

**THE EPISCOPAL CHURCH IN HAWAII**  
**CONSTRUCTION AGREEMENT – FIXED PRICE**  
(\$50,000 or more)

I. EFFECTIVE DATE: \_\_\_\_\_

II. PARTIES:

A. OWNER: The Episcopal Church in Hawai`i  
229 Queen Emma Square  
Honolulu, Hawaii 96813

B. CONTRACTOR: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

III. PROJECT: \_\_\_\_\_

IV. SITE: \_\_\_\_\_

PARISH/FACILITY: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

V. AGREEMENT:

This Construction Agreement – Fixed Price consists of the Specific Provisions, General Provisions and all Exhibits attached hereto (collectively, “Agreement”).

VI. SPECIFIC PROVISIONS:

The following constitute certain specific provisions of this Agreement (“Specific Provisions”). To the extent the Specific Provisions conflict with any General Provisions or Exhibits attached hereto, the Specific Provisions shall control:

(a) Upon acceptance, Owner shall pay to Contractor fifty percent (50%) of the total Fixed Price. The balance shall be billed according to progress of the work.

VII. EXHIBITS:

The following Exhibits attached hereto are hereby made a part of this Agreement:

1. Exhibit A: Scope of Work
2. Exhibit B: Project Schedule

- 3. Exhibit C: Schedule of Values
- 4. Exhibit D: House Rules
- 5. Exhibit E: Supplementary Conditions
- 6. Exhibit F: Insurance Requirements

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

THE EPISCOPAL CHURCH IN HAWAII

By: \_\_\_\_\_  
 \_\_\_\_\_  
 Its: \_\_\_\_\_  
 \_\_\_\_\_  
 "Owner"

By: \_\_\_\_\_  
 \_\_\_\_\_  
 Its: \_\_\_\_\_  
 \_\_\_\_\_  
 "Owner"

By: \_\_\_\_\_  
 \_\_\_\_\_  
 Its: \_\_\_\_\_  
 \_\_\_\_\_  
 "Parish"

By: \_\_\_\_\_  
 \_\_\_\_\_  
 Its: \_\_\_\_\_  
 \_\_\_\_\_  
 "Contractor"

## GENERAL PROVISIONS

- 1. CONTRACT DOCUMENTS:** The contract documents shall consist of this Agreement, all exhibits attached hereto, the final construction drawings and specifications and any other documents that are specifically incorporated herein by reference (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 WORK:** Contractor is responsible for completion of all, or a portion of, the Project which shall be carried out in or around all or a part of the (“**Site**”). The Contractor’s scope of work is set forth and more particularly described in **Exhibit A** (“**Work**”).
- 3. CONTRACT PRICE:** In consideration for the performance of the Work, Owner shall pay Contractor a fixed price of **Number Number Thousand Number Hundred Number and XX/100 Dollars (\$XXX,XXX.00)** (“**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, federal, state, and local statutory benefit taxes, income taxes and sales and use taxes. Further, the Contract Price shall include all out-of-pocket expenses incurred in connection with the Work, including without limitation travel expenses, food, lodging and all office expenses. The Contractor’s bid is attached as **Exhibit A**.
- 4. PROJECT SCHEDULE:** Contractor has submitted to Owner, and Owner has approved, a schedule for the Project, which is attached hereto as **Exhibit B** (“**Project Schedule**”). Contractor shall commence promptly and diligently pursue completion of the Work within the time parameters, including all interim milestone dates, set forth in the Project Schedule (“**Contract Time**”). The Project Schedule and all subsequent updates and revisions to the Contract Time shall be printed in a tabular bar chart format in a program acceptable to Owner.
- 5. SCHEDULE OF VALUES:** Contractor has submitted to Owner, and Owner has approved, a schedule of values for the Work, allocated by either trades or by CSI Division 00 of the Masterformat (“**Schedule of Values**”). The Schedule of Values will be used by Owner to evaluate Contractor’s Progress Payments, as described in Paragraph 23. The Schedule of Values is attached hereto as **Exhibit C**.
- 6. CHANGE PROPOSALS/ORDERS:** Upon the Effective Date of this Agreement, any change involving the Work (“**Additional Work**”) or an increase or decrease in the amounts stated in the Schedule of Values, the Contract Price or the Contract Time may be accomplished only by a written order, submitted by the Contractor after review by the Architect/Consultant to the Owner and subject to Owner’s and Parish/Facility’s approval (“**Change Order**”). No Change Order will be effective unless agreed to in advance and bearing the signature of the parties involved.

