

**PROJECT MANAGEMENT AGREEMENT
Over \$50,000**

THIS AGREEMENT ("**Agreement**") is entered into and effective ("**Effective Date**") this _____ day of _____, by and between ROMAN CATHOLIC CHURCH IN THE STATE OF HAWAII (**Owner**) as agent for Parish or Facility ("**Parish or Facility**") _____ and _____, a ("**Project Manager**").

Recital 1. Owner is the property Owner of the land located at _____ (the "**Site**"). On the Site is to be construction of a _____ (the "**Project**").

Recital 2. Owner desires to engage Project Manager for Project management services in connection with enter brief description of the work at (the "**Site**").

1. CONTRACT DOCUMENTS. The contract documents shall consist of this Agreement, all exhibits attached hereto, the final construction drawings and specifications ("**Construction Documents**") and any other documents that are specifically incorporated herein by reference (collectively the "**Contract Documents**"). The terms of this Agreement shall control in the event of any inconsistencies or conflicts with other Contract Documents, including any conflicting commercial terms and/or provisions stated in the exhibits.

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

.1 Overview.

.a Project Manager's primary duty shall be to act as the representative of the Parish to coordinate the efforts of the general contractor ("**General Contractor**"), the architect ("**Architect**"), the FF& E installation services, all consultants ("**Consultants**") and other contractors and subcontractors associated with the Project, including contractors and subcontractors contracted directly by the Parish.

.b In the performance of the Services hereunder, Project Manager accepts the relationship of trust and confidence established between Project Manager and Parish. Project Manager covenants with Parish to furnish its best skill and judgment in furthering the interests of Parish and the Project. Project Manager agrees to furnish efficient business administration and superintendence and to use its best efforts to achieve timely, accurate and complete construction of the Project in accordance with the Construction Documents, the Project Schedule, as defined in Paragraph 3, and any other documents described in this Agreement. Project Manager's Services shall be carried out in accordance with the standards of care applicable to nationally and Hawaii recognized Project Management profession who are regularly engaged in providing the same or

similar services on construction projects in the State of Hawaii.

.c Project Manager shall provide Parish with a personnel staffing plan which is attached hereto as **Exhibit B** ("**Personnel Staffing Plan**"). The Personnel Staffing Plan shall detail Project Manager's employees working on the Project, their anticipated hours to be devoted to the Project and their hourly rates. Furthermore Project Manager agrees to devote the necessary personnel at all times during the course of the Project and this includes providing adequate replacements for key personnel during vacation, personal or sick leave and providing such replacements in a way that does not interfere with the continuity or productivity of the Project.

.d Project Manager shall be Parish's authorized representative for purposes of issuing and receiving notices and issuing directives required from Parish in the resolution of day-to-day Project design and construction issues. Under no circumstances shall Project Manager's authority pertaining to Parish's contractual commitments with the General Contractor, the Architect and other contractors and Consultants or any governmental entities exceed One Thousand Dollars (\$1,000) in any one instance without Parish's prior written consent.

.e The Project Manager shall prepare a Project Management plan for the successful delivery of the Project ("**Project Management Plan**"). In preparing the Project Management Plan, Project Manager shall consider Parish's schedule of all activities, costs, general design requirements and an Order of Magnitude Project Budget for the Project. The Project Manager shall then develop various alternatives for the scheduling and management of the Project and shall make recommendations to Parish. The Project Management Plan shall also include a description of the various bid packages recommended for the Project. The Project Management Plan shall be presented to Parish for acceptance.

.f The Project Manager shall assist Parish in selecting, retaining and coordinating the professional services of design consultants including an architect; special consultants, including, but not limited to, surveyors, civil engineers and soils engineers; and testing laboratories required for the Project. The Project Manager will assist Parish in the preparation, negotiation and execution of agreements for the services listed above.

.g The Project Manager shall become familiar United States Conference of Catholic Bishops publication Built of Living Stones Art, Architecture and Worship document when a Worship space is involved in the project. The document is available at the Parish or for purchase at <http://store.usccb.org/built-of-stones-p/5-408.htm>

.h The duties, responsibilities and limitations of authority of Project Manager as set forth in this Agreement shall not be modified or extended without written consent of Owner and Project Manager.

