

**DESIGN/BUILD AGREEMENT
BETWEEN
OWNER AND DESIGN/BUILDER**

This DESIGN/BUILD AGREEMENT is made and entered into by and between the Roman Catholic Church in the State of Hawaii (“**Owner**”) and _____ a [for entities, enter state of organization and type of entity – e.g., corporation/limited liability company/general partnership/ limited partnership] _____ with its principal place of business at _____ (“**Design/Builder**”).

This Contract is for the design and construction of a project (the “**Project**”) identified as: _____ in [enter Parish/Facility Location] _____ (“**Parish/Facility**”).

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements stated herein, and for other good and valuable consideration, the sufficiency of which is acknowledged, Owner and Design/Builder agree as follows:

I. THE CONTRACT AND THE CONTRACT DOCUMENTS; CONTRACT PRICE

A. **The Contract:** The Contract between Design/Builder and Owner consists of this Design/Build Agreement and the other Contract Documents described in Section I.B below (collectively, this “**Contract**”). This Contract shall be effective as of _____, the date of its approval, and that date is considered the execution date of this Contract.

B. **The Contract Documents:** The Contract Documents consist of the following (collectively, the “**Contract Documents**”):

1. This Design/Build Agreement, including the following Exhibits attached hereto:

Exhibit A: Parish/Facility’s Design Program (Scope of Work)

Exhibit A-1: Construction Scope of Work

Exhibit B: Design Schedule

Exhibit B-1: Construction Schedule

Exhibit C-1: Certificate of Substantial Completion

Exhibit C-2: Certificate of Completion

Exhibit D: Pay Application and Schedule of Values

Exhibit E: House Rules

Exhibit F: Insurance Requirements

Exhibit _: _____

2. All design Documents (defined in Section VI.C below and hereafter prepared by Design/Builder and approved by Owner in accordance with this Contract

3. Any written instrument signed by Owner and Design/Builder stating their agreement as to (a) a change in the Design Services or Work, (b) the amount of adjustment, if any, in the Design Services Fee or Lump Sum Price, as

applicable, and (c) the extent of the adjustment, if any, in the Contract Time (each, a “**Change Order**”).

4. Any written order signed by Owner directing a change in the Design Services or Work, prior to agreement on adjustment, if any, in the Design Services Fee or Lump Sum Price, as applicable, or Contract Time, or both (each, a “**Change Directive**”).

5. Any other written amendments to this Contract executed by Owner and Design/Builder (each, a “**Supplemental Agreement**”)

6. The following documents (if any):

All of the foregoing are incorporated herein by reference and made a part of this Contract.

The attached **Exhibit A** contains design criteria for use with the Design Documents prepared by Design/Builder, Change Directives issued hereafter, and any Change Orders and Supplemental Agreements executed by Owner and Design/Builder.

C. Enumerated Documents Form Entire Contract: Documents not specifically enumerated in Section I.B of this Design/Build Agreement are not Contract Documents.

D. Contract Interpretation: This Contract is intended to be an integral whole and shall be interpreted as internally consistent. Work required by any page, part, or portion of this Contract shall be deemed to be required Contract Work as if called for in the whole Contract and no claim for extra work shall be based upon the fact that the description of the Work in question is incomplete.

E. Provision for all Things Required: Anything that may be required, implied or inferred by the Contract Documents, which make up this Contract, or any one or more of them, shall be provided by Design/Builder for the Contract Price.

F. Privet with Design/Builder: Nothing contained in this Contract shall create, nor be interpreted to create, privet or any other relationship whatsoever between Owner or Parish/Facility and any person except Design/Builder.

G. Agreed Interpretation of Contract Terms: When a word, term, or phrase is used in this Contract, it shall be interpreted or construed first, as defined herein; second, if not defined, according to its generally accepted meaning in the construction industry, according to its common and customary usage. Headings are used herein solely for convenience.

H. Term “Include” Intended to be Encompassing: “Include”, “includes”, or “including”, as used in this Contract, shall be deemed in all cases to be followed by the phrase, “without limitation.”

I. Use of Singular and Plural: Words or terms used as nouns in this Contract shall be inclusive of their singular and plural forms, unless the context of their usage clearly requires a contrary meaning.

J. Definition of Material Breaches: The specification herein of any act, failure, refusal, omission, event, occurrence, or condition as constituting a material breach of this Contract shall not imply that any other, non-specified act, failure, refusal, omission, event, occurrence, or condition shall be deemed not to constitute a material breach of this Contract.

K. Order of Precedence: In the event of any conflict, discrepancy, or inconsistency among any of the Contract Documents, which make up this Contract, the following shall control:

1. As between figures given on plans and scaled measurements, the figures shall govern.
2. As between large-scale plans and small-scale plans, the large-scale plans shall govern.
3. As between plans and specifications, the requirements of the specifications shall govern.
4. As between this document and the plans or specifications, this document shall govern.

L. **CONTRACT PRICE**

1. **Design Services Fee:** Owner shall pay, and Design/Builder shall accept _____ Dollars, \$_____ (the "**Design Services Fee**"), as full and complete payment for the Design Services (defined in Section IV.C below), payable on the basis of monthly billings as Design Services are completed and accepted by Owner. Design/Builder shall promptly pay any design professional or consultant having a direct contract with Design/Builder to perform Design Services for all or a portion of the Design Services upon receipt of payment from Owner. Out of the amount paid by the Owner to Design/Builder each such design professional or consultant respective portion of the Design Services Fee, shall receive the amount to which each such design professional or consultant is entitled.

2. **Lump Sum Price:** Owner shall pay, and Design/Builder shall accept, the Lump Sum Construction Price of _____ Dollars, \$_____, (the "**Lump Sum Price**") for the performance of all Construction Work, required by this Contract, and the performance of all other requirements of this Contract other than Design Services. Owner agrees to perform its responsibilities to assist Design/Builder to facilitate the completion of the Construction Work and represents to Design/Builder that Owner will pay Design/Builder up to the Lump Sum Price as may be adjusted pursuant to any Change Order or Supplemental Agreement. The Lump Sum Price, unless changed by Supplemental Agreement or Change Order, represents the absolute limit of obligation or liability that Owner may ever have insofar as the cost for full and final completion of the Construction Work, and the total of all payments to which Design/Builder or its Contractors or Subcontractors, are entitled. The "Cost of Construction Work" as used in this Contract shall mean the Lump Sum Price as adjusted by Supplemental Agreements or Change Orders.

3. **Contract Price.** As used in this Contract, the term “**Contract Price**” means the Design Services Fee and the Cost of Construction Work.

II. AUTHORIZED REPRESENTATIVES

A. For Design Services and Construction Services, Owner has designated;

_____, Telephone: _____

E-mail: _____ as its Project Manager (“**Project Manager**”) authorized to represent Owner with respect to the Project.

B. Owner has designated; _____ Telephone; _____

E-mail: _____, as its Parish Liaison (“**Parish Liaison**”) to represent Owner with respect to Parish events and operations.

C. For Design Services, Design/Builder, Owner has appointed; _____, _____, Telephone; _____, E-mail; _____ to

be its representative, who is assigned solely to this Project, and authorized to act on Design/Builder’s behalf with respect to the Project and whose decisions, notices and directives shall be binding upon Design/Builder with respect to this Contract.

D. If required, the Interior Designer for the Project is; _____ with

an office at _____

Telephone: _____, E-mail: _____.

E. For Construction Services, Design/Builder has appointed; _____,

_____ Telephone: _____

E-mail: _____, to be its representative, who is assigned solely to this Project, and authorized to act on Design/Builder’s behalf with respect to the Project and whose decisions, notices and directives shall be binding upon Design/Builder with respect to this Contract.

III. DESIGN/BUILDER'S REPRESENTATIONS

A. Specific Representations: In order to induce Owner to execute this Contract and recognizing that Owner is relying thereon, Design/Builder, by executing this Contract, makes the following express representations to Owner:

1. Design/Builder is professionally and fully qualified to act as the design professional and the general contractor for the Project and is, and will remain, licensed to practice engineering, architecture, and general contracting by all public entities having jurisdiction over Design/Builder or the Project.

2. Design/Builder will maintain all necessary licenses, permits or other authorizations necessary to act as Design/Builder for the Project until Design/Builder’s duties under this Contract have been fully satisfied.

3. Design/Builder has the expertise, experience, and knowledge as well as the necessary plant, personnel and financial capability to perform the Design Services and the Work in accordance with the terms of this Contract have been duly satisfied.

4. Prior to the execution of this Contract, Design/Builder has visited and inspected the Project site and the local conditions under which the Project is to be designed, constructed and operated. The Design/Builder has performed such tests, if any, as are necessary to determine the conditions under which the Work will be performed, and Design/Builder accepts the conditions of the Work site and has taken those conditions into account in entering into this Contract.

5. Design/Builder assumes full responsibility to Owner for the improper acts and omissions of its Subcontractors or others employed or retained by Design/Builder in connection with the Project. See House Rules attached hereto as **EXHIBIT E**.

6. Design/ Builder shall maintain the appropriate Insurance coverage as specified in **EXHIBIT F** attached hereto..

IV. **PRELIMINARY CONSULTATION AND PROJECT ANALYSIS**

A. **Determining the Project Objectives:** Prior to preparation of the Preliminary Design, Design/Builder shall first consult in detail with Owner, and shall carefully analyze any information furnished by Owner concerning requirements of the Project, including but not limited to, any design, construction, scheduling, budgetary or operational requirements, limitations, and objectives, as well as the Parish/Facility's Design Program attached hereto as **Exhibit A**.

