

**For the following contract, please make sure the documents to be included in Exhibit A do not contain a *Limitation in Liability* clause. If they do, please negotiate that limitation (in writing) to be no less than the liability insurance requirements. Please contact the Property Management Office with questions.**

## CONTRACT TO PERFORM WORK

THIS AGREEMENT ("Contract") is made as of \_\_\_\_\_, 20\_\_\_\_, by and between:

\_\_\_\_\_ ("Owner"), and

\_\_\_\_\_ ("Contractor").

In consideration of the mutual promises of the parties and other good and valuable consideration, and subject to the attached Terms and Conditions, the parties agree as follows:

1. Description of Work. Contractor agrees to perform the following work (the "Work") described in Exhibit A attached hereto. To the extent a Contractor proposal or quotation (a "Proposal") may be attached to Exhibit A to serve as a description of the Work to be performed pursuant to this Contract, no provisions contained in the Proposal other than the description of Work to be performed shall become part of this Contract, and all such other terms shall be considered rejected by Owner.

2. Contract Price. Upon completion of the Work, Owner agrees to pay Contractor a contract price (the "Contract Price") of:

- An hourly rate of \$\_\_\_\_\_, but not to exceed \$\_\_\_\_\_.
- A fixed price of \$\_\_\_\_\_.
- A not to exceed price of \$\_\_\_\_\_.

The Contract Price is intended to cover all contingencies, known or unknown, falling within the scope of the Work to be performed pursuant to this Contract.

3. Warranty. The Work and each of its components will be free of defects in materials and/or workmanship for a period of \_\_\_\_\_ years from the date of final completion.

4. Starting and Completion Dates.

- (a) Contractor agrees to commence Work on \_\_\_\_\_, 20\_\_\_\_.
- (b) Contractor agrees to complete the Work on or before \_\_\_\_\_, 20\_\_\_\_.

5. Notices and Contact Information.

If to Owner:

\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

If to Contractor:

\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

**IN WITNESS WHEREOF**, the parties have executed this Contract on the day and year first above written.

**OWNER:**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**CONTRACTOR:**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## TERMS AND CONDITIONS

1. Contract Documents. The contract documents ("Contract Documents") on which the agreement between Owner and Contractor is based, consist of this Contract and the Terms and Conditions only. No provisions contained in any Contractor Proposal shall become part of this Contract, and all such other terms shall be considered rejected by Owner

2. Responsibilities of Contractor. Contractor agrees to be solely responsible for all Work performed under this Contract, including the techniques, sequences, procedures and means, and for the coordination of all Work. Contractor agrees to prosecute the Work diligently, supervise and direct the Work in accordance with the highest industry standards, and give the Work all attention necessary for such proper supervision and direction, and complete the Work in a thorough and workmanlike manner. Contractor agrees to provide and pay for all labor, materials and equipment, including tools, construction equipment, machinery, transportation and all other facilities and services necessary for the proper completion of the Work. Contractor agrees to pay all taxes required by law in connection with the Work and completion of the Work and shall secure, at its expense, all licenses and permits necessary to conduct the Work. Contractor agrees to comply with all laws, ordinances, and the rules, regulations or orders of all public authorities relating to the performance of the Work hereunder and the hiring of employees therefor. Contractor agrees to keep the premises on which the Work is conducted and adjoining ways free of waste material and rubbish caused by its work or that of its subcontractors. Contractor further agrees to remove all such waste material and rubbish on completion of the Work.

3. Covenant Against Liens. Contractor agrees to keep all of the property of the Owner free of any mechanic's lien or any other lien, charge or order for the payment of money which may be filed against the Owner's property or the Owner or Contractor's interest therein arising out of any act or omission of Contractor.

4. Asbestos. (a) Contractor certifies that no asbestos containing materials or work will be provided, installed, furnished to the Work site. All materials used in or for the Work shall be certified as non Asbestos Containing Building Materials ("ACBM"). The Contractor and all Contractor employees, suppliers, fabricators, materialmen, subcontractors, or their assigns shall comply with the following acts: Asbestos Hazard Emergency Response Act (AHERA—40 CFR 763-99 (7)); and National Emission Standards for Hazardous Air Pollutants (NESHAP—EPA 40 CFR 61, National Emission Standard for Asbestos. (b) In the event that asbestos-containing materials or suspected asbestos-containing materials are discovered in any area included within the Work site, the Contractor assumes responsibility to notify the Owner and all workmen of the existing asbestos conditions. Notification shall be made on approved EPA forms and will include posting of notices in accordance with EPA and OSHA guidelines. The Contractor agrees to assume all responsibility for compliance with applicable codes and regulations regarding discovery and notification of the presence of asbestos-containing material.

Work shall not continue until the Owner, upon proper notification from the Contractor or subcontractor, has the suspected asbestos-containing materials analyzed. If the Contractor proceeds without approval from the Owner after such notification, the Contractor agrees to become liable for all costs associated with the cleaning and clearance for occupancy of the Work site.