.2 Pre-Construction Phase. Project Manager shall assist Parish in the design process through conceptual, schematic and design development ("**Pre- Construction Phase**"). Throughout the Pre-Construction Phase, Project Manager will provide (a) continuous interaction with Parish and the Architect, (b) constructive input during the design and systems review, (c) value engineering, (d) estimating, (e) budgeting, and (f) scheduling. The Pre-Construction Phase of Services shall include, without limitation, the following activities:

.a Plan Review and Value Engineering.

(i) The Project Manager shall take a predominant role in monitoring the performance of the Architect and other technical Consultants including the preparation of plans and specification and other construction documents. Project Manager shall keep Parish informed as to any problems regarding the speed of preparation or adequacy of the plans and specifications and other Construction Documents. Upon completion of the Construction Documents, Project Manager shall review it for completeness and feasibility of construction.

(ii) The Project Manager shall review design documents during their development with the Architect and advise and obtain Parish approval on the selection of materials, building systems and equipment and methods of Project delivery.

(iii) Project Manager shall review the design with respect to new and innovative techniques, which may produce savings in time and/or money while maintaining or improving quality. Furthermore, Project Manager shall review the design with the Architect to ensure that alternate systems, components, materials, and techniques are fully identified, specified, and approved by the Parish to permit proper bidder response.

(iv) Project Manager shall consider Building Green and sustainability methods within the budget.

.b Budgeting.

(i) The Project Manager shall take a predominant role in cost refinement and shall coordinate Architect and Parish in preparing an estimate of the Project cost ("**Project Budget Cost**"). As the Architect progresses with the preparation and update of drawings, Project Manager shall update and refine the Project Budget Cost. The Project Manager shall review the Project Budget Cost with increasing detail and refinement and shall review each such Project Budget Cost for adequacy and completeness.

(ii) The Project Manager shall monitor the costs of the Project and submit to Parish a monthly report showing deviations from the approved Project Budget, as defined in Paragraph 7.2. As necessary, Project Manager shall recommend a cost recovery plan to Parish. The Project

Manager shall also develop cash flow reports for the Project and advise Parish and Architect as to variances between actual, budgeted or estimated costs. The Parish will provide Project Manager with a budget and an analysis of the timing of the funds.

.c Scheduling. The Project Manager shall periodically update the Project Schedule, as defined in Paragraph 3, for Parish's review and acceptance. At Parish's request, Project Manager shall coordinate and integrate into the Project Schedule the General Contractor's work ("**Work**"), as further defined in the Construction Contract, the Architect's services, and the operational activities and responsibilities of the Parish.

(i) The Project Manager shall, with the assistance of Parish, submit a list of prospective bidders for various portions of the Project to the Architect for their review and for Parish's approval.

(ii) The Project Manager shall develop prospective bidders' interest in the Project and establish the bidding schedule. The Project Manager, with the assistance of the Architect, shall prepare the bidding documents for issue by the Pastor. Project Manager, and Architect with the Parish leadership shall conduct pre-bid conferences with prospective bidders. The Project Manager shall assist the Architect with regard to questions from bidders and with the issuance of an addenda.

(iii) The Project Manager with the Architect shall review and analyze bids received for Parish. They will prepare bid analyses and make recommendations to Parish for Parish's award of contracts to the General Contractor ("**Construction Contract**") and other Consultants and contractors.

(iv) The Project Manager shall follow the Diocesan bidding and bid opening procedures:
<http://www.catholichawaii.org/media/124566/PROJECT%20PLANNING.pdf>

(v) The Project Manager shall assist Parish with its preparation of the Construction Contract, for the Owner's execution.

.3 Construction Phase - Administration of the Construction Contract.

Upon execution of the Construction Contract, Project Manager shall provide, without limitation, the following construction phase services ("**Construction Phase**"):

.a The Project Manager shall schedule and conduct regular meetings to discuss procedures, progress and scheduling for the Project. The Project Manager shall prepare and promptly distribute minutes, in the form of action lists, to Parish, Architect, the General Contractor, and other affected contractors or Consultants.

.b Utilizing the Project construction schedule ("**Construction Schedule**") provided by the General Contractor, Project Manager shall periodically update the Project Schedule incorporating the critical path activities of the General Contractor. The Project Schedule will include events identified by the Parish. The Project Schedule shall be sensitive to unscheduled events and parish activities that are related to the parish operation, such as funerals and special religious days. The Project Manager shall update and reissue the Project Schedule as required to show current conditions. If an updated Project Schedule indicates that the previously approved Project Schedule may not be met, Project Manager shall recommend corrective action to Parish for its approval.

