

**CONSTRUCTION AGREEMENT**  
**(under \$50,000)**

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

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

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

**1. SCOPE OF WORK:** Contractor is responsible for completion of all, or a portion of, the Project which shall be carried out in or around the ("**Project Site**"). The Contractor's scope of work is set forth and more particularly described in **Exhibit A** ("**Scope of Work**"). Contractor shall promptly commence and diligently pursue completion of the Work within the time frame set forth in **Exhibit A** ("**Contract Time**").

**2. CONTRACT PRICE:** In consideration for the performance of the Work, Owner shall pay Contractor a fixed price of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), in accordance with \_\_\_\_\_ ("**Contract Price**"). The Contract Price shall be Contractor's sole and total compensation for all costs, overhead and profit, including, without limitation, all permits, fees and taxes.

**3. CHANGE ORDERS:** To be effective, any changes in the Scope of Work, the Contract Price or the Contract Time must be reflected on Owner's Standard Change Proposal form and signed by both parties ("**Change Order**"). Change Orders over \$20,000 are forwarded to the Owner for approval.

**4. CONTRACTOR'S REPRESENTATIONS:** Contractor is being engaged by Owner in reliance upon Contractor's: (1) possession of all licenses and/or certifications as required in the local jurisdiction; (2) representations of professional expertise in the specific area of construction called for by this Agreement; and (3) ability to provide the required Work independently without substantial direction by Parish/Facility. Contractor shall comply with all applicable laws, codes, regulations, ordinances and rules, whether local, regional or national, with respect to the Work to be performed and the equipment or materials to be furnished hereunder and shall cause the Work to be constructed in compliance with this Agreement.

**5. CONTRACTOR'S WARRANTY:** Contractor warrants that the Work performed hereunder shall be performed in a first-class workmanlike manner and the materials and equipment provided shall be new and free from defects in workmanship and/or materials and equipment and agrees that any damage arising from any breach of this representation

and warranty shall be promptly remedied by Contractor at its sole expense. If Contractor defaults or neglects to correct defective Work within a five (5) day period after receipt of written notice from Parish/Facility, Owner may, without prejudice to other remedies, correct such deficiencies at Contractor's expense. Contractor's warranty shall apply during performance of the Work and shall extend for the later of: (1) a period of twelve (12) months after the date of Final Completion, as defined in Paragraph 15; or (2) the period of such manufacturer's warranties provided for materials and equipment ("**Warranty Period**"). During the Warranty Period, Contractor shall be responsible for correcting any and all defects in workmanship, materials or equipment or other damages arising from a breach of this warranty at Contractor's sole cost and expense.

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

**7. EQUIPMENT AND MATERIALS:** Contractor shall provide at its expense, without remuneration or reimbursement of any kind, all equipment, materials, tools, construction equipment, machinery and other supplies necessary to complete the Work in accordance with this Agreement. Contractor may make a substitution in materials only if a Change Proposal has been approved in conformance with Paragraph 3.

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

**9. INDEPENDENT CONTRACTOR:** Contractor shall act as an independent contractor in providing the Work. The means and methods Contractor employs to provide the Work are matters entirely within its discretion and control in accordance with accepted industry practices. Contractor has no authority to act as an agent of Owner or Parish\Facility. Contractor acknowledges and agrees that as an independent contractor, it is solely responsible and liable for performance of all duties, obligations and responsibilities as an employer of individuals hired or retained by Contractor to provide services to the Owner hereunder. Those duties, obligations and responsibilities shall include, but are not limited to, recruitment, interviewing, hiring, maintenance of personnel records, compliance with

Form I-9 Employment Eligibility Verifications, drug testing, payment of wages, setting wage rates and supervision.