B. **Report on Project Requirements and Objectives:** Based on its study and analysis, and no later than ten (10) days after the effective date of this Contract, Design/Builder shall prepare and submit to Owner a written report detailing Design/Builder's understanding and analysis of the Project requirements and identifying any design, construction, scheduling, budgetary, operational, or other problems which may result from said requirements (the "**Design/Builder's Requirements and Objectives**"). The Design/Builders Requirements and Objectives shall also include proposed solutions, including design alternatives if appropriate, addressing each of the identified problems. Design/Builder shall review such report with Owner and shall implement such changes as Owner may require.

C. **Design Services:** Design/Builder shall perform all Design Services described in, contemplated by, inferable from, or necessary or desirable to achieve the objectives stated in the Parish/Facility's Design Program (Scope of Work) attached hereto as **Exhibit A** and this Contract, including all Design Services necessary for the Project to be properly constructed by Design/Builder and used, operated and maintained by Owner in accordance with all applicable guidelines, requirements and standards. "**Design Services**" means any and all architectural, engineering and design services required to be performed by Design/Builder pursuant to this Contract and all labor, materials, supervision, equipment, computers, documents, and all other things necessary for the performance of such services. The Design Services shall be performed within the time provided by the Design Schedule for the performance of Design/Builder's Design Services as provided in Section IV.D. of this Contract.

D. **Schedule of Design Services:** Design/Builder shall, within ten (10) calendar days after Owner's acceptance of the Design/Builder's Requirements and Objectives, submit for Owner's approval the schedule (the "**Design Schedule**") for the performance of Design/Builder's Design Services, which shall include allowance for reasonable time

required for the Owner's review of submissions and for approvals of authorities having jurisdiction over the Project. This Design Schedule shall, upon approval by Owner, be considered incorporated and made a part of this Contract as **Exhibit B**. The Design Schedule, when approved by Owner, shall not, except for good cause, be exceeded by Design/Builder. Should Design/Builder at any time during the course of performing this Contract, have reason to believe that it will be unable to meet any completion date in accordance with the Design Schedule, it shall immediately notify the Owner in writing.

Design/Builder shall state the reason for the delay in the notice, including the party responsible, if any, and the steps being taken to remedy or minimize the impact of the delay. Failure of Design/Builder to submit such notice shall constitute a waiver by Design/Builder of any claim for an adjustment to the Contract Price, the Design Schedule, or the Contract Time. All extensions of time shall be approved by Owner.

E. Preparation of Site Information: Design/Builder shall prepare, as necessary, surveys and topographic information including aerial photographs as needed to establish line and grade information, location of property lines and easements. Owner expressly does not warrant any information provided by it in connection with preparation of the above-mentioned information; Design/Builder, however, may reasonably rely on information provided by Owner to the extent the information has been prepared by Owner or an independent consultant hired by Owner to prepare the information specifically for this Project, without absolving Design/Builder from its responsibility to independently verify or investigate information that a reasonable, prudent professional architect or engineer should or would inquire about.

F. Quality of Design Services: Design/Builder shall be responsible for the professional quality, completeness, accuracy, and coordination of Design Documents. Design/Builder shall provide Design Services that will result in an operationally cost efficient and economical facility that meets all environmental and regulatory requirements as of the date hereof, and uses the most appropriate available technology. Design/Builder shall provide for all quality control reviews required by sound professional architectural and engineering practices and by governmental authorities having jurisdiction over the Project.

G. Compliance with Laws and Regulatory Requirements: In providing Design Services, Design/Builder shall comply with the lawful requirements of all federal, state, and local authorities having lawful jurisdiction over the Project. Design/Builder shall design the Project to meet all applicable requirements of building control laws and regulations in relation to the design, construction, occupation, and operation of the Project, including, without limitation, environmental standards, fire and safety regulations and requirements and compliance with all other applicable standards and codes.

H. Duty to Correct Errors: Design/Builder shall, without additional compensation, immediately correct any errors, omissions or deficiencies in its Design Services and Design Documents.

I. Time for Preliminary Design: Not later than the date called for in the Design Schedule, Design/Builder shall prepare and submit to Owner a preliminary design (the "**Preliminary Design**") for the Project to include a proposed construction schedule.

J. Contents of Preliminary Design: The Preliminary Design shall address all requirements of the Project and shall include, without limitation, the following:

1. Preliminary drawings that illustrate each of the basic components of the Project including the size, scale, location, dimensions, and character of each building structure;
2. Preliminary drawings that illustrate each exterior view of the project;
3. Preliminary drawings that illustrate a floor plan for each room, office, and functional area of the Project and the dimensions thereof;
4. Preliminary drawings and specifications illustrating and describing the architectural, electrical, mechanical, and structural, systems of the Project;
5. A written description of the materials and equipment to be incorporated into the Project and the location of same; and
6. Any other documents necessary to illustrate, describe or depict the Preliminary Design and the conformity of same with the requirements of the Parish/Facility's Program (Scope of Work) and this Contract.

K. To Be Reviewed with Owner: Design/Builder shall review the Preliminary Design with Owner and shall incorporate any changes ordered by Owner in regard to the Preliminary Design or the requirements of the Project.

L. Scheduling: Owner agrees to review the proposed construction schedule promptly in accordance with the Design Schedule. The proposed Project construction schedule should include allowances for reasonable time to address currently unknown refinements or changes to the Project that may become necessary and in order to control Project costs.

M. Authorization to Proceed with Detailed Design: After review and approval of the Preliminary Design and proposed Project construction schedule, and incorporation of any changes ordered by Owner, Owner shall authorize Design/Builder in writing to commence preparing the detailed design (the "**Detailed Design**"), or such part thereof as directed by Owner.

V. **DETAILED DESIGN**

A. Time for Preparation: Not later than the date called for in the Design Schedule, after Owner has authorized Design/Builder to commence with the Detailed Design, Design/Builder shall prepare and submit to Owner the complete Detailed Design for the Project to include an updated estimated construction schedule.

B. The Detailed Design: The Detailed Design shall include all Design Documents which shall describe with specificity all elements, details, components, materials, and other information necessary for the complete construction of the Project and the rendering of the Project fully operational for its intended purposes, including satisfaction of all testing, permitting, qualifications, certifications, validations, and obtaining regulatory approvals by all applicable regulatory authorities required to render the Project and all its components operational and functionally and legally usable for their intended purpose. Owner shall review and approve, where appropriate, the Design Documents, or any portion thereof.

C. Design Documents; Construction Schedule: “**Design Documents**” means all the design documents provided by Design/Builder and approved by Owner pursuant to the Contract including, without limitation, those for use in constructing the Project, performing the Work, and the rendering of the Project fully operational, and shall include, without limitation, detailed plans, drawings, specifications, manuals, and related materials prepared by or on behalf of Design/Builder. The updated estimated construction schedule shall, upon approval by Owner (the “**Construction Schedule**”), be considered incorporated and made a part of this Contract as **Exhibit B-1**.

D. Lump Sum Price: The Lump Sum Price shall include the cost of constructing the Project Work in strict accordance with the requirements of the approved Detailed Design and the Project Construction Scope of Work attached hereto as **EXHIBIT A-1**.

VI. CONSTRUCTION SERVICES

A. General Intent: Design/Builder shall perform all Work necessary to construct the Project in accordance with this Contract, and to render the Project and all its components operational and functionally and legally usable for their intended purpose.

B. Work Defined: The term “**Work**” or “**Construction Work**” shall mean whatever is done by or required of Design/Builder to perform and complete its duties relating to the construction of the Project under this Contract, including, without limitation, the following:

1. Construction of the whole and all parts of the Project in full and strict conformity with this Contract;
2. The provision and furnishing, and prompt payment therefore, of all labor, supervision, services, materials, supplies, equipment, fixtures, appliances, facilities, tools, transportation, storage, power, fuel, heat, light, cooling, other utilities and things required for the construction of the Project;
3. The procurement and furnishing of all necessary building permits and other permits required for the construction of the Project;
4. The creation and submission to Owner of detailed “as built drawings” depicting all as built construction;
5. The furnishing of any required surety bonds and insurance as required by this Contract;
6. The furnishing of all equipment and product warranties, manuals, test results and user guides required by this Contract or otherwise reasonably available to Design/Builder;
7. The furnishing of all other services and things required or reasonably inferable from the Contract Documents, including the provisions of Section IX below.

VII. TIME FOR CONSTRUCTION; THE CONTRACT TIME

A. Notice of Commencement; Commencement Date: After Owner has approved the Design Documents for the Detailed Design, Owner shall issue a notice to commence the

Work (the “**Notice of Commencement**”) directing Design/Builder to proceed with the Work on the date indicated in the notice (the “**Commencement Date**”). The Notice of Commencement shall be issued at least ten (10) days prior to the Commencement Date.

B. **Scheduled Completion Date; Contract Time:** Design/Builder shall commence the Work on the Commencement Date, and the Work shall be carried out regularly and without interruption. Design/Builder shall substantially complete the Work not later than the scheduled substantial completion date set out in **Exhibit B-1** or such other date as may by Change Order be designated (the “**Scheduled Completion Date**”). The number of calendar days between the effective date of this Contract and the Scheduled Completion Date is the “**Contract Time.**” Design/Builder shall achieve Final Completion of the Work no later than thirty (30) calendar days after achieving Substantial Completion.