  - .1** Contractor shall submit all Change Proposals in the form of fixed fee proposals based upon the reasonable expenditures for the Additional Work, plus the allowable

mark-up in accordance with Paragraph 6.2 below. Contractor's fixed fee proposal must be itemized and segregated by labor and materials for the various components of the Additional Work. As part of its proposal, Contractor must include signed proposals from the relevant subcontractors and vendors with sufficient breakdowns to enable Owner to verify actual costs of the Contractor and its subcontractors and vendors of every tier.

.2 Contractor shall be allowed a five percent (5%) mark-up for costs of self-performed labor and for Contractor's direct material and equipment purchases attributable to the Additional Work ("**Contractor's Mark Up**"). Contractor's Mark Up is for all overhead and profit attributable to the Additional Work. In addition, Contractor will be allowed a two and a half percent (2.5%) mark-up on the approved value of Additional Work performed by its subcontractors and vendors and Contractor will be allowed a two and a half percent (2.5%) mark-up on overhead and profit on equipment rented in performing the Additional Work either by Contractor or its subcontractors of any tier. Subcontractors shall be permitted a two and a half percent (2.5%) mark-up for costs of self-performed labor and for the subcontractor's direct material and equipment purchases attributable to the Additional Work ("**Subcontractor's Mark Up**"). Subcontractor's Mark Up is for all overhead and profit attributable to the Additional Work. As described herein, overhead and profit includes all other costs whatsoever beyond those enumerated above.

**7. 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 Owner. 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.

**8. 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 Owner, 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 27; 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.

**9. COOPERATION:** Contractor acknowledges that a portion of its Work may be performed in or adjacent to existing buildings that are in service. The Contractor shall coordinate its Services with the Parish/Facility order to minimize disruption to Parish/Facility operations. Further, Contractor acknowledges that it has reviewed and shall abide by Owner's house rules ("House Rules") which are attached hereto as **Exhibit D**. Contractor agrees that the Parish/Facility may revise the House Rules at any time and Contractor agrees to adhere to any changes. The Parish/Facility will provide Contractor with a copy of any revised House Rules. Contractor acknowledges that Owner may engage other contractors to provide work or services relating to the Project which may be carried out concurrently with Contractor's Work. Contractor shall coordinate its Work with any work being performed by other contractors.

**10. SITE CONDITIONS:** Contractor has examined the Site and the Contract Documents 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 Owner, 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.

**11. 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 Order has been approved in conformance with Paragraph 6.

**12. 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 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 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.

**13. 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. 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.

**14. EMPLOYEES:** Owner and 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 Owner and 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 Owner or 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.

**15. 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 or in or around the Parish. 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, and any other safety requirements provided for in the Supplementary Conditions attached as **Exhibit E** hereto.

**16. AUTHORIZED REPRESENTATIVE:** Owner has designated \_\_\_\_\_ (Facsimile: (\_\_\_\_) \_\_\_\_\_) as its project Manager (“**Project Manager**”) authorized to represent Owner/Parish/Facility with respect to the Project. Contractor has appointed \_\_\_\_\_ (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.

**17. TIME OF THE ESSENCE:** Contractor acknowledges that **TIME IS OF THE ESSENCE** of this Agreement. In this regard, Contractor hereby accepts and confirms that the time allowed in the Project Schedule 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 Owner’s objectives of cost, time and quality.