.c The Project Manager shall endeavor to obtain satisfactory performance from the General Contractor, the Architect, the Interior Designer, all Consultants and other contractors and shall coordinate their services with the same. The Project Manager shall recommend courses of action to Parish when requirements of a contract are not being fulfilled by the respective parties.

.d The Project Manager shall monitor the General Contractor in its preparation of a Construction Schedule providing for the components of the Work of the General Contractor. Such Construction Schedule shall include phasing of construction, times of commencement and completion of each subcontractor, ordering and delivery of products requiring long lead time, and the operational requirements of Parish.

.e Project Manager, with assistance from the Architect, shall review General Contractor's invoices and payment applications and assist in the timely receipt of invoices and payment applications in concurrence with the approved schedule of values. Project Manager shall submit the pay application approved by the Architect to Parish for approval and payment.

.f The Project Manager's review of the General Contractor's payment applications shall constitute a representation to Parish, based on Project Manager's determination at the Site and on the data comprising the payment applications, that General Contractor's Work has progressed to the point indicated and the quality of the Work is in accordance with the Construction Documents.

.g The Project Manager shall require the General Contractor to prepare and submit to Project Manager a safety program, as required by the Construction Contract. The Project Manager shall review the safety program to determine that the General Contractor's program provides for coordination among all other contractors and Consultant's performing Work at the Site and submit it to the Parish for review. The Project Manager shall not be responsible for General Contractor's implementation of such program or the procedures and precautions associated therewith, or for the coordination of any of the above with the other contractors and Consultants performing the Work at the Site. The Project Manager shall not be responsible for the adequacy or completeness of the General Contractor's safety programs, procedures or precautions. Project Manager shall not be liable for another party's breach of

safety measures. However, to the extent Project Manager observes any safety violations at the Site; it shall inform Parish and the General Contractor.

.h The Project Manager shall determine that the Work of the General Contractor is being performed in accordance with the requirements of the Construction Documents and the Construction Contract, endeavoring to protect Parish against defects and deficiencies in the Work. As appropriate, Project Manager shall in coordination with the Architect and approval of the Parish, require additional inspections or testing of the Work in accordance with the provisions of the Construction Documents, whether or not such Work is fabricated, installed or completed. The Project Manager shall reject Work which does not conform to the requirements of the Construction Documents.

.i In conjunction with the Architect, Project Manager shall resolve questions transmitted by the General Contractor in the form of requests for information (“RFI”). Project Manager will maintain an RFI log. Questions regarding items of Work not consistent with the Construction Documents, thereby possibly leading to additional cost or time to Parish, shall be reviewed with the Architect and Pastor.

.j The Project Manager shall review requests for changes from the General Contractor, assist in negotiating General Contractor’s proposals and submit recommendations to the Architect and Parish. If accepted by Parish, Project Manager shall, with the assistance of the Architect, prepare change orders which incorporate the Architect’s modifications to the Construction Documents. Project Budget and Schedule.

.k Change Orders. The Project Manager shall establish and implement a change order control system. All changes to the Construction Contract shall be made only by change orders approved and executed by Parish.

(i) All proposed Parish initiated changes shall first be described in detail by Project Manager to the Architect and then in a change proposal issued to the General Contractor. The change proposal shall be accompanied by drawings and specifications prepared by the Architect. In response to the change proposal, the General Contractor shall submit to Project Manager for evaluation detailed information concerning the price and time adjustments, if any, as may be necessary to perform the change proposal work. The Project Manager shall review the General Contractor’s proposal, shall discuss the change proposal with the General Contractor and the Architect, and endeavor to determine the General Contractor’s basis for the price and time proposed to perform the change proposal work.

(ii) The Project Manager shall review the contents of all General Contractor requested changes to the Contract Time, the Contract Price, or Contract Quality each as defined in the Contract Documents, and shall endeavor to determine the cause of the request and assemble and evaluate information concerning the request. The Architect and Project Manager shall in its evaluations of the General Contractor’s request consider the Architect’s comments regarding the proposed changes.

(iii) The Project Manager shall make recommendations to Parish regarding all proposed construction change proposals. At Parish's direction, Project Manager shall prepare and issue to the General Contractor appropriate construction change order documents. The Project Manager shall provide the Architect with copies of all approved construction change orders and contract modifications to the Project Budget and Project Schedule.

.l The Project Manager shall assist Parish and Architect in the review, evaluation and documentation of claims.