VIII. THE DESIGN BUILDER

A. **Design/Builder to Perform all Work required by this Contract:** The intent of this Contract is to require complete, correct and timely execution of the Design Services and the Construction Work. Any and all Construction Work that may be required, reasonably implied, or reasonably inferred by this Contract or any part of it, as necessary to produce the intended result shall be provided by Design/Builder for the Design Services Fee and Lump Sum Price as provided for in this Contract.

B. **Strict Compliance with the Contract Documents:** All Construction Work performed by Design/Builder shall be in strict compliance with this Contract. “Substantial compliance” is not strict compliance. Any Construction Work not in strict compliance with this Contract is defective

C. **Permits, Licenses and Notices:** All construction and building permits, licenses and authorizations necessary for the construction of the Project shall be secured and paid for by Design/Builder. Design/Builder shall notify Owner when it has received said permits, licenses, and authorizations, and upon receipt shall supply Owner with copies of same. The originals of permits, licenses and authorizations shall be delivered to Owner upon completion of the Construction Work, and receipt of these documents by Owner shall be a condition precedent to final payment. Design/Builder shall also give and maintain any and all notices required by applicable laws pertaining to the construction of the Construction Work.

D. **Supervision of the Construction Work:** The Construction Work shall be strictly supervised and directed using Design/Builder's best and highest skill and effort. Design/Builder shall bear full responsibility for any and all acts or omissions of those engaged in the Construction Work on behalf of Design/Builder.

E. **Warranty of Construction Workmanship and Materials:** Design/Builder warrants and guarantees to Owner that all labor furnished to perform the Construction Work under this Contract will be competent to perform the tasks undertaken and is the best quality obtainable, that the product of such labor will yield only first class results in strict compliance with this Contract, that materials and equipment furnished will be of high quality and new unless otherwise permitted by this Contract, and that the Construction Work will be of high quality, free from faults and defects and in strict conformance with this Contract. Any and all Construction Work not strictly conforming to these requirements shall be considered defective and shall constitute a breach of Design/Builder's warranty.

F. Commencement of Guarantee and Warranty: Special or specific guarantees and warranties which are required by this Contract to run for a fixed period of time shall commence running on the date of Substantial Completion of all Construction Work.

G. Design/Builder's Schedule of Construction: Design/Builder, within fifteen (15) days after the Commencement Date, shall submit to Owner for Owner's information, and shall comply with, Design/Builder's Schedule of Construction. The Schedule of Construction shall reflect the performance of all Construction Work on weekdays and non-holidays. The Schedule of Construction shall be a detailed Gantt Chart schedule in a form acceptable to Owner. The Schedule of Construction shall be revised at least monthly and shall be revised to reflect conditions encountered from time to time and shall be related to the entire Project. Each such revision shall be furnished to Owner. Strict compliance with the requirements of this paragraph shall be a condition precedent for payment to Design/Builder, and failure to strictly comply with said requirements shall constitute a material breach of this Contract. No claim for an increase in the Lump Sum Price shall be allowed as a result of Design/Builder basing the Lump Sum Price upon an early completion schedule, or as a result of delays and costs attributable to completion later than the planned early completion date.

H. Record Copy of Contract Documents; Submittals: Design/Builder shall continuously maintain at the site, for the benefit of Owner, an updated copy of this Contract, including one record copy of the Contract Documents marked to record on a current basis changes, selections and modifications made during construction. Additionally, Design/Builder shall maintain at the site, for the benefit of Owner, a copy of all updated Detailed Design Drawings, shop drawings, product data, samples, and other submittals (collectively, "**Submittals**"). Upon Final Completion of the Construction Work, or upon the Owner's request, all of the documents described in this paragraph shall be finally updated and delivered to Owner and shall become the property of Owner.

I. Review and Approval of Submittals: Design/Builder shall review, study, and approve, or take other necessary action upon all shop drawings, product data, samples, and other Submittals to ensure that the Project will be constructed in a timely fashion in strict compliance with this Contract. No deviation from, substitution of or other modification from the Contract Documents shall be allowed by Design/Builder in a shop drawing or other Submittal without written approval, in the form of a Change Order, from Owner. Design/Builder shall engage in prompt and adequate review of shop drawings and other Submittals to maintain the Construction Schedule; Design/Builder also warrants it will use its best independent professional judgment in its review to determine compliance with the Contract Documents.

J. Owner's Option to Review Submittals and Long Lead Items Log: Owner shall also, in its discretion, have the right to review and comment on Submittals and long lead items, and if Owner so elects, Design/Builder shall not perform any portion of the Construction Work unless Owner reviews and approves the required Submittal. Approval by Owner, however, shall not be evidence that Construction Work installed pursuant to Owner's approval conforms to the requirements of this Contract nor shall such approvals relieve Design/Builder of any of its responsibilities or warranties under this Contract. If Owner elects to review Submittals and long lead items, Design/Builder shall maintain a Submittal Log and Long Lead Item Log. The Submittal Log shall include, at a minimum, the date of each Submittal, the date of any resubmittal, the date of any approval or rejection, and the reason for any approval or rejection. The Long Lead Item Log shall indicate the item ordered, the date ordered and the estimated arrival on site. Design/Builder shall have the duty to carefully review, inspect and examine any and all Submittals and the Long Lead

Item Log before submission of same to Owner. Shop drawings, Submittals and the Long Lead Item Log from the Design/Builder constitute a part of this Contract.

K. Procurement and Review of Warranties: Design/Builder shall procure from all Contractors, Subcontractors and Suppliers and shall transmit to Owner, all warranties required by this Contract. Design/Builder shall review all such warranties and shall certify to Owner that the warranties are in strict compliance with the requirements of this Contract.

L. Procurement of Operations and Maintenance Documentation: Design/Builder shall prepare or procure and shall transmit to Owner all documentation required by this Contract regarding the operation and recommended maintenance programs relating to the various elements of the Construction Work.

M. As-built Drawings: Design/Builder shall prepare and provide to Owner two complete sets of all as-built drawings, as well as one digital set which shall be complete and, except as specifically noted, shall reflect performance of the Construction Work in strict compliance with the requirements of this Contract.

N. Testing, Inspections, and Approvals: Design/Builder, other than Owner required tests, shall be responsible for procuring all tests and inspections required by sound professional practices and by governmental authorities having jurisdiction over the Project. Design/Builder shall submit certified results of such tests to Owner. If the laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction require any Construction Work to be specifically inspected, tested, or approved, Design/Builder shall assume full responsibility therefore, pay all costs in connection therewith and furnish to Owner the required certificates of inspection, testing or approval.

O. Owner's Regulations and Applicable Laws: Design/Builder shall, during the course of the Construction Work, comply with any regulations or guidelines prescribed by Owner. Design/Builder warrants that it will comply with all public laws, ordinances, rules and regulations applicable to the services to be performed under this Contract, including without limitation, those relating to the terms and conditions of the employment of any person by Design/Builder in connection with the Construction Work to be performed under this Contract.

P. Compliance with Construction Regulations: Design/Builder shall perform the Construction Work in accordance with all construction codes, laws, ordinances or regulations applicable to the design and execution of the Construction Work. Any fine or penalty which may be imposed as consequence of any violation of this provision shall be paid by Design/Builder, and Design/Builder shall fully indemnify and hold Owner harmless from all loss, damage, and expense, including attorney's fees, resulting from any such violation or alleged violation of codes, laws, ordinances, or regulations, regardless of a concurrent contribution by Owner, through negligence or other wrongful act, to such loss, damage, or expense.

Q. Conditions to Site Access: While on Owner's property, all Design/Builder's employees and Subcontractors shall confine themselves to areas designated by Owner and will be subject to Owner's House Rule requirements.

R. Site Safety and Security: Design/Builder shall take all reasonable steps and legally required measures at the site to comply with applicable safety regulations and

standards and to adequately protect the Construction Work, stored materials, and temporary structures located on the premises, and to prevent unauthorized persons from entering upon the site. Design/Builder shall at all times safeguard Owner's property and employees from injury or loss in connection with the performance of this Contract. Design/Builder shall at all times safeguard and protect its own partially or completely finished Construction Work and that of the adjacent property and all adjacent construction work from damage. Design/Builder shall protect Owner's equipment, apparatus, machinery, and other property and all adjacent construction Work with boarding and other safeguards so as to keep the premises free from dampness, dirt, dust, or other damage and shall remove all such temporary protection upon completion of the Construction Work.

S. Repair of Collateral Damage: Unless otherwise instructed by Owner, Design/Builder shall repair and return to original condition all buildings, streets, curbs, sidewalks, utilities or other facilities affected by Design/Builder's performance of the Construction Work.

T. Cleaning the Site: Design/Builder shall keep the site reasonably clean during performance of the Construction Work. Upon Final Completion of the Construction Work, Design/Builder shall thoroughly clean the Project site and remove all waste, debris, trash and excess materials or equipment, together with Design/Builder's property therefrom.

U. Owner's Access to Construction Work: At all times relevant to this Contract, Design/Builder shall provide access to the Construction Work to Owner and its designees without formality or other procedure.

V. Design/Builder to Remain an Independent Contractor: In performing both Design Services and Construction Work under this Contract, the relationship between Owner and Design/Builder is that of independent contractor, and the execution of this Contract does not change the independent status of Design/Builder. Design/Builder shall exercise independent judgment in performing its duties under this Contract and is solely responsible for setting working hours, scheduling or prioritizing the Contract work flow and determining how all Contract work is to be performed.