5. Insurance. During the term of this Contract the Contractor shall carry and maintain at its sole cost and expense the following insurance: (a) Builder's Risk Insurance (For Building Construction Contracts only). Contractor shall carry and maintain at all times while Work is being performed on the Project Builder's Risk insurance insuring the Work, including material stored at the Project site or elsewhere or in transit, from fire and other perils included in standard "all risk" coverage for one hundred percent (100%) of the replacement costs (without deductible) thereof at the time of loss and name Owner as an additional insured thereunder, as its interests may appear. Owner shall be the loss payee pursuant to such insurance. Prior to commencement of the Work by Contractor and thereafter at least ten (10) days prior to the expiration of the then current insurance coverage, Contractor shall provide Owner with certificates evidencing that such coverage is in effect at all times throughout performance by Contractor of the Work. Contractor shall be required to carry and maintain such insurance until Final Payment of the Work. (b) Commercial General Liability Insurance. Contractor shall carry and maintain at all times while Work is being performed on the Project, Commercial General Liability Insurance covering Bodily Injury and Property Damage on an "occurrence" basis. This coverage shall include Contractual Liability insurance for the indemnity provided under this Contract. Coverage shall include explosion, collapse, and underground hazards. The following limits of insurance shall apply: Each Occurrence: \$1,000,000.00; General Aggregate: \$2,000,000.00. The Commercial General Liability Insurance shall cover Owner as an additional insured for claims for damages because of bodily injury, including death, and from claims for damages to property which may arise or result from Contractor's operations, whether such operations be by Contractor or by any subcontractor retained by Contractor or anyone directly or indirectly employed or supervised by either of them. (c) Worker's Compensation. Contractor shall make required contributions and maintain insurance in compliance with all applicable laws, ordinances, rules, regulations and orders of any public authority regulating Worker's Compensation, old age benefits, state and federal Unemployment compensation and all other employee benefit laws, ordinances, rules, regulations and orders of any public authority with respect to employees of Contractor and the employees of any subcontractor engaged by Contractor. (d) Automobile Liability Insurance. Contractor shall carry and maintain during the term of this Contract comprehensive automobile liability insurance (including hired and non-owned automobile liability) protecting against liability arising from bodily injury (including death) and property damage coverage with the same minimum limits as set forth in Section (4)(b)(i) and Section (4)(b)(ii). The comprehensive automobile liability insurance shall name the Owner as an additional insured. (e)

**Professional Liability Insurance. (Required Only If Contractor Employees Design and/or Engineering Professionals Who Will Provide Services In Connection with the Project.)** Contractor shall carry professional liability insurance coverage for the activities of the Contractor's professional staff with a combined single limit of not less than \$1,000,000 per occurrence or claim and \$2,000,000 in the aggregate. (f) **Installation Floater. (Required Only If Contractor Will Supply or Install Equipment at the Project.)** Contractor shall carry and maintain during the term of this Contract an Installation Floater covering Contractor's labor, materials and equipment to be used for completion of the Work performed under this Contract against all risks of direct physical loss, excluding earthquake and flood, for an amount equal to the full amount of the contract improvements. (g) **Certificates.** Upon execution of this Contract, Contractor shall provide Owner with certificates evidencing each form of insurance coverage required by this Contract to be in full force and effect naming Owner as an additional insured, as its interest may appear. (h) **Insurance of Subcontractors.** Contractor covenants and agrees to include in all subcontracts and to require all subcontractors of Contractor to provide and maintain insurance coverage identical to the above reference insurance requirements. (i) **No Waiver.** The foregoing provisions dealing with the insurance required shall not be construed in any manner as waiving, restricting or limiting the liability of the Contractor under the provisions of the Contract, whether or not same are, or may be, covered by insurance.

6. During the term of this Contract the Contractor agrees to carry (a) **Liability Insurance** in the amount of (i) Each Occurrence: \$1,000,000.00; (ii) General Aggregate: \$2,000,000.00; (b) **Worker's Compensation** in compliance with all applicable laws, ordinances, rules, regulations and orders of any public authority regulating Worker's Compensation; (d) **Automobile Liability Insurance** in the amount of (i) Each Occurrence: \$1,000,000.00; (ii) General Aggregate: \$2,000,000.00. Contractor agrees to provide Owner with certificates evidencing each form of insurance coverage required by this Contract to be in full force and effect naming Owner as an additional insured, as its interest may appear.

7. **Warranty.** Contractor warrants that the Work completed under the Contract, and any change orders thereto, shall conform to the specific requirements, performances and capacities identified in the Contract Documents, and that each of the Work's components will be free of defects in materials or workmanship for a period of time set forth on the first page of this Agreement. Contractor represents and warrants to Owner that all materials used in the Work, and made a part of the Work, or placed permanently in connection therewith, will be new unless otherwise specified in the Contract Documents, of good quality, free of defects and in conformity with the Contract Documents. The parties agree that materials not conforming to this warranty are defective. The provisions of this paragraph apply to work by subcontractors as well as to work done directly by the Contractor.

8. **Indemnity.** Contractor hereby agrees to assume all risks incident to its work in connection with the Work and to indemnify and save and hold harmless (i) Owner; (ii) Dennis M.