**18. COMPLETION GUARANTY:** Subject to any approved Change Order authorizing an extension to the Project Schedule, Contractor hereby guarantees to achieve Substantial Completion of the Work, as defined in Paragraph 26, within the Contract Time set forth in the Project Schedule. Contractor’s failure to achieve Substantial Completion within the Contract Time, except pursuant to a mutually agreed Change Order, shall constitute a breach of this Agreement. In the event that Contractor falls significantly behind the Project Schedule, Owner shall be entitled to require Contractor to implement a recovery schedule (“**Recovery Schedule**”) within five (5) days, which Recovery Schedule shall only be effective if approved by Owner and Parish/Facility.

**19. EXTENSIONS OF TIME:** If Contractor is delayed at any time in the progress of the Work by an act or omission of Owner or Parish/Facility, Owner's or Parish/Facility employees, or separate contractors employed by Owner, or by changes ordered in the Work, or by Force Majeure, as defined in Paragraph 20, or by other causes which Owner and Contractor agree may justify delay ("**Excusable Delay**"), and Contractor has provided written notice to Owner within ten (10) days of the event causing the delay, then the Contract Time shall be reasonably extended by Change Order if such Change Order is approved by Owner in accordance with Paragraph 6 of this Agreement. Contractor's failure to submit written notice within ten (10) days of the event causing the delay shall constitute a waiver of Contractor's right to assert that an Excusable Delay justified an extension of time hereunder.

**20. FORCE MAJEURE:** In the event that Contractor is prevented from performing the Work hereunder by reason of any labor disputes, fire, unusual delay in deliveries, adverse weather conditions not reasonably anticipatable, unavoidable casualties or other causes beyond Contractor's and Owner's control ("**Force Majeure**"), resulting in delays to the Project Schedule, Contractor shall be entitled to an extension of time as provided in Paragraph 19.

**21. CONCURRENT DELAYS:** Any delay in the Work caused by any act or omission of Contractor or any subcontractor or vendor of any tier, which independently affects the Contract Time will not entitle the Contractor to an extension of time as provided in Paragraph 19 ("**Contractor Delay**"). Accordingly, Contractor is only entitled to an extension of time to the extent that an Excusable Delay exceeds a Contractor Delay when they are concurrent.

**22. LIMITED DAMAGES FOR OWNER DELAYS:** To the extent that any delay is caused solely by Owner, its agents, consultants or separate contractors, which independently affects the critical path of the Project, it shall be deemed a compensable delay ("**Compensable Delay**"). All other delays, including Force Majeure delays, shall be non-compensable. Contractor agrees that any compensation for Compensable Delay shall be limited to the following costs when actually paid by Contractor: : (1) direct costs of craft labor; (2) direct costs for materials and equipment; (3) direct rental charges for machinery and equipment; (4) direct sales and use taxes; and (5) extended project overhead. Under no circumstances shall Contractor be entitled to recover any amounts for lost productivity, inefficiency, out-of-sequence work, stacking of trades, idle equipment, lost profits, extended home office overhead, interest or any other indirect costs and Contractor hereby waives any right to claim such costs under this Agreement. Any compensation to Contractor for a Compensable Delay shall be documented in a Change Order in accordance with Paragraph 6 of this Agreement.

**23. APPLICATIONS FOR PAYMENT:** Contractor will be paid monthly, based upon the progress of the Work ("**Progress Payment**") and within thirty (30) days of Final Completion as defined in Paragraph 27 ("**Final Payment**"). On or before the twentieth (20<sup>th</sup>) day of each month, Contractor shall submit its application or payment for the preceding month (CSI Masterformat "**Application for Payment**") to the Project Manager in a format acceptable to Owner and supported by such documentation to verify entitlement, including lien waivers, in the format approved by Owner. Each such monthly Application for Payment shall be based upon the approved Schedule of Values and shall identify clearly and itemize the percentage of Work satisfactorily completed by Contractor in a manner which facilitates review by Owner. Progress

Payments shall and paid within thirty (30) days after Owner's receipt of Contractor's approved Application for Payment by the Architect/Consultant and Parish/Facility. Ten percent (10%) of the approved value of all Progress Payments shall be retained by Owner. Such retention shall be released as part of the Final Payment after completion of all final corrective "punch list" work.