W. Warranties: Design/Builder shall be responsible for enforcing warranties and for obtaining correction and/or replacement of all defective work not constructed or installed in accordance with the Contract Documents. All such corrective or remedial work required by the Contract Documents shall be performed by the responsible Contractors or Subcontractors under the terms of their contracts, without additional cost to Owner. Costs incurred by Design/Builder to correct or remedy work performed by Design/Builder's own forces, or where the responsible Contractor or Subcontractor fails to perform, shall be Design/Builder's sole responsibility, at no additional cost to Owner; provided, however, Design/Builder shall be entitled to the proceeds of any Contractor or Subcontractor maintenance bond, where such Contractor or Subcontractor has defaulted in this regard.

IX. **OWNER'S DUTIES, OBLIGATIONS, AND RESPONSIBILITIES**

A. Provide Project Information: Owner shall provide Design/Builder with information regarding Owner's requirements for the Project including any desired or required design or construction schedule.

B. Owner's Review of Design Services: Design/Builder shall submit all documents produced as part of the Design Services to Owner for review and approval in accordance

with the terms of this Contract. However, any review or approval by Owner shall not relieve Design/Builder of or otherwise diminish its obligations under this Contract. Owner may direct Design/Builder to make changes to any design documents in order to agree with Owner's objectives. Any changes ordered by Owner shall not relieve Design/Builder of its obligations under this Contract unless, and only to the extent that, Design/Builder notifies Owner in writing, within five (5) days after receipt of Owner's directive to make changes, concerning any adverse impact on schedules, budgets, operational costs, operational performance, satisfaction of regulatory requirements, or other adverse impact that may result from the directed changes. Failure of Design/Builder to submit its notice within the five (5) day period constitutes a waiver by Design/Builder of any claim for an adjustment to the Design Schedule or the Contract Time.

C. Retention of Geotechnical and Civil Engineering Consultants: In preparing the Design Documents, Owner shall separately retain an experienced, qualified geotechnical and civil engineering consultant to evaluate all geotechnical and civil considerations relating to the design and construction of the Project. Design/ Builder shall be responsible for designing the Project in accordance with the analysis and recommendations of the geotechnical and civil engineering consultants. Nothing in this paragraph, however, prevents Design/Builder from retaining its own geotechnical or civil engineering consultants to review design work, raise issues for mutual discussion, and obtain further information in connection with the geotechnical or civil nature of the Project. Owner expressly does not warrant any geotechnical or civil engineering information provided by it for use in connection with preparation of the design documents; Design/Builder, however, may reasonably rely on geotechnical and civil information provided by Owner to the extent the information has been prepared by Owner or an independent consultant hired by Owner to prepare the information specifically for this Project, without absolving Design/Builder from its responsibility to independently verify or investigate information that a reasonable, prudent professional architect or engineer should or would inquire about.

D. Provide Notice of Defects: In the event Owner knows of any material fault or defect in the Construction Work, nonconformance with this Contract, or of any errors, omissions or inconsistencies in the Design Documents, then Owner shall give prompt notice thereof in writing to Design/Builder.

E. Access to the Site and the Construction Work: Owner shall provide Design/Builder access to the site and to the Construction Work, and shall provide Design/Builder with such information, existing and reasonably available, necessary to Design/Builder's performance of this Contract as Design/Builder may request.

F. Cooperation to Secure Permits, Licenses, Approvals, and Authorizations: Owner shall cooperate with Design/Builder in securing any necessary licenses, permits, approvals or other necessary authorizations for the design, construction and certification of the Project.

G. Timely Performance: Owner shall perform the duties set forth in a reasonably expeditious fashion so as to permit the orderly and timely progress of Design/ Builder's Design Services and of the Construction Work.

H. Owner's Reviews, Inspections, Approvals, and Payments Not a Waiver: Owner's review, inspection, or approval of any Construction Work, Design Documents, Submittals,

or Pay Applications by Design/Builder shall be solely for the purpose of determining whether such Construction Work and such documents are generally consistent with Owner's construction program and requirements. No review, inspection, or approval by Owner of the Construction Work or documents shall relieve Design/Builder of its responsibility for the performance of its obligations under this Contract or the accuracy, adequacy, fitness, suitability, or coordination of its Design Services or the Construction Work. Approval by any governmental or other regulatory agency or other governing body of any Construction Work, Design Documents, or Contract Documents shall not relieve Design/Builder of responsibility for the strict performance of its obligations under this Contract. Payment by Owner pursuant to this Contract shall not constitute a waiver of any of Owner's rights under this Contract or at law, and Design/Builder expressly accepts the risk that defects in its performance, if any, may not be discovered until after payment, including the final payment, made by Owner.

I. Documents Requested by Design/Builder: Owner shall furnish to Design/Builder, prior to the execution of this Contract, any and all written and tangible material knowingly in its possession concerning conditions below ground at the site of the Project. Such written and tangible material is furnished to Design/Builder only in order to make complete disclosure of such material and for no other purpose. By furnishing such material, Owner does not represent, warrant, or guarantee its accuracy or completeness either in whole or in part, and therefore shall have no liability. If Design/Builder requests it in writing, Owner shall also furnish surveys, legal limitations, utility locations (if known), and a legal description of the Project site.

J. Approvals and Easements: Owner shall obtain all easements required for construction, and shall pay for necessary assessments and charges required for use and occupancy of the Construction Work. Design/Builder shall render such assistance as Owner may request in obtaining such easements.

K. Right to Stop Construction Work: In the event Design/Builder fails or refuses to perform the Construction Work in strict accordance with this Contract, or is otherwise in breach of this Contract in any way, Owner may, at its option, instruct Design/Builder to cease and desist from performing further Construction Work, or any part thereof. Upon receipt of such instruction from Owner in writing, Design/Builder shall immediately cease and desist as instructed by Owner and shall not proceed further until the cause for Owner's instructions has been corrected, no longer exists, or Owner instructs that the Construction Work may resume.

L. Owner's Right To Perform Construction Work: In the event Owner issues such instructions to stop Construction Work, and in the further event that Design/Builder fails and refuses within seven (7) days of receipt of same to provide adequate assurance to Owner that the cause of such instructions will be eliminated or corrected, then Owner shall have the right to carry out the Construction Work with its own forces, or with the forces of other contractors, and Design/Builder shall be fully responsible for the costs incurred in correcting any defective or deficient Construction Work.

X. **PAYMENT OF THE COST OF CONSTRUCTION WORK.**

A. Schedule of Values: Within ten (10) calendar days of the Notice of Commencement (defined in Section VIII.A above), Design/Builder shall submit to Owner a Schedule of Values in the form attached hereto as **EXHIBIT D** allocating the Lump Sum Price to the various portions of the Construction Work. Such Schedule of Values shall be prepared in such form, with such detail, and supported by such additional data as Owner may require. Design/Builder shall not imbalance its Schedule of Values nor artificially inflate any element thereof. The violation of this provision by Design/Builder shall constitute a material breach of this Contract. The Schedule of Values shall only be utilized as a basis for evaluating Design/ Builder's Applications for Payment based on Work completed and stored, and shall only constitute such basis after it has been acknowledged in writing by Owner.

B. Application for Payment: At least ten days before the date established for each progress payment, Design/Builder shall submit to Owner an itemized Application for Payment in the form attached hereto as **EXHIBIT D** for operations completed in accordance with the current Schedule of Values. Such application shall be notarized, if required, and supported by such data substantiating the Design/Builder's right to payment as Owner may require, such as copies of requisitions from Contractors and material suppliers, and reflecting 10% retainage. Such applications may include requests for payment of amounts not in dispute on account of changes in the Work which have been properly authorized by Change Directives but are not yet included in Change Orders.

1. Such applications may not include requests for payment for portions of the Work for which the Design/Builder does not intend to pay to a Contractor or material supplier or other parties providing services for the Design- Builder, unless such Work has been performed by others whom the Design-Builder intends to pay.

2. Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by Design/Builder with procedures satisfactory to Owner to establish Owner's title to such materials and equipment or otherwise protect Owner's interest and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

3. Design/Builder warrants that title to all Work covered by an Application for Payment will pass to Owner no later than the time of payment. Design/Builder further warrants that, upon submittal of an Application for Payment, all Work for which Application for Payment have been previously submitted and payments received from Owner shall, to the best of Design/Builder's knowledge, information and belief, be free and clear of liens, Claims (defined in Section XVI.A below), security interests or encumbrances in favor of the Design/Builder, Contractors, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

4. Owner shall have no obligation to make payment to Design/Builder for any Design Services or Construction Work where the amount for which such payment is requested is in excess of the amount allocated in the Schedule of Values for

such Design Services or Construction Work based upon the percentage of completion as of the date of the request for payment.

C. PROGRESS PAYMENTS: After Owner has issued a written acknowledgement of receipt of Design/Builder's Application for Payment, Owner shall make payment of the amount, within 15 working days.

1. Design/Builder shall promptly pay each person or entity (other than the Architect) having a direct contract with Design/Builder to perform all or a portion of the Construction Work (each, a "**Contractor**"), upon receipt of payment from Owner, out of the amount paid to Design/Builder on account of such Contractor's portion of the Work, the amount to which said Contractor is entitled, reflecting percentages actually retained from payments to Design-Builder on account of the Contractor's portion of the Work. The Design/Builder shall, by appropriate agreement with each Contractor, require each Contractor to make payments to its subcontractors (each a "**Subcontractor**") in a similar manner.