Schnurr, Archbishop of Cincinnati, and his successors (the "Archbishop"); and (iii) and any clergy, religious, lay employee, or lay volunteer and/or parishioner serving the Owner and/or the Archbishop (collectively the "Indemnified Parties") from and against any loss, damage or expense resulting from sickness or injury to person or persons, or damage or loss of property caused in any manner by Contractor, its officers, agents, employees or subcontractors, or caused by Contractor's a breach of any representation or warranty contained herein.

9. **Alterations, Extras, and Change Orders.** Owner may order changes in the Work consisting of additions, deletions, or other revisions, in which event the Contract Price and the contract time shall be equitably adjusted accordingly. All such changes in the Work shall be authorized by a written change order (a "Change Order"), mutually agreed to by Owner and Contractor, specifying each such alteration or extra and the additional amount to be paid by Owner or allowed as a credit by Contractor by virtue of such alteration or extra. All Change Orders shall be signed by Owner and Contractor, prior to completion of said item. In no event shall a Change Order increase the Contract Price without the written agreement of the Owner.

10. **Termination of the Contract for Cause.** (a) The Owner may terminate this Contract if: (i) the Contractor becomes insolvent, files a petition in bankruptcy, makes a general assignment for the benefit of its creditors, or (ii) a petition in bankruptcy is filed against the Contractor by a third party, and is not dismissed within sixty (60) days of having been filed, or a receiver is appointed for the Contractor; or (iii) the Contractor fails, refuses or is unable to carry out the Work or refuses or fails to supply enough properly skilled workers or proper materials to timely complete the Work in accordance with the Contract Documents; or (iv) the Contractor fails to make payment to subcontractors for materials or labor in accordance with the requirements of the Contract Documents or the respective agreements between the Contractor and the subcontractors; or (v) the Contractor disregards applicable laws, ordinances, or rules, regulations or orders of a public jurisdiction; or (vi) the Contractor otherwise breaches a material provision of the Contract Documents. (b) When any of the above reasons exist, the Owner may, without prejudice to any other remedy the Owner may have, terminate the Contract and take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon, owned by the Contractor, and may finish the Work by whatever reasonable method the Owner may deem expedient.

11. **Termination of the Contract for Convenience.** (a) Owner may at any time and for any reason terminate Contractor's services and Work at Owner's convenience. Upon receipt of such notice, Contractor shall, unless the notice directs otherwise, immediately discontinue the Work and placing of orders for materials, facilities and supplies in connection with the performance of this Contract. (b) Upon such termination, Contractor shall be entitled to payment only as follows: (1) the actual cost of the Work completed in conformity with this Contract; plus, (2) such other costs actually incurred by Contractor prior to notice of termination as permitted by this Contract; (3) plus ten percent (10%) of the cost of the Work

referred to in subparagraph (1) above for overhead and profit. There shall be deducted from such sums as provided in this subparagraph the amount of any payments made to Contractor prior to the date of the termination of this Contract. Contractor shall not be entitled to any claim or claim of lien against Owner's property for any additional compensation or damages in the event of such termination and payment.

12. Complete Agreement. This Contract constitutes the entire agreement between the parties hereto.

13. Assignment of the Contract. The Contractor agrees to not assign or subcontract the Contract without the prior written consent of Owner, which may be withheld in Owner's sole discretion.

14. Validity of Provisions. In the event any provision of this Contract is determined to be invalid, void or otherwise unenforceable, such determination shall not affect the remaining part or portions of that provision, or any other provisions, of this Contract.

15. Relationship. The Contractor acknowledges and agrees that no employment or other similar relationship is established hereby and that the Contractor agrees to be solely responsible for the payment of all tax withholdings, workers compensation, unemployment compensation and social security withholdings with respect to the Contractor's employees and agents, without contribution from Owner. Nothing in this Contract is intended nor shall it be construed to create a partnership or a joint venture relationship between Owner and the Contractor. The Contractor shall have no express, apparent or implied authority to incur any financial or legal obligation or liability on behalf of or binding upon Owner.

16. Notices. Whenever Owner or Contractor shall make any demand or serve any notice of a claim or termination under the terms of this Contract upon the other, such notice shall be in writing and shall be deemed to have been sufficiently given upon the earlier of: (i) receipt by the party or (ii) two (2) postal delivery service days after the same is sent, postage prepaid, by United States certified mail, addressed to the address set forth on the first page of this Contract.

17. Compliance with Lead Laws and Regulations. Contractor agrees to comply with all laws and regulations regarding the prevention of childhood lead poisoning through the remediation of lead paint hazards encountered while accomplishing the Work. Without limiting the foregoing, the Contractor shall comply with laws regarding the proper testing, removal, and disposal of lead containing paint and the protection of workers and others that may be exposed to such material, by complying with all applicable EPA and OSHA guidelines regarding lead paint testing, removal, and disposal.

18. Governing Law. Unless otherwise provided, this Contract shall be governed by the law of the jurisdiction in which the Work is done without regard to the choice of law principles thereof.

**Exhibit A**

[See attached and/or below]