**10. EMPLOYEES:** Owner or Parish/Facility may, from time to time, establish reasonable rules and regulations relating to standards to be met by Contractor regarding the appearance or conduct of employees or agents, including all subcontractors and vendors performing Work at the Site. Contractor will remove, or cause to be removed, from the Site any persons to whom Parish/Facility may reasonably object and will ensure that such person(s) shall not thereafter be employed by Contractor in connection with the Work hereunder. Contractor shall not be required by Parish/Facility to engage in any personnel action which is, or may be deemed to be, against public policy or contrary to any local, state or federal ordinance, rule or statute or to any collective bargaining agreement or other labor or employment contract.

**11. SAFETY:** Contractor shall be responsible at all times for the safety of its employees, the employees of its subcontractors and vendors of any tier, and their respective representatives and agents who are engaged in performing Work at the Site . Contractor shall fulfill all notice and reporting requirements and otherwise strictly comply with, and shall require all of its subcontractors and vendors to likewise comply with, all local, municipal, state and federal laws and regulations of public authorities pertaining to health and safety.

**12. AUTHORIZED REPRESENTATIVE:** Owner has designated \_\_\_\_\_ Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_ as its project director ("**Project Director**") authorized to represent Owner with respect to the Project. Contractor has appointed \_\_\_\_\_ Telephone: \_\_\_\_\_ Facsimile: \_\_\_\_\_ to be its representative, who is assigned solely to this Project, and authorized to act on Contractor's behalf with respect to the Project and whose decisions, notices and directives shall be binding upon Contractor with respect to this Agreement.

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

**14. NO DAMAGES FOR DELAY:** Contractor acknowledges that any and all delays shall be non-compensable delays. Parish/Facility shall use reasonable efforts to have the Site available and ready for commencement and continuation of Contractor's Work during the Contract Time. Notwithstanding Parish\Facility efforts, if any delays are caused solely, or in part, by reason of any act, omission, fault or negligence of Parish/Facility, or any of Parish\Facility other contractors, consultants and/or any other persons or entities which are Parish\Facility responsibility, Parish\Facility shall not be liable for any delay-related costs, damages or losses whatsoever incurred by, or claimed to have been incurred by, Contractor and/or subcontractors and vendors of every tier and their respective agents and representatives of every tier.

**15. FINAL COMPLETION:** Contractor will have achieved final completion of the Work when (1) Parish\Facility and Contractor have agreed to a list of items to be completed prior to final completion ("**Punchlist Items**"); (2) Parish\Facility has accepted all Punchlist Items as complete and deemed the Work completed; (3) Contractor has submitted satisfactory proof to Parish\Facility that all subcontractors and vendors have been paid in full; and (4) Contractor has obtained all applicable certificates and approvals from the local jurisdiction ("**Final Completion**"). Parish\Facility will provide written notification to Contractor when Final Completion has been achieved.

**16. LIENS:** Contractor covenants and agrees to keep the equipment and property of Parish\Facility and the premises free and clear from any and all liens for Work performed or materials and equipment furnished hereunder and Contractor agrees to indemnify Owner against any and all costs, expenses, losses and all damage resulting from the filing of any such liens against Owner. If a lien is filed by a subcontractor or vendor of Contractor, Contractor will immediately take whatever action is necessary to remove such lien at Contractor's expense. Contractor shall, upon request by Owner, furnish waivers of such liens or receipts in full for all claims for such Work or materials and equipment and an affidavit that all such claims have been fully satisfied. Contractor's obligations under this Paragraph 16 shall apply unless Owner has failed to pay Contractor any undisputed amount after thirty (30) days written notice of such non-payment.

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

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

**19. PERFORMANCE AND PAYMENT BONDS:** At Owner's option, Contractor shall furnish performance and payment bonds ("**Performance and Payment Bonds**") in a form and issued by a company satisfactory to Owner. The Performance and Payment Bonds shall

cover both the faithful performance of all obligations set forth herein and the payment of Contractor's obligations arising out of performance of the Work. The Performance and Payment Bonds shall be in the amount stipulated by Owner. The cost thereof shall be reimbursed to Contractor as an addition to the Contract Price, subject to Owner's prior written approval.