2. Owner shall have no obligation to pay or to see to the payment of money to a Contractor except as may otherwise be required by law.

3. Payment to material suppliers shall be treated in a manner similar as above.

4. A progress payment, or partial or entire use or occupancy of the Project by Owner, shall not constitute acceptance of Work not in accordance with the Contract Documents.

5. Unless Design/Builder provides Owner with a payment bond in the full penal sum of the Cost of Construction Work, payments received by Design/Builder for Work properly performed by Contractors and suppliers shall be held by Design/Builder for those Contractors or suppliers who performed Work or furnished materials, or both, under contract with the Design/Builder for which payment was made by Owner. Nothing contained herein shall require money to be placed in a separate account and not be commingled with money of Design-Builder, shall create any fiduciary liability or tort liability on the part of Design-Builder for breach of trust or shall entitle any person or entity to an award of punitive damages against Design- Builder for breach of the requirements of this provision.

D. Failure of Payment: If Owner, without cause or basis hereunder, does not issue a payment within the time period required by this Contract, then Design/Builder may, upon seven additional days' written notice to Owner, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Cost of Construction Work shall be increased by the amount of Design/Builder's reasonable costs of shutdown, delay and start-up, plus interest as provided for in this Contract.

E. Condition Precedent to Final Payment: Notwithstanding any other provision in the Contract Documents, final payment shall not be made to Design/Builder until Design/Builder has fully performed all of its obligations under this Contract and the Design Services and the Construction Work are fully complete.

F. Owner's Review of Pay Applications: Owner shall review all Applications for Payment supported by the Schedule of Values to determine whether the quantity and

quality of the Construction Work and the Design Services are as represented in the Application for Payment and as required by this Contract.

G. Conditions Precedent to Payment: In addition to all other conditions precedent contained herein, it shall be a condition precedent to payment of any Application for Payment that Design/Builder has submitted updated Project Schedules for the performance of its Construction Work and Design Services as required by this Contract and that Design/Builder shall have furnished to Owner properly executed waivers of lien, in a form acceptable to Owner, from all Contractors, Subcontractors, material suppliers or others having lien rights, wherein they shall acknowledge receipt of all sums due pursuant to all prior Applications for Payment and waive and relinquish any liens or lien rights relating thereto.

H. Passage of Title to Construction Work: Notwithstanding progress payments made by Owner under this Contract, title to Construction Work under this Contract does not pass to Owner until final completion and acceptance of the Project by Owner, at which point title to all Construction Work is deemed to pass immediately to Owner. The risk of loss regarding completed Construction Work that is paid for by Owner prior to final completion and acceptance remains with Design/Builder.

I. Unexcused Failure to Pay: If Owner, without cause or basis hereunder, fails to pay Design/Builder any amounts due and payable to Design/Builder within thirty (30) days after the date established in this Contract for payment of such amounts, then the payment shall bear 1% interest per day for every working day beyond the original payment date. Provided, however, that Owner shall not be liable for interest due on any late or delayed progress payment or final payment caused by any good faith claim or dispute, any discrepancy in quantities, any failure to provide supporting documentation or other information required with the request for payment or as a precondition to payment under the Contract Documents, or due to any payment Owner has a right to withhold or not certify under the Contract Documents.

J. Decisions to Withhold Payment: Owner shall have the right to withhold a payment in whole or in part to the extent necessary to protect Owner due to Owner's determination that the Work has not progressed to the point indicated in the Application for Payment or that the quality of Work is not in accordance with the Contract Documents. Owner shall also have the right to withhold a payment or, because of subsequently discovered evidence, may nullify the whole or a part of an Application for Payment previously issued to such extent as may be necessary to protect Owner from loss for which Design/Builder is responsible, including loss resulting from or likely to result from the following:

1. Defective Work not remedied;
2. Third-party claims filed or reasonable evidence indicating probable filing of such Claims unless security acceptable to Owner is provided by Design/Builder;
3. Failure of Design/Builder to make payments properly to Contractors, Subcontractors, laborers and material and equipment Suppliers or for design services labor, materials or equipment;
4. Reasonable evidence that the Work cannot be completed in accordance with this Contract for the unpaid balance of the Cost of Construction Work;
5. Damage to Owner or a separate contractor;

6. Reasonable evidence that the Work will not be completed within the Contract Time and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
7. Loss caused by Design/Builder;
8. Claims made, or likely to be made, against the Owner or its property;

When the above reasons for withholding payment are removed, payment will be made for amounts previously withheld.

K. Use of Joint Checks: If Owner becomes informed that Design/Builder has not paid a Subcontractor, material supplier, laborer, or Vendor as provided herein, Owner shall have the right, but not the duty, to issue checks and payment then or thereafter otherwise due to Design/Builder naming Design/Builder and any such Subcontractor, material suppliers, laborer, or Vendor as joint payees. Such joint check procedure, if employed by Owner, shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit Owner to repeat the procedure in the future nor to create any contractual or other relationship of any kind between Owner and such person or entity.

L. Payment Not a Waiver or Acceptance: No payment to Design/Builder, nor any use or occupancy of the Project by Owner, shall be interpreted or construed to constitute acceptance of any Construction Work not in strict compliance with this Contract, and Design/Builder expressly accepts the risk that defective Construction Work may not be detected (1) during any inspection by Owner, (2) prior to making of any payment to Design/Builder, or (3) before Owner's occupancy of the Project.

XI. **SUBSTANTIAL AND FINAL COMPLETION**

A. Substantial Completion: "**Substantial Completion**" **Exhibit C-1**, is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or use the Work or a portion thereof for its intended use.

1. When Design/Builder considers that the Work, or a portion thereof which Owner agrees to accept separately, is substantially complete, Design/Builder shall prepare and submit to Owner a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of Design/Builder to complete all Work in accordance with the Contract Documents.

2. Upon receipt of Design/Builder's list, Owner or Owner's hired consultant shall make an inspection to determine whether the Work or designated portion thereof is substantially complete. If Owner's inspection discloses any item, whether or not included on Design/Builder's list, which is not substantially complete, Design/Builder shall complete or correct such item. In such case, Design/Builder shall then submit a request for another inspection by Owner to determine whether Design/Builder's Work is substantially complete.

3. In the event of a dispute regarding whether Design/Builder's Work is substantially complete, the dispute shall be resolved pursuant to Section XVI.

4. When the Work or designated portion thereof is substantially complete, Design/Builder shall prepare for Owner's signature an Acknowledgement of Substantial Completion which, when signed by Owner, shall establish (1) the date of Substantial Completion of the Work, (2) responsibilities between Owner and Design/Builder for security, maintenance, heat, utilities, damage to the Work and insurance, and (3) the time within which Design/Builder shall finish all items on the list accompanying the Acknowledgement. When Owner's inspection discloses that the Work or a designated portion thereof is substantially complete, Owner shall sign the Acknowledgement of Substantial Completion. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Acknowledgement of Substantial Completion.

5. Upon execution of the Acknowledgement of Substantial Completion and consent of surety, if any, Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

B. Partial Occupancy or Use: Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with Design/Builder, provided such occupancy or use is consented to by the insurer, if so required by the insurer, and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided Owner and Design/Builder have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for completion or correction of the Work and commencement of warranties required by the Contract Documents. When Design/Builder considers a portion substantially complete, Design/Builder shall prepare and submit a list to the Owner as provided under Section XII.A.1.

1. Consent of Design/Builder to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between Owner and Design/Builder.

2. Immediately prior to such partial occupancy or use, Owner and Design/Builder shall jointly inspect the area to be occupied or portion of the Work to be used to determine and record the condition of the Work.

3. Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

C. Final Completion and Final Payment: Upon receipt of written Final Completion **Exhibit C-2**, notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, Owner or Owner's consultant shall promptly make such inspection and, when Owner finds the Work acceptable under the Contract Documents and fully performed, Owner shall, promptly make final payment to Design/Builder.

1. Neither final payment nor any remaining retained percentage will become due until Design/Builder submits to Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which Owner or Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by Contract Documents to remain in force after final payment is currently in effect and will not be cancelled or allowed to expire until at least 30 days' prior written notice has been given to Owner, (3) a written statement that the Design/Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, and (5) if required by Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, Claims, security interests or encumbrances arising out of this Contract, to the extent and in such form as may be designated by Owner. If a Contractor refuses to furnish a release or waiver required by Owner, Design/Builder may furnish a bond satisfactory to Owner to indemnify Owner against such lien. If such lien remains unsatisfied after payments are made, Design/Builder shall refund to Owner all money that Owner may be liable to pay in connection with the discharge of such lien, including all costs and reasonable attorneys' fees.

2. If, after Owner determines that Design/Builder's Work or designated portion thereof is substantially completed, final completion thereof is materially delayed through no fault of Design/Builder or by issuance of a Change Order or a Change Directive affecting final completion, Owner shall, upon application by Design/Builder, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Design/Builder. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

3. The making of final payment shall constitute a waiver of Claims by Owner except those arising from:

- a. Liens, claims, security interests or encumbrances arising out of the Contract Documents and unsettled;
- b. Failure of the Work to comply with the requirements of the Contract Documents; or
- c. Terms of special warranties required by the Contract Documents.
- d. Acceptance of Final Payment A Waiver: Acceptance of final payment by Design/Builder, a Contractor or material supplier shall constitute a waiver and release of all Claims by that payee against Owner except for those Claims previously made in writing against Owner, pending at the time of final payment and specifically identified by that payee as unsettled at the time of final Application for Payment.