.m The Project Manager shall obtain certificates of insurance and Performance Bonds to the extent required by the Construction Contract from the General Contractor and forward them to Owner and shall monitor the status of General Contractor's insurance coverage.

.n In collaboration with the Architect, Project Manager shall assist in establishing and implementing procedures for expediting, processing and approving shop drawings, product data, samples and other submittals.

.o The Project Manager shall record the progress of the Work against the approved Project Schedule. The Project Manager shall submit written progress reports monthly to Parish showing progress of the Work.

.p The Project Manager shall maintain for Parish one record copy of all contracts, shop drawings, specifications, addenda, change orders and other modifications. The Project Manager shall make all such records available to the Architect and upon completion of the Project shall deliver them to Parish.

.q The Project Manager shall arrange for the delivery, storage, protection and security of Parish-purchased materials, systems, furniture and equipment that are a part of the Project.

.r The Project Manager shall coordinate its efforts with Parish, the purchasing of furniture, fixtures and equipment ("**FF&E**") for the Project.

.s The Project Manager shall, in cooperation with Parish coordinate the activities of the installer, and the sequence of installation of the FF&E in accordance with the Project Schedule.

.t With the Architect and Parish Liaison, Project Manager shall observe the General Contractor's final testing and start-up of utilities, operational systems and equipment.

.u When the General Contractor considers the Work or a designated portion thereof substantially complete, Project Manager, Architect and, in consultation with Parish Liaison, shall jointly prepare a list of incomplete or unsatisfactory items and a schedule for their completion. The Project Manager

shall in conjunction with the Architect, and, in consultation with Parish Liaison, conduct inspections to determine whether the Work or a designated portion thereof is substantially complete.

v. The Project Manager with the Architect shall conduct the Substantial Completion and Final Completion requirements outlined in the General Contractors Construction Contract.

.w The Project Manager shall secure and transmit to the Parish warranties and similar submittals as prepared by the General Contractor and required by the Construction Documents and the Construction Contract, for delivery to Parish. The Project Manager shall coordinate the General Contractor's obligation to deliver all keys, manuals, record drawings and material for attic stock to Parish.

.x The Project Manager shall assist Parish in obtaining an occupancy permit by coordinating final testing, preparing and submitting documentation to governmental agencies, and accompanying government officials during inspections of the Project.

.y The Project Manager shall assist Parish in obtaining building permits and special permits for permanent improvements, except for permits required to be obtained directly by the General Contractor or the various contractors.

.z The Project Manager shall close-out the contract between Owner and the General Contractor, the Architect, all Consultants and other contractors upon completion of the Project.

3. PROJECT SCHEDULE. The Project Manager shall manage the activities of the General Contractor, the Architect, all Consultants and other contractors. He will ensure the Work and all other aspects of the Project will be pursued diligently in accordance with the time parameters, including all interim milestone dates, set forth in the project schedule. The project schedule is developed by Project Manager and the General Contractor and attached hereto as **Exhibit C ("Project Schedule")**. The Project Manager shall be sensitive to the operational needs of the Parish.

4. COMPENSATION. As compensation for performance of the Services in full accordance with the Contract Documents, Project Manager shall be paid a fixed fee in the amount of _____ **Dollars** (\$_____) ("**Contract Price**"). The Contract Price shall be paid in accordance with the fee breakdown shown on the Personnel Staffing Plan in proportion to the percentage of Services completed in accordance with the Project Schedule. Except for Reimbursable Expenses, as described below, the Contract Price shall be Project Manager's sole and total compensation for all costs, overheads and profit, including, but not limited to, all cost of general conditions, federal, state, and local statutory benefit taxes, income taxes and sales, use and excise taxes which relate to the Services hereunder.

.1 Reimbursable Expenses. Project Manager shall be reimbursed at actual cost, without mark-up, for all reimbursable expenses reasonably incurred in the

performance of the Services ("**Reimbursable Expenses**"). Project Manager estimates that its Reimbursable Expenses for the Project will not exceed _____ Dollars (\$ _____), and Project Manager agrees to obtain Parish's written approval in the event that the Reimbursable Expenses exceed the estimate. The Reimbursable Expenses are limited to the following items:

- .a Travel and subsistence expenses for out-of-town travel, subject to Parish's approval. Project Manager shall use best efforts to obtain the lowest costs in compliance with **Exhibit D**.
- .b Costs of postage including the cost of air express mail and delivery services directly required by the Project.
- .c Costs of long distance telephone communications including facsimile transmissions directly required by the Project.
- .d All photocopying required in support of the Project.

