otherwise agreed between Architect and Owner: (i) if the Contract Time is less than thirty (30) days, the Contract Price shall be due and payable within thirty (30) days after approval by Owner of Architect's request for payment following completion of the Services; or (ii) if the Contract Time is more than thirty (30) days, Architect shall submit payment requests to the Parish/Facility on or before the twentieth (20th) day of each month, such request to be supported by such documentation as Owner shall require to verify entitlement. Once approved by Owner, Architect's request for payment shall be payable within thirty (30) days after receipt by the Project Director.

IV. CONTRACT TIME. Architect shall commence its Services on or before _____ and shall complete its Services on or before _____. In addition, Architect shall complete phased drawings in accordance with the following schedule: (1) Concept documents by no later than _____, (2) Schematic Documents by no later than _____, (3) Design Development documents by no later than _____, and (4) Construction Documents by no later than _____.

EXHIBIT B

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.

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 to include the name of the Parish/Facility 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.

The Owner does not agree to any limitation of the architect's liability especially, limiting the liability to the amount of the fees. This is extremely prejudicial to the Roman Catholic Church in the State of Hawaii and in the event of a claim against the architect could expose the Church to an uninsured loss.