XII. PROJECT DOCUMENTATION

A. Maintenance of Project Records: Design/Builder shall maintain and protect all records relating in any manner whatsoever to the Project (the “**Project Records**”) for no less than four (4) years after Final Completion of the Project, and for any longer period of time as may be required by law or good management practice.

B. Availability of Project Records to Owner: All Project Records which are in the possession of Design/Builder or Design/Builder’s Contractors or Subcontractors shall be made available to Owner for inspection and copying upon Owner’s request at any time. Additionally, such records shall be made available upon request by Owner to any state, federal or other regulatory authorities and any such authority may review, inspect and copy such records. The Project Records include, without limitation, all drawings, plans, specifications, Submittals, correspondence, logs, minutes, memoranda, photographs, tape or videotape recordings, or other writings or things which document the Project, its design, or its construction. Said records include those documents reflecting the cost of design and construction to Design/Builder.

C. Terms Of Subcontracts: All subcontracts and purchase orders with Contractors and Subcontractors shall afford Design/Builder rights against the Contractor or Subcontractor which correspond to those rights afforded to Owner against Design/Builder under this Contract, including those rights of contract suspension, termination, and stop Construction Work orders as set forth in this Contract. It is expressly agreed that no relationship of agency, employment, contract, obligation or otherwise shall be created between Owner and any Contractor or Subcontractor of Design/Builder, and a provision to this effect shall be inserted into all agreements between Design/Builder and its Contractors and Subcontractors.

D. Design/Builder Responsible for Acts of Its Contractors and Subcontractors: Should Design/Builder subcontract all or any part of the Construction Work, such subcontracting of the Construction Work shall not relieve Design/Builder from any liability or obligation under this Contract or under any applicable policy, law or regulation, and Design/Builder shall be responsible for all and any acts, defaults, omissions or negligence of its Contractors, Subcontractors, Suppliers, and consultants.

E. Personnel: Design/Builder shall employ and assign only qualified and competent personnel to perform any service or task concerning the Project in accordance with Section II above.

XIII. PERSONAL PERFORMANCE STANDARDS

A. Removal of Subcontractors And Personnel: If, at any time during the course of the Project, Owner reasonably determines that the performance of any Contractor, Subcontractor or any member of Design/Builder’s staff working on the Project is unsatisfactory, Owner’s Project Manager or other representative may require Design/Builder to remove such Contractor or Subcontractor or staff member from the Project immediately and replace the staff member at no cost or penalty to Owner for delays or inefficiencies the change may cause.

XIV. CHANGE ORDERS AND EXTENSION OF TIME

A. Owner's Right to Order Changes: Changes in the Design Services or the Construction Work under this Contract, consisting of additions, deletions, revisions or any combination thereof, may be accomplished by Supplemental Agreement or Change Order, or unilaterally by Owner pursuant to a Change Directive without invalidating this Contract. Design/Builder shall proceed diligently with any changes pursuant to a Supplemental Agreement, Change Order or Change Directive, and same shall be accomplished in strict accordance with the terms and conditions of the Contract.

B. Changes to Work And Extensions of Time: All changes requested by Design/Builder, in the Design Services or the Construction Work under this Contract or extensions of Contract Time are not effective unless reviewed and approved by Owner. Any Claims for (i) an increase in the Design Services Fee due to a change in the scope of Design Services, or (ii) for an extension of time to the Design Schedule, or (iii) an increase in the Cost of Construction Work due to a change required or approved by Owner, or (iv) for an extension of the Contract Time due to a change required or approved by Owner, shall be made in writing within seven (7) calendar days after occurrence of the event that gives rise to the Claim. All such requests for additional compensation or extension of time, shall include sufficient backup documentation for Owner to reasonably understand the request and the amount of time or compensation requested and to determine the merits of the request. The failure of Design/Builder to provide notice in writing to Owner of any request for an increase in the Design Services Fee or Lump Sum Price or for an extension of time to the Design Schedule or the Contract Time shall constitute a waiver by Design/Builder of any entitlement thereto.

C. Adjustments To Cost of Construction Work Or Contract Time: Upon the occurrence of a change authorized by Owner and set out in a Change Order or Supplemental Agreement which increases or decreases the Design Services Fee or Cost of Construction Work, the Design Services Fee or Cost of Construction Work, as the case may be, will thereafter be adjusted as set out in the Change Order or Supplemental Agreement and also in an updated Schedule of Values.

D. Continuing Duty To Perform Construction Work And Make Payment: In the event the parties are unable to agree on the terms of a Change Order or Supplemental Agreement, then Design/Builder shall continue to diligently perform the Design Services and the Construction Work, including any change directed by Owner by Change Directive, and shall keep thorough records of the cost of performance of such Change Directive.

E. Fiduciary Relationship: Design/Builder recognizes and accepts a fiduciary relationship of trust and confidence hereby established between Design/Builder and Owner and agrees that it shall at all times in good faith use its best efforts to advance Owner's interests and agrees to perform the Design Services and the Construction Work in the highest professional manner.

XV. CLAIMS AND DISPUTES

A. Clams and Disputes: The validity, interpretation and effect of this Contract shall be governed by laws of the State of Hawaii. A "Claim" is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between Owner and Design/Builder arising out of or relating to the Contract. The

responsibility to substantiate Claims shall rest with the party making the Claim. The existence of any Claim, dispute or legal proceeding shall not relieve Design/Builder 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 Design/Builder, Owner shall pay all undisputed amounts and Design/Builder shall continue performing any remaining Work hereunder. In accordance with the applicable statute of limitations, neither party shall initiate a legal proceeding until the Work is fully performed or until this Contract is terminated, whichever occurs first.

B. 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 St., Pauahi Tower Suite 1155, Honolulu, HI 96813 and bear equally the costs of the mediation.

C. 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 St., 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 St. Pauahi Tower Suite 1155, Honolulu, HI 96813, however, that 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.

1. 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 CONTRACT.

D. 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: Owner's Rep: _____
E-mail: _____

If to Parish\Facility:

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

If to Design/Builder:

Name of Design/Builder: _____
Address of Design/Builder: _____
Address of Design/Builder: _____
Attn: Design/Builder's Rep: _____
E-mail: _____

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

E. Duty to Continue Performance: Design/Builder shall continue its performance under this Contract regardless of the existence of any Claims submitted by Design/Builder against Owner.

F. Claims for Increase in Compensation: In the event Design/Builder seeks to make a Claim for an increase in Design Services Fee or in the Lump Sum Price, as a condition precedent to any liability of Owner for any Claim, Design/Builder shall strictly comply with the requirements of Section XV.B above and such notice shall be given by Design/Builder before proceeding to execute any alleged additional or changed Construction Work. Failure of the condition precedent to occur shall constitute a waiver by Design/Builder of any claim.

G. Limit Of Owner's Liability For Increased Compensation: In connection with any claim by Design/Builder against Owner for compensation in excess of the Lump Sum Price or the not to exceed limit of the Design Services Fee, any liability of Owner shall be strictly limited to the Cost of Construction Work and Design Services Fee, and shall in no event include, indirect, consequential, impact or other costs, expenses or damages of Design/Builder or its subcontractors. Owner shall not be liable to Design/Builder for Claims of third parties, including Contractors and Subcontractors, for acts, omissions, events, or conditions for which Owner would not be liable to Design/Builder under the terms of this Contract. As a condition precedent to Owner's liability to Design/Builder for any loss or damage resulting from Claims of third parties, including Contractors and Subcontractors, such third parties must have complied with all conditions contained in their agreements with Design/Builder and such Claims must have been submitted to Owner by Design/Builder in strict compliance with all the requirements of this paragraph. Owner shall not be liable to Design/Builder for Claims of third parties including Contractors and Subcontractors, unless and until the liability of Design/Builder has been established in a court of competent jurisdiction.

H. Owner's Right to Order Acceleration and to Deny Claimed and Appropriate Time Extensions: Design/Builder acknowledges and agrees that Substantial Completion of the Construction Work by or before the Scheduled Completion Date is, or may be, of substantial importance to Owner.

I. Claims Resolved by Change Order: The resolution of any Claim under this paragraph shall be reflected by a Change Order or Supplemental Agreement executed by Owner and Design/Builder.

XVI. UNCOVERING AND CORRECTING CONSTRUCTION WORK

A. Design/Builder not to Cover Construction Work Contrary to Requirements: If any of the Construction Work is covered, concealed or obscured contrary to the written request of Owner, or contrary to any provision of the Contract, said Construction Work shall, if required by Owner, be uncovered for inspection and shall be properly replaced at Design/Builder's expense without change in the Contract Time.

B. Owner's Right to Order Uncovering of any Construction Work: If any of the Construction Work is covered, concealed or obscured in a manner not inconsistent with the above, it shall, if required by Owner, be uncovered for inspection. If such Construction Work conforms strictly with the Contract, the cost of uncovering and proper replacement shall be charged to Owner. If such Construction Work does not strictly conform to the Contract, Design/Builder shall pay the cost of uncovering and proper replacement.

C. Duty to Correct Rejected Construction Work: Design/Builder shall immediately proceed to correct Construction Work rejected by Owner as defective or failing to conform to the Contract. Design/Builder shall pay all costs and expenses associated with correcting such rejected Construction Work, including any additional testing and inspections made necessary thereby.