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

- .a Costs of all transportation and subsistence expenses within the metropolitan area of the Project.
- .b All local telephone communications.
- .c Costs of computer-aided design software and drafting equipment ("**CADD**") time used in support of the Services.
- .d Costs of all materials, computer time, data processing and similar expenses incurred in support of the Services.
- .e Costs of Internet and e-mail access fees and charges.

5. ADDITIONAL SERVICES. The Project Manager compensation for additional services not included in the Services shall not commence without Parish's express prior written authorization. Payment for all Additional Services shall be computed on either: (1) a time and expense basis measured by the hourly rates listed in **Exhibit B**, without mark-ups; or (2) on a fixed price basis as may be mutually agreed upon by the parties in advance and in writing.

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

7. PARISH'S RESPONSIBILITIES.

.1 Parish shall provide Project Manager with information regarding Parish's requirements for the Project and will cooperate with Project Manager in obtaining information reasonably requested by Project Manager.

.2 Parish has established an overall Order of Magnitude Project Budget. The Project Budget shall include all estimated construction costs and all other Project-related costs and contingencies as specified by Parish. The Project Manager shall review the Project Budget and forward comments to Parish for Parish's consideration.

.3 Project Manager may at times rely upon instructions from the Parish Liaison , as defined in Paragraph 10.1, as being authorized on behalf of Parish, except as may be expressly stated otherwise in this Agreement or subsequently advised to Project Manager by the Parish Liaison in writing. The Parish Liaison shall be reasonably available to Project Manager to facilitate communication with the parish. Parish may also designate in writing one or more additional representatives to assist with the administration of the Project upon whose directions Project Manager shall also be entitled to rely.

.4 Parish shall retain an Architect and various consultants whose services, duties and responsibilities are to be described in agreements between Parish and the respective parties. The terms and conditions of each agreement noted above and any modifications thereto shall be furnished to Project Manager. Project Manager shall promptly notify Parish of any act or omission of which Project Manager becomes aware and recognizes as threatening or causing harm to the Project, the Site, the Work, or the interests of Parish or Owner.

.5 Parish shall retain a General Contractor and various other Consultants, contractors, subcontractors, suppliers and vendors whose services, duties and responsibilities are to be described in agreements between Parish and the respective parties. Project Manager shall promptly notify Parish of any act or omission of which Project Manager becomes aware and recognizes as threatening or causing harm to the Project, the Site, the Work, or the interests of Parish therein.

.6 As guided by the Architect and Construction Manager the Parish shall arrange for structural, mechanical, chemical, air and water pollution tests, tests for hazardous materials, other laboratory and environmental tests, inspections and reports as required by law or the Construction Documents.

.7 Parish shall furnish Project Manager with a sufficient and reasonable quantity of the Construction Documents.

.8 Prompt written notice shall be given by Parish to Project Manager and Architect if Parish becomes aware of any fault or defect in the Project or nonconformance with the Construction Documents.

.9 Parish reserves the right to perform construction and operations related to the Project with Parish's own forces, and to award contracts in connection with the Project

which are not part of Project Manager's responsibilities under this Agreement. The Project Manager shall notify Parish if any such independent action will interfere with Project Manager's ability to perform Project Manager's responsibilities under this Agreement. When performing construction or operations related to the Project, Parish agrees to be subject to the same obligations and to have the same rights as the General Contractor with respect to Project Manager's responsibilities under this Agreement.

.10 Information or services under Parish's control shall be furnished by Parish with reasonable promptness to avoid delay in the orderly progress of Project Manager's Services and the progress of the Work.

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

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

10. AUTHORIZED REPRESENTATIVES:

.1 **Parish Liaison.** Parish has designated _____
Phone Number: _____ e-mail address: _____
as its Project Liaison ("PL") authorized to represent Parish with respect to the Project.

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

.3 **Architect, Consultant, or Interior Designer.**

A. The Architect for the Project is:
_____ with an office at _____
Phone Number: _____, e-mail address: _____

B. The Interior Designer for the Project is: _____ with an office at _____
Phone Number: _____, e-mail address: _____

C. The Consultant for the Project is: _____ with an office at _____
Phone Number: _____, e-mail address: _____

11. TIME OF THE ESSENCE. Performance of Project Manager's Services shall commence timely and shall continue until Project Manager satisfactorily performs its Services and Parish duly accepts the Services as complete. Project Manager acknowledges that **TIME IS OF THE ESSENCE** of this Agreement. In this regard, Project Manager hereby accepts and confirms that the time allowed in the Project Schedule is reasonable for completing the Services and hereby agrees to dedicate such personnel and other resources as may be necessary to guarantee that the Services are managed and performed continuously in a diligent, skilled and professional manner in accordance with Parish's objectives of cost, time and quality.