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

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

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

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

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

**22. PROJECT DOCUMENTS:** All drawings and other documents prepared by Contractor in furtherance of the Work shall be the property of Owner. Contractor shall promptly furnish Owner and Parish/Facility with the originals of all drawings that are produced during the course of the Work. Upon completion of the Work or any earlier termination of this Agreement, Contractor shall promptly furnish Owner with one (1) complete set of reproducible record prints that shall incorporate all "as-built" variations and conditions.

**23. ADVERTISING AND USE OF NAME:** Contractor shall not display or distribute any advertising signs or notices of any kind whatsoever, except caution and work in progress signs, without the prior written permission of Parish\Facility in each instance. Any such permission given shall be revocable at any time thereafter without prior notice to Contractor and at the sole discretion of Parish\Facility. In the event of such approval, Contractor may use the name of the Parish\Facility only in the manner and at such times as prescribed in such approval.

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

**25. 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 Contractor from its obligation to properly perform its Work as set forth herein. In the event of a dispute with respect to amounts payable under a request for payment from the Contractor, Owner shall pay all undisputed amounts and Contractor shall continue performing any remaining Work hereunder. Neither party shall initiate a legal proceeding and the applicable statute of limitations shall not commence to run until the Work is fully performed or until this Agreement is terminated, whichever occurs first.

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

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

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



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

**ROMAN CATHOLIC CHURCH IN THE STATE OF HAWAII**

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

**PARISH**

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

**NAME OF CONTRACTOR**

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

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

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



## EXHIBIT A

**I. SCOPE OF WORK.** The Work to be provided by Contractor is as follows:

**II. PAYMENT TERMS.** The Contract Price of \_\_\_\_\_, (\$\_\_\_\_\_), shall be due and payable as follows, unless otherwise agreed between Contractor and Parish\Facility: (i) if the Contract Time is less than thirty (30) days, the Contract Price shall be due and payable within thirty (30) days after approval by Parish\Facility of Contractor's request for payment following Final Completion of the Work.; or (ii) if the Contract Time is more than thirty (30) days, Contractor shall submit payment requests to Parish\Facility on or before the twentieth (20th) day of each month in accordance with an approved schedule of values, such request to be supported by such documentation as Parish\Facility shall require to verify entitlement. Once reviewed and approved by the Architect/Consultant and approved by Parish\Facility, Contractor's requests for payment shall be payable within thirty (30) calendar days after receipt by Parish\Facility.

Notwithstanding the foregoing, Parish\Facility shall be permitted to retain ten percent (10%) of any payment(s) due hereunder in order for Parish\Facility to confirm Contractor's full and complete performance under this Agreement in strict accordance with all of its terms and conditions. This retention shall be released to Contractor by not later than sixty (60) days following Final Completion of the Work, provided that Parish\Facility so confirms Contractor's performance.

**III. CONTRACT TIME.** Contractor shall commence its Work on or before \_\_\_\_\_ and shall complete its Work on or before \_\_\_\_\_. If applicable, Contractor shall perform its Work in accordance with the following schedule, (**Attach Schedule**):

## **EXHIBIT B**

### **Insurance Requirements**

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

Contractor shall carry Workers Compensation per applicable laws and Employers Liability insurance with a limit not less than \$500,000 each accident for bodily injury, \$500,000 each employee for bodily injury by disease, and \$500,000 policy limit for disease.

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

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

Contractor may, as its option, purchase insurance to cover its personal property. In no event shall the Roman Catholic Church in the State of Hawaii and (*insert name of parish or school*), its officers, officials, employees and volunteers be liable for any damages to or loss of personal property sustained by Contractor, whether or not it is insured, even if such loss is caused by the negligence of the Roman Catholic Church in the State of Hawaii and (*insert name of parish or school*), its officers, officials, employees and volunteers.

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

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

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