D. Duty to Correct Defective Construction Work Discovered after Completion: In addition to its warranty obligations set forth elsewhere herein, Design/Builder shall be specifically obligated to correct at its cost and expense any and all defective or nonconforming Construction Work for a period of twelve (12) months following Final Completion upon written direction from Owner. This obligation shall survive final payment by Owner and termination of the Contract.

E. No Period Of Limitation Established: Nothing contained in Section XVII above shall establish any period of limitation with respect to other obligations which Design/Builder has under the Contract. Establishment of the one- year time period in Section XVII.D above relates only to the duty to Design/Builder to specifically correct the Construction Work.

F. Owner's Option to Accept Defective Construction Work: Owner may, but shall in no event be required to, choose to accept defective or nonconforming Construction Work. In such event, the Contract Price shall be reduced by the reasonable costs of removing and correcting the defective or nonconforming Construction Work.

XVII. SUSPENSION AND TERMINATION

A. Suspension of Performance: Owner may for any reason whatsoever suspend performance under the Contract. Owner shall give written notice of such suspension to Design/Builder specifying when such suspension is to become effective.

B. Ceasing Performance upon Suspension: From and upon the effective date of any suspension ordered by Owner, Design/Builder shall incur no further expense or

obligations in connection with this Contract and Design/Builder shall cease its performance. Design/Builder shall also, at Owner's direction, either suspend or assign to Owner any of its open or outstanding subcontracts or purchase orders.

C. Claim For Costs Of Suspension: In the event Owner directs a suspension of performance, through no fault of Design/Builder, and provided Design/Builder submits a proper claim as provided in this Contract, Owner shall pay Design/Builder, as full compensation for such suspension, Design/Builder's reasonable costs, actually incurred and paid, of:

1. Demobilization and remobilization, including such costs paid to Subcontractors;
2. Preserving and protecting Construction Work in place;
3. Storage of materials or equipment purchased for the Project, including Insurance thereon; and
4. Performing in a later, or during a longer, time frame than that contemplated by this Contract.

D. Resumption of Construction Work after Suspension: If Owner lifts the suspension it shall do so in writing, and Design/Builder shall promptly resume performance of the Contract unless, prior to receiving the notice to resume, Design/Builder has exercised its right of termination as provided herein.

E. Termination by Owner for Convenience: Owner reserves the right, for any reason whatsoever (including, but not limited to, non-appropriation of funding), or without reason, terminate performance under the Contract by Design/Builder for convenience. Owner shall give thirty (30) calendar days advance written notice of termination for convenience to Design/Builder. Design/Builder shall incur no further obligations in connection with the Contract and Design/Builder shall stop Design Services and the Construction Work when such termination becomes effective. Design/Builder shall also, at Owner's direction, either terminate or assign to Owner outstanding orders and subcontracts.

Design/Builder shall settle the liabilities and Claims arising out of any terminated subcontracts and orders. Owner may direct Design/Builder to assign Design/Builder's right, title and interest under terminated orders or subcontracts to Owner or its designee. Design/Builder shall transfer title and deliver to Owner such completed or partially completed Design Documents, Construction Work and materials, equipment, parts, fixtures, information and Contract rights as Design/Builder has.

F. Submission of Termination Claim and Compensation for Termination for Convenience: When terminated for convenience, Design/Builder shall be compensated as follows:

1. Design/Builder shall submit a termination claim to Owner specifying the amounts believed to be due because of the termination for convenience together with costs, pricing or other data required by Owner. If Design/Builder fails to file a termination claim within three (3) months from the effective date of termination, Owner shall pay Design/Builder an amount derived in accordance with Section XVIII.F.3. below;

2. Owner and Design/Builder may agree to the compensation, if any, due to Design/Builder under this paragraph;

3. Absent agreement to the amount due to Design/Builder, Owner shall pay Design/Builder, as full compensation for termination for convenience, the following amounts:

a. such portion of the Design Services Fee and Cost of Construction Work, as previously defined, to the extent earned and paid prior to receipt by Design/Builder of the notice of termination;

b. such portion of Design Services Fee and Cost of Construction Work which is earned and unpaid as of the date of receipt by Design/Builder of the notice of termination; and

c. reasonable costs of paying Claims arising out of the termination of subcontracts or orders pursuant to hereinabove. These costs shall not include amounts paid in accordance with other provisions of this Contract.

In no event shall Design/Builder be entitled to recover lost profits or other incidental or consequential damages from Owner on account of a termination for convenience, or an erroneous termination for cause as described below.

G. Termination By Owner For Cause: If Design/Builder does not perform the Construction Work, or any part thereof, in a timely manner, supply adequate labor, supervisory personnel or proper equipment or materials, or if it fails to timely discharge its obligations for labor, equipment and materials, or proceeds to disobey applicable laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise commits a violation of a material provision of the Contract, then Owner may by written notice to Design/Builder, without prejudice to any other right or remedy against Design/Builder or others, terminate the performance of Design/Builder and take possession of the Project site and of all materials and equipment at the site and may finish the Construction Work by whatever methods it may deem expedient. In such cases, Design/Builder shall not be entitled to receive any further payment.

XVIII. OWNER OF DOCUMENTS

A. Documents Considered Owner's Property: The Design Documents and the Contract Documents, including, but not limited to, the drawings, specifications and other documents or things prepared by Design/Builder for the Project, shall immediately become and be the sole property of Owner. Any documents furnished by Owner shall remain the property of Owner. Design/Builder may be permitted to retain copies of the Design Documents and Contract Documents and any documents furnished by Owner for its records with approval in writing of Owner; provided, however, that in no event shall Design/Builder use, or permit to be used, any portion or all of such documents on other projects without Owner's prior written authorization

B. Proprietary Information: Owner considers all information pertaining to the Services or the Project to be confidential and proprietary unless otherwise stated to in writing. The Design/Builder shall refrain from disclosing any such information without Owner's prior written consent, including any information which is prepared or developed by or through Design/Builder, other consultants, Owner, or contractors.

C. Advertising and Use of Name: Design/Builder shall not display or distribute any advertising signs or notices of any kind whatsoever at the Parish/Facility, except caution and work in progress signs, without the prior written permission of Owner in each instance. Any such permission given shall be revocable at any time thereafter without prior notice to Design/Builder and at the sole discretion of Owner.

XIX. **MISCELLANEOUS PROVISIONS**

A. Successors and Assigns: This Contract shall be binding upon and inure to the benefit of the parties to this Contract and their respective successors and, except as otherwise provided in this Contract, assigns.

B. Non-Assignment: Design/Builder shall not assign this Contract, or any part of this Contract, without the prior written consent of Owner, which may be given or withheld in Owner's sole and absolute discretion.

C. Publicity: No information relative to the existence or the details of the Design Services or the Construction Work shall be released by Design/Builder, either before or after completion of the Project, for publication, advertising or any commercial purposes without Owner's prior written consent.

D. Severability: In the event that any portion or any portions of this Contract are held to be unenforceable by a court of competent jurisdiction, then the remainder of this Contract shall be enforced as though such portions had not been included, unless to do so would cause this Contract to fail of its essential purposes.

E. Counterparts: This Contract may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument. If this Contract is executed in counterparts, then it shall become fully executed only as of the execution of the last such counterpart called for by the terms of this Contract to be executed.

F. Entire Agreement; no Oral Modifications: This Contract (with all referenced Exhibits, attachments, and provisions incorporated by reference) embodies the entire agreement of both parties, superseding all oral or written previous and contemporary agreements between the parties relating to matters set forth in this Contract. Except as otherwise provided elsewhere in this Contract it cannot be modified without a written supplemental agreement executed by both parties (each a "**Supplemental Agreement**").

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

ROMAN CATHOLIC CHURCH IN THE STATE OF HAWAII

By: _____

Name: _____

Title: _____

PARISH/FACILITY

By: _____

Name: _____

Title: _____

NAME OF DESIGN/BUILDER

By: _____

Name: _____

Title: _____

Diocesan legal review is not required if there are no modifications made by the Design/Builder.

ASHFORD & WRISTON

A Limited Liability Law Partnership LLP

By: _____

Name: _____

Title: _____

EXHIBIT A

**DESIGN PROGRAM
(SCOPE OF WORK)**

EXHIBIT A-1

CONSTRUCTION SCOPE OF WORK
(Attached Drawings and Specifications)

EXHIBIT B

DESIGN SCHEDULE
(See attached)

EXHIBIT B-1

CONSTRUCTION SCHEDULE
(See attached)

Exhibit C-1

Certificate of Substantial Completion

Contract
No. _____

Project
Name: _____

Date of
Issuance: _____

Owner: _____
Design
Professional: _____

Contractor: _____

Contract
Date: _____

Begin Construction
Date: _____

Substantial
Completion: _____

This Certificate of Substantial Completion applies to all Work under the Design/Build Contract dated _____ and any Change Orders or other documents subsequently executed in relation to the Contract.

The Work to which this Certificate applies has been inspected by authorized representatives of Owner. Design Builder hereby declares to be substantially complete in accordance with the Contract documents on _____.

A tentative list of items to be completed or corrected is attached hereto. This list may not be all inclusive, and the failure to include an item in it does not alter the responsibility of Design/Builder to complete all the Work in accordance with the Contract Documents. The items in the tentative list shall be completed or corrected by Contractor within _____ days of the above date of Substantial Completion.

From the date of Substantial Completion the responsibilities between Owner and Design/Builder for security, operation, safety, maintenance, heat, utilities, insurance and warranties and guarantees shall remain the same until a Certificate of Final completion is executed.