12. APPLICATIONS FOR PAYMENT. Project Manager will be paid monthly, based upon the progress of the Services ("**Progress Payments**") and within thirty (30) days of final completion of the Services ("**Final Payment**"). On or before the twentieth (20th) day of each month, Project Manager shall submit its monthly application for payment for the preceding month ("**Application for Payment**") to the Pastor in a format and supported by such documentation to verify entitlement as Parish reasonably may require, including lien waivers in a format approved by Parish. Each such monthly Application for Payment shall identify clearly, itemize and attribute all cost items in a manner that facilitates review by Parish and shall itemize separately the following:

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

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

13. INDEMNIFICATION. Project Manager shall defend, indemnify and hold harmless Owner and the Owner's respective successors and assigns and each of their directors, officers, employees, agents, representatives and assigns (collectively referred to as the "**Indemnitees**") from and against any and all claims, causes of actions, damages, liabilities, losses, costs and expenses, including reasonable attorneys' fees, arising out of or connected with the performance of Project Manager's Services, including the acts, errors or omissions by the Project Manager, its employees and agents, or others for whom the Project Manager is responsible in the performance of its Services under this Agreement. In the event that any claim is made or an action or proceeding is brought against Indemnitees, arising out of Project Manager's Services, any such Indemnitee may, by notice to Project Manager, require Project Manager, at Project Manager's expense, to resist such claim or take over the

defense of any such action or proceeding and employ counsel for such purpose. Any counsel chosen by Project Manager is subject to Indemnitees prior written approval, which approval shall not be unreasonably conditioned, delayed or denied. In the case of counsel acting for the Project Manager's insurance underwriters, Indemnitees approval is deemed to have been given. Project Manager's obligations under this Paragraph 14 shall survive termination of this Agreement.

14. INSURANCE. Project Manager shall procure and maintain at its expense policies of insurance of the types and in amounts no less than the minimum coverages specified in **Exhibit E** attached hereto. Project Manager shall maintain such policies of insurance for the duration of the Services and for a period of at least two (2) years thereafter if no other time period is specified herein.

15. TERMINATION, SUSPENSION AND STOP WORK ORDERS.

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

.a Termination for Cause. Owner may terminate this Agreement upon written notice if Project Manager: (i) violates or breaches any of the terms, conditions or covenants hereof and does not remedy such violation or breach within ten (10) days after written notice by Owner to Project Manager of such violation or breach ("**Default Notice**"); or (ii) makes an assignment for the benefit of creditors or is a party to a voluntary or involuntary bankruptcy proceeding ("**Termination for Cause**").

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

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

.3 Owner's Rights Upon Termination for Cause. If all or a portion of Project Manager's Services are terminated pursuant to Paragraph 15.1.a, Project Manager shall not be entitled to receive any payment until after final completion of the Services is achieved by others and after Owner has assessed its additional costs and damages arising out of such Termination for Cause. If Owner's costs to achieve final completion of the Services are in excess of the Contract Price, Project Manager shall pay Owner for all costs in excess of the Contract Price, plus reimbursement for all of Parish's additional costs for remedial design services, managerial and administrative services, attorney's fees and court costs arising out of such Termination for Cause.

Upon such Termination for Cause, Project Manager shall immediately undertake all necessary steps to mitigate Owner's damages, including but not limited to the following:

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

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

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

16. ASSIGNMENT. The Services to be provided by Project Manager hereunder are personal in nature and accordingly, Project Manager may not assign or encumber this

Agreement or any rights or obligations of Project Manager hereunder.

17. ADVERTISING AND USE OF NAME. Project Manager shall not display or distribute any advertising signs or notices of any kind whatsoever at the Parish, except caution and work in progress signs, without the prior written permission of Parish in each instance. Any such permission given shall be revocable at any time thereafter without prior notice to Project Manager and at the sole discretion of Parish.