**24. JOINT PAYEE CHECKS:** If Contractor fails to make timely payments to any subcontractor or vendor, Owner may elect to issue one or more checks which are payable jointly to Contractor and the relevant subcontractor or vendor of any tier. Such checks shall be forwarded to Contractor for further handling. Owner may also elect to issue jointly payable checks in circumstances where a dispute exists between Owner and Contractor.

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

**26. SUBSTANTIAL COMPLETION:** Substantial completion of the Work has been accomplished when the following conditions are met ("**Substantial Completion**"):

- .1 Contractor and Owner have met and created a list of items to be completed before Final Completion, as defined in Paragraph 27 ("**Substantial Completion Punchlist**");
- .2 Contractor shall certify, on CSI Masterformat Certificate of Substantial Completion Form and signed by Contractor, that the Work has been completed consistent with the Contract Documents, subject to the Substantial Completion Punchlist;
- .3 Contractor has submitted its Application for Final Payment;
- .4 Contractor has obtained all necessary certificates of compliance from the appropriate jurisdiction;
- .5 Contractor has provided a certificate listing all subcontractors and vendors involved in providing labor and material in the completion of the Work;
- .6 Contractor and all subcontractors have delivered to Owner complete and final conditional lien waivers in a form acceptable to Owner and its lender (if any);
- .7 Contractor has delivered to Owner an indemnity, in a form acceptable to Owner and signed by Contractor, from any and all claims by all subcontractors and vendors retained by Contractor in its performance of the Work; and



.8 Contractor has complied with any and all laws and codes within the jurisdiction regarding procedures for Substantial Completion.

27. **FINAL COMPLETION:** Final completion of the Work has been accomplished when the following conditions are met (“**Final Completion**”):

.1 Parish/Facility and Owner has approved Contractor’s Application for Final Payment;

.2 Contractor has completed all items on the Substantial Completion Punchlist and Parish/Facility has accepted Contractor’s completion of the same;

.3 Contractor has submitted to Owner satisfactory proof that all claims or liens previously filed or recorded, including those for taxes, arising out of the Work, have since been released or bonded or funds have been retained by Owner to cover same;

.4 If requested by Owner, Contractor has submitted to Owner a written statement from a title company, satisfactory to Owner, that no liens appear of record arising out of the Work which have not been released or bonded;

.5 Contractor and all subcontractors have delivered to Owner complete and final unconditional lien waivers in a form acceptable to Owner and its lender (if any); and

.6 Contractor has complied with any and all laws and codes within the jurisdiction regarding procedures for Final Completion.

28. **LIENS:** Contractor covenants and agrees to keep the equipment and property of Owner and the premises of the Parish/Facility 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 or the Parish/Facility. 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 28 shall apply unless Owner has failed to pay Contractor any undisputed amount after thirty (30) days written notice of such non-payment.

29. **INDEMNIFICATION:** Contractor shall defend, indemnify and hold harmless Owner and the Parish and their respective successors and assigns and their respective officers, employees and agents (collectively referred to as the “**Indemnitees**”) from and against any and all claims, liabilities, loss, damages, fines, penalties or costs of any nature, including reasonable attorneys’ fees, whether by reason of death of or injury to any person or loss of or damage to any property or otherwise, arising out of or in any way related to the Work or undertaking performed pursuant to this Agreement, or acts or omissions of Contractor, all subcontractors and vendors, or

Contractor's employees and agents. Contractor's obligations under this Paragraph 29 shall survive termination of this Agreement.

**30. INSURANCE:** Contractor shall procure and maintain at its expense policies of insurance of the types and in amounts no less than the minimum coverage's specified in **Exhibit F** 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.

**31. PERFORMANCE AND PAYMENT BONDS: (Contracts over \$100,000)** 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 itemized and requested in the full amount of the Contract Price. The cost thereof shall be reimbursed to Contractor as an addition to the Contract Price, up to 1.25% of the Contract Price. Any cost in excess of the reimbursement from Owner shall be borne by the Contractor unless otherwise agreed to in writing by Owner.