This Certificate does not constitute an acceptance of Work not in accordance with the Contract Documents nor is it a release of Design/Builder's obligation to complete the Work in accordance with the Contract Documents.

Executed by Design/Builder

on: _____

By: _____

Design/Builder accepts the Certificate of Substantial Completion

on: _____

By: _____

Owner accepts this Certificate of Substantial Completion

on: _____

By: _____

Remaining Items for Completion

Exhibit C-1

CERTIFICATE OF FINAL COMPLETION

Project #, Name:

Substantial Completion Date: _____

Final Punchlist Inspection: _____

The Design/Builder certifies that the Work and all other requirements have been completed in accordance with the Contract for Construction, including, but not limited to:

- Completion of all discrepancies (punch list items) noted at the time of Substantial Completion
- Submission of "as-built" plans and specifications, shop drawings, and other record documents.
- Completion of all Owner training
- Submission of all contractually-required attic stock and spare parts
- Submission of all final Operation & Maintenance documents and other closeout deliverables
- Submission of consent of Design/Builder's surety
- Submission and approval of all remaining change order proposals, claims, and applications for payment
- Payment of all costs incurred for equipment, material, labor and services against the Project

The Design/Builder further certifies that:

- No liens have been attached against the project
- No suits are pending by reason of Work on the Project under the Construction
- All Workers' compensation claims are covered by Workers' Compensation Insurance are required by law
- All insurance required of the Design/Builder beyond final payment, if any, is in effect and will not be cancelled or allowed to be expired without notice to the Owner
- All public liability claims are adequately covered by insurance and that the Design/Builder shall save, protect, defend, indemnify, and hold the Owner harmless from and against any and all claims which arise as a direct or indirect result of any transaction, event occurrence, or omission related to performance of the Work contemplated under said Contract for Construction.

Upon execution below, this project will be considered complete. This consideration does not relieve the Design/Builder from its post-construction responsibilities, including the correction of discrepancies noted during the first year after Substantial Completion, warranty issues, latent defects, and other requirements of the Contract for Construction or State law.

For the Design/Builder

Name of Firm: _____

By: _____
Authorized Representative

Project Manager (Parish/Faculty)

Name: _____

By: _____

EXHIBIT D

**CONSTRUCTION SERVICES PAY APPLICATION
and
SCHEDULE of VALUES
(See Attached)**

TO OWNER: PROJECT: PAY APPLICATION NO: Distribution to:
 FROM CONTRACTOR: VIA PERIOD TO: OWNER
 PROJECT MANAGER: PROJECT NOS: 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)) \$ _____
- 6. TOTAL EARNED LESS RETAINAGE \$ _____
(Line 4 Less Line 5 Total) of the
- 7. LESS PREVIOUS CERTIFICATES FOR
- 8. CURRENT PAYMENT DUE \$ XXXXXXXXXX
- 9. BALANCE TO FINISH, INCLUDING RETAINAGE \$ _____
(Line 3 less Line 6)

CONTRACTOR:

By: _____ Date: _____

State of: _____ County of: _____
 Subscribed and sworn to before me this _____ d ay of _____
 Notary Public:
 My Commission expires: _____

PROJECT MANAGER, ARCHITECT CERTIFICATION

In accordance with the Contract Documents, based on on-site observations and the data comprising the application, the Project Manager and Architect certify to the Owner that to the best their knowledge, information and belief the Work has progressed as indicated., CURRENT PAYMENT DUE:

Project Manager: _____ Date: _____

Architect: _____ Date: _____

This Certificate is not negotiable. The CURRENT PAYMENT DUE 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.

Pastor: _____ Date: _____

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

EXHIBIT E

HOUSE RULES

CODE OF CONDUCT CONSTRUCTION PERSONAL

A. Code of Conduct: The following is a code of conduct with which all design/build related personnel (“**Design/Build Personnel**”) shall comply with while on Site. Design/Builder shall provide a copy of these rules to each of its Contractors, Subcontractors, suppliers and delivery companies. All references to Design/Build Personnel hereinafter shall apply to Design/Builder, its Contractors, Subcontractors, sub consultants and vendors and each of their respective employees (as applicable). Design/Builder shall be responsible for assuring that all Design/Build 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 Design/Build Personnel.

1. The Project may be performed in a Parish/Facility that will continue to conduct normal Parish/Facility operations. Accordingly, Design/Builder 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. Design/Builder shall ensure that Design/Build Personnel conduct themselves in an appropriate manner so as not to impair the parishioners’ experience at the Parish/Facility.
2. Design/Builder shall exercise good judgment and practice safety at all times for the protection of the Design/Build Personnel, as well as that of Parish/Facility employees, parishioners, pedestrians, vehicles and other property. Design/Builder shall conduct safety meetings weekly and maintain records of these meetings. Such records shall be made available to the Owner and the Project Director upon request.
3. All Design/Build Personnel must enter and leave the premises from the entrance designated for such purpose. Design/Build Personnel shall dress consistently with their occupational needs, craftsman status and the Parish/Facility’s reasonable requirements. All Design/Build Personnel are subject to inspection by Owner whenever they leave the Parish/Facility premises.
4. The presence of Design/Build 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. Design/Build Personnel shall exhibit conduct befitting the Parish/Facility and shall show deference to Parish/Facility parishioners and employees. All Design/Build Personnel shall refrain from the use of profanity on Parish/Facility

property. Radios are not allowed. Design/Build Personnel shall be evicted from the Parish/Facility premises permanently if found to be using, possessing or under the influence of alcohol or narcotics. Design/Builder 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. Design/Build 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. 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 Parish/Facility premises. Design/Builder shall provide sand buckets and fire extinguishers for use in the designated smoking areas. Design/Builder 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 Design/Builder will provide a fire watch and appropriate fire detection and extinguishing equipment in addition to that provided by Parish/Facility, if reasonably necessary. Design/Builder 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. Design/Builder shall supply a lock box or boxes for the safekeeping of design/build 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. Design/Builder shall restore all areas used for on-site storage and design/build activities to their pre-construction condition, excluding ordinary wear and tear.

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

9. It is Design/Builder's responsibility to keep Parish/Facility reasonably apprised of the activities performed each day.

EXHIBIT F

INSURANCE REQUIREMENTS

A. Required Insurance: At Design/Builder's expense, Design/Builder shall maintain insurance coverage of the following types continuously throughout the term of this Contract or during any period Work is performed relating to this Contract (and such further periods if required below):

B. Workers Compensation and Employer's Liability: Design/Builder shall carry Workers Compensation fulfilling the requirements of any and all applicable workers' compensation laws. Design/Builder 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. Design/Builder 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 Design/Builder pursuant to this Contract.

C. Commercial General and Umbrella Liability Insurance: Design/Builder shall carry commercial general liability ("**CGL**") and, if necessary, commercial umbrella insurance covering Design/Builder's Work at the Parish/Facility, with a limit of not less than \$2,000,000 each occurrence subject to the following:

1. If such CGL insurance contains a general aggregate limit, it shall apply separately to the Work under this Contract.
2. 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.
3. Owner shall be included as an insured using ISO additional insured endorsement CG 20 10 or a substitute providing equivalent coverage.
4. 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.
5. Design/Builder 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 Contract regardless of deductibles, if any.

D. Commercial Auto Insurance: If Design/Builder's scope of Work under this Contract requires or involves the ownership, maintenance or use of an auto, Design/Builder shall carry Commercial Auto Insurance with a limit of insurance no less than \$2,000,000 each accident subject to the following:

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

E. Commercial Property Insurance: Design/Builder 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 Design/Builder, whether or not it is insured, even if such loss is caused by the negligence of Owner, its employees, officers, directors, or agents.

F. Builders Risk: Prior to the start of construction, Design/Builder 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:

1. Property in the course of construction, reconstruction, or repair
2. Property while in transport to the site
3. Property stored at the site or off premises
4. Scaffolding, staging, shoring, formwork, fences, false work, and temporary buildings and any similar items commonly referred to as construction equipment located at the site

5. 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 Owner 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 Design/Builder 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 insured's under the policy agree that it shall be terminated, or the date on which the insurable interests in the property of all insured's other than Owner have ceased. This insurance shall name Owner, agents of Owner, contractors and subcontractors of any tier as insured's. 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.

G. Evidence of Insurance: Prior to the execution date of this Contract or commencement of any activity contemplated under this Contract, whichever is earlier, Design/Builder shall furnish Owner (the Roman Catholic Church in the State of Hawaii to include 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. Design/Builder 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 Design/Builder's obligation to maintain such insurance.

H. Insurance Company Rating: Insurance companies affording the coverage required above shall have an AM Best Rating of no less than A- VII.

I. Failure to Maintain Insurance: Failure to maintain the required insurance may result in termination of this Contract at Owner's option. If Design/Builder fails to maintain the insurance as set forth herein, Owner shall have the right, but not the obligation, to purchase said insurance at Design/Builder's expense. If Owner is damaged by the failure of Design/Builder to maintain insurance as required in this Exhibit, then Design/Builder shall bear all costs attributable to that failure.

J. No Representation of Coverage Adequacy: By requiring insurance herein, Owner does not represent that coverage and limits will be adequate to protect Design/Builder.

K. No Limitation: The requirements contained herein shall not be construed in any manner to relieve or limit Design/Builder's indemnification obligations for any loss or claim arising out of this

Contract.

L. Cross-liability Coverage: If Design/Builder'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.