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

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

20. CLAIMS AND DISPUTES:

.1 General. The validity, interpretation and effect of this Agreement shall be governed by laws of the State of Hawaii. The existence of any claim, dispute or legal proceeding shall not relieve Project Manager from its obligation to properly perform its Work as set forth herein. In the event of a dispute with respect to amounts payable under a request for payment from the Project Manager. Owner shall pay all undisputed amounts and Architect shall continue performing any remaining Work hereunder. Neither party shall initiate a legal proceeding nor shall the applicable statute of limitations commence to run until the Work is fully performed or until this Agreement is terminated, whichever occurs first.

.2 Mediation. In the event of any claim, dispute or other matter arising out of or relating to this Agreement, the parties shall attempt to resolve any dispute amicably at a meeting to be attended by persons with decision-making authority. If, within thirty (30) days after such meeting, the parties have not resolved the dispute, they shall submit the dispute to mediation by written demand in accordance with the Construction Industry Mediation Procedures of the Dispute Prevention and Resolution, Inc., 1003 Bishop Street, Pauahi Tower Suite 1155, Honolulu, HI 96813 and bear equally the costs of the mediation.

.3 Arbitration. If, within thirty (30) days after mediation is initiated, the mediation does not result in settlement of the dispute, then the same shall be settled by arbitration administered Dispute Prevention and Resolution, Inc., 1003 Bishop Street, Pauahi Tower Suite 1155, Honolulu, HI 96813 and not by litigation. Either party may submit such unresolved dispute to arbitration, which shall be conducted by a sole arbitrator. The arbitrator shall be selected in accordance with Dispute Prevention and Resolution, Inc., 1003 Bishop Street, Pauahi Tower Suite 1155, Honolulu, HI 96813, however, the arbitrator must have experience in construction disputes and must not have any conflict of interest. The compensation of the arbitrator and all related expenses shall be borne equally by the parties, unless otherwise awarded by the arbitrator. Unless otherwise agreed, the arbitration shall be conducted in the State of Hawaii. The prevailing party shall be entitled to recover its reasonable attorneys' fees, costs and disbursements in any action brought to enforce its rights under this Agreement.

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

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

If to Owner:

Owner's Name: _____
Owner's Address: _____
Attn: Owner's Rep: _____
E-mail: _____

If to Parish:

Parish Name: _____
Parish Address: _____
Attn: Parish Liaison: _____
E-mail: _____

If to Project Manager:

Name of Project Manager: _____
Address of Project Manager: _____
Attn: Project Manager'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 Paragraph 22.

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

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

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

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

26. DAYS. For the purposes of this Agreement and unless stated to the contrary, the term “days” shall refer to calendar days.

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

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

ROMAN CATHOLIC CHURCH IN THE STATE OF HAWAII

By:
Name:
Title: _____

PARISH

By: _____
Name: _____
Title: _____

NAME OF PROJECT MANAGER

By: _____
Name: _____
Title: _____

The Diocesan Attorney must review this Agreement when there are suggested modifications to it:

Diocesan form reviewed by:

ASHFORD & WRISTON

A Limited Liability Law Partnership LLP

By: _____
Name: _____
Title: _____

EXHIBIT A
Scope of Services

EXHIBIT B
Personnel Staffing Plan

EXHIBIT C
Project Schedule
(See Attached)

EXHIBIT D

Expense Account Procedures

1. Project Manager will be reimbursed for actual costs incurred on the company's behalf while Project Manager's employees are engaged solely in authorized Parish business. Such expenses must be reasonable in the circumstances and must be necessary and incidental to the performance of the Parish business involved.
2. Every Project Manager employee is responsible for controlling expenses at the lowest possible level and for ensuring that Parish receives adequate value for all expenditures. Project Manager's employees are expected to use common sense in the disbursement of funds and to treat all expenditures as they would if they had to pay for them personally.
3. Expense accounts are to be submitted monthly by the 10th of the succeeding month.
4. When booking airline reservations, Project Manager is to book coach class only and as far in advance as possible to increase the opportunity for obtaining reduced or discounted fares. Stopovers or connecting flights can provide savings.
5. Rental cars should only be used when less expensive transportation is not available. If a rental is authorized, Project Manager's employees are to rent standard or small cars. The cost of automobile rentals will not be reimbursed for weekend or holiday travel.
6. The cost of taxicabs to and from the place of business, Parish and airport is reimbursable. However, bus or airport shuttle should be used whenever possible.
7. Parish facilities are to be used wherever possible, and only standard rooms are to be requested while on company business.
8. The following Parish charges listed below are examples of the types of charges that are Non-Reimbursable Expenses:
 - ∨ Personal telephone calls or any calls or expenses for Non-Parish business
 - ∨ Gift shop charges
 - ∨ Non-Parish business related payouts
 - ∨ Entertainment
 - ∨ Health club services
 - ∨ Hairdresser services
 - ∨ Golf, tennis fees, etc...
9. All expense account forms must be completely filled out on both sides. Receipts are required for every expense over \$15.00; however, every Project Manager employee is encouraged to submit a receipt for EVERY item on the expense report.
10. Laundry and dry cleaning are not reimbursable.
11. Expenditures for entertaining are not reimbursable.