**32. PERFORMANCE AND PAYMENT BONDS: (Contracts under \$100,000)** 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.

**33. 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, 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 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.

**.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 32.1 and 32.2 hereof. All amounts payable by Owner shall be subject to Owner's right of audit and offset.

**34. 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.

**35. 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 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 and Parish/Facility each with one (1) complete set of reproducible record prints that shall incorporate all "as-built" variations and conditions.

**36. PROPRIETARY INFORMATION:** Owner considers all information pertaining to the Work or the Project to be confidential and proprietary unless otherwise stated to Contractor in writing. Contractor shall refrain from disclosing any such information without Owner's prior written consent, including any information which is prepared or developed by or through Contractor, other contractors, Owner, architects or other consultants.

**37. ADVERTISING AND USE OF NAME:** Contractor shall not display or distribute any advertising signs or notices of any kind whatsoever at the Parish/Facility, except caution and work in progress signs, without the prior written permission of the 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 Owner or Parish/Facility. Additionally, Contractor hereby covenants and agrees not to use the name of the Parish/Facility, or any variation thereof, or any other trademarks or logotypes now or hereafter used by the Parish/Facility or Owner, in any manner without the prior written approval of the Parish/Facility or Owner. In the event of such approval, Contractor may use the name of the Parish/Facility or the Owner only in the manner and at such times as prescribed in such approval.

**38. 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.

**39. OWNER'S RIGHT TO SUPPLEMENT:** If Contractor violates or breaches any of the terms, conditions or covenants hereof, then Owner may, without prejudice to any other remedy it may have, provide any such labor and materials as are necessary to remedy such violation or breach, and Owner may deduct the cost thereof from any money due or thereafter becoming due to Contractor.

**40. CLAIMS AND DISPUTES:**

**.1 General.** 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.**

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

If to Owner: Owner's Name  
Owner's Address  
Owner's Address  
Attn: Project Manager  
Facsimile No.: ( )

If to Parish/Facility: Parish Name  
Parish Address  
Parish Address  
Attn: Project Manager  
Facsimile No.: ( ) Name

If to Contractor: Name of Contractor  
Address of Contractor  
Address of Contractor  
Attn: Contractor's Representative  
Facsimile No.: ( )

The parties hereto shall be responsible for notifying each other of any change of address or facsimile number in accordance with this Paragraph 41.

**42. 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.

**43. 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.

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

**45. 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.

**46. GOVERNING LAW:** The validity, interpretation and effect of this Agreement shall be governed by laws of the State of Hawaii.

**EXHIBIT A**  
**Scope of Work**

**Contractor shall provide or obtain all labor, materials and permits necessary to <<describe job>> at <<Parish Name>>, <<Parish Address>>. All work shall be performed in a first-class workmanlike manner, in compliance with all applicable laws or codes, and the materials and equipment provided shall be new and free from defects in workmanship and/or materials and equipment.**

**Contractor's Bid No. <<number>> dated <<date>> is attached hereto.**

**EXHIBIT B**  
**Project Schedule**

Contractor shall commence work no later than                     .

Substantial Completion shall occur no later than                     .

Final Completion shall occur no later than                     .

**EXHIBIT C**  
**Schedule of Values**

**[Contractor to provide]**

These Schedule of Values typically contain provisions for the description of the work, value of the completed work, value of materials stored and the value of the balance to finish the work



**EXHIBIT D**  
**House Rules**

The following is a code of conduct with which all construction related personnel (“**Construction Personnel**”) shall comply with while on Site. Contractor shall provide a copy of these rules to each of its subcontractors, suppliers and delivery companies. All references to Construction Personnel hereinafter shall apply to Contractor, its subcontractors, sub-consultants and vendors and each of their respective employees (as applicable). Contractor shall be responsible for assuring that all Construction Personnel abide by these rules. Owner shall not have any responsibility whatsoever for delays in the Work caused by violations of these rules by Construction Personnel.