12. Expenses for spouses accompanying Project Manager's employee on a business trip are not reimbursable.
13. Reasonable gratuities are reimbursable only when business related. Food and Beverage gratuities should be added to the restaurant check and should NOT be paid in cash.
14. The following expenses are examples of the types of expenses that are Non-Reimbursable Expenses:
 - Personal travel
 - Airline trip insurance
 - Barbershop, beauty shop or shoe shine charges
 - Personal or non-Parish business telephone calls and postage charges
 - Theft damage or loss of luggage or effects
 - Clothing
 - Gifts (flowers, Christmas, birthday, etc.)
 - Traffic/parking violation fines
 - Bar or liquor bills or movie charges
 - Newspapers or magazines
 - Personal medical expenses
 - Personal toiletries
 - Personal credit fees or charges
 - Health Club services
 - Limousines
 - Airline club fees
 - Babysitting services
 - Repairs, maintenance or insurance of personal automobiles
 - Other personal, non-Parish or UNREASONABLE expenses
15. Expense accounts should be accompanied by all receipts, airline charges and Parish invoices. Expenses will not be reimbursed if an item is not fully explained and supported by the required receipts.
16. All travel must be approved by the Pastor.

EXHIBIT E

Insurance requirements

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

WORKER'S COMPENSATION AND EMPLOYER'S LIABILITY. Project Manager shall carry Worker's Compensation fulfilling the requirements of any and all applicable worker's compensation laws. Project Manager shall also carry Employer's 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. Project Manager 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 Worker's Compensation and Employer's Liability or Commercial Umbrella Liability insurance obtained by Project Manager pursuant to this Agreement. Project Manager shall obtain an endorsement equivalent to ISO form WC 00 03 13 to affect this waiver.

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

- If such CGL insurance contains a general aggregate limit, it shall apply separately to the Services under this Agreement.
- The CGL insurance shall be written on ISO occurrence form CG 00 01 01 96 (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, independent Project Managers, 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.
- All Indemnitees shall be included as an insureds using ISO additional insured endorsement CG 20 10 or a substitute providing equivalent coverage.
- This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to Owner. There shall be no endorsement or modification of the CGL to make it excess over other available insurance. Alternatively, if the CGL states that it is excess or pro rata, the policy shall be endorsed to be primary and neither excess or contributory with any insurance or self-insurance carried by Owner. Project Manager waives on behalf of itself and its insurers all rights against Owner and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by insurance maintained pursuant this Agreement regardless of deductibles, if any.

COMMERCIAL AUTO INSURANCE. If Project Manager's Scope of Services under this Agreement requires or involves the Owner, maintenance or use of an auto, Project Manager shall carry Commercial Auto Insurance with a limit of insurance no less than \$5,000,000 each accident subject to the following:

The insurance shall be on a form no less broad than ISO form CA 00 01 10 01.

Coverage shall apply to "any auto" whether owned, scheduled, leased, hired or other. Coverage shall extend to Parish for its vicarious liability, if any. The required Commercial Umbrella insurance may be used to meet the required limit. to or loss of personal property sustained by Project Manager, whether or not it is insured,

COMMERCIAL PROPERTY INSURANCE. Project Manager may, at its option, purchase insurance to cover its personal property. In no event shall Owner be liable for any damage even if such loss is caused by the negligence of Owner, its employees, officers, directors, or agents.

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

EVIDENCE OF INSURANCE. Prior to the execution date of this Agreement or commencement of any activity contemplated under this Agreement, whichever is earlier, Project Manager shall furnish Owner (the Roman Catholic Church in the State of Hawaii and [*enter name of parish and school*], its officers, officials, employees and volunteers are hereby named as an additional insured), with evidence of compliance with the above requirements. Thirty (30) days written notice to Owner prior to cancellation or material change is required. Project Manager 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 Parish to identify a deficiency from evidence that is provided shall not be construed as a waiver of Project Manager's obligation to maintain such insurance.

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

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

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

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

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