**2. PARISH/FACILITY OPERATIONS.** The Project may be performed in a Parish/Facility that will continue to conduct normal operations. Accordingly, Contractor shall perform its Work in such a manner that the operations, character and atmosphere of the Parish are not materially impaired, except as may be reasonably necessary for execution of the Work. Contractor shall ensure that Construction Personnel conduct themselves in an appropriate manner so as not to impair the Parish.

**3. SAFETY.** Contractor shall exercise good judgment and practice safety at all times for the protection of the Construction Personnel, as well as that of Parish/Facility employees, pedestrians, vehicles and other property. Contractor shall conduct safety meetings weekly and maintain records of these meetings. Such records shall be made available to the Parish/Facility and the Project Manager upon request.

**4. PARISH/FACILITY SECURITY.** All Construction Personnel must enter and leave the Project Site from the entrance designated for such purpose. Construction Personnel shall dress consistently with their occupational needs, craftsman status and the Parish/Facility’s reasonable requirements. All Construction Personnel are subject to inspection by the project manager whenever they leave the Parish/Facility premises.

**5. WORK AREA.** The presence of Construction Personnel shall be restricted to those areas in which Work is being performed, unless they have prior approval. All areas outside the construction site are off limits to Construction Personnel. Failure to comply with these requirements will first result in a warning and, upon the second occurrence, removal of offending personnel from the premises for the duration of the Project.

**6. GENERAL CONDUCT.** Construction Personnel shall exhibit conduct befitting the Parish/Facility and shall show deference to Parishioners and employees. All Construction Personnel shall refrain from the use of profanity on Parish/Facility property. No Radios are permitted. Construction Personnel shall be evicted from the Parish/Facility premises permanently if found to be using, possessing or under the influence of alcohol or narcotics. Contractor shall ensure that none of Owner’s personal property (*e.g.*, furnishings, fixtures and/or equipment) will be removed from the Parish/Facility unless property passes are issued by Parish/Facility. Restroom facilities shall be provided by the Contractor. Use of other toilet facilities is

prohibited. Telephones are not to be used unless prior written authorization has been granted by Parish/Facility. Construction Personnel shall exercise particular care in order to avoid damaging phones, phone wires, and TV cables. At the end of the work day Construction Personnel shall turn out all lights in work areas, close windows and lock doors. Lunch and coffee breaks will be taken in areas designated by Contractor and approved by Parish/Facility.

**7. FIRE PREVENTION.** Smoking shall be allowed only in designated smoking areas, in accordance with State Law. Failure to comply with this requirement will result in the offending individual's eviction from the premises by the Parish/Facility. Contractor shall provide sand buckets and fire extinguishers for use in the designated smoking areas. Contractor shall use appropriate care and caution in the execution of the Work to prevent building fires. All heat-producing work shall be closely supervised, and Contractor will provide a fire watch and appropriate a fire detection and extinguishing equipment in addition to that provided by Owner, if reasonably necessary. Contractor shall ensure that all areas where heat-producing Work is being performed are properly ventilated. Personnel performing fire watch duties should be informed of alarm box locations and fire hose cabinet locations.

**8. STORAGE.** Contractor shall supply a lock box or boxes for the safekeeping of construction equipment (*e.g.*, tools). There will be no storage area supplied by the Parish/Facility other than the designated work areas and lock box area. Contractor shall restore all areas used for on-site storage and construction activities to their pre-construction condition, excluding ordinary wear and tear.

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

**10. COMMUNICATION.** Communication with Parish/Facility is essential. It is Contractor's responsibility to keep Parish/Facility reasonably apprised of the activities being performed each day.

**EXHIBIT E**  
**Supplementary Conditions**

**These conditions supplement and clarify terms and conditions in the Agreement. The terms of the Agreement shall control in the event of a conflict or inconsistency.**

1. Contractor shall supply all materials, labor, tools, equipment, and supplies required to complete the total Project in accordance with the drawings, specifications and other Contract Documents. In addition, Contractor shall provide all labor, tools and equipment for installation of all Owner supplied items. Prior to beginning an area, Contractor shall list any deficiencies, (i.e., damaged or missing items) and report to Project Manager. Contractor shall be responsible for replacing/repairing all items not noted at its sole cost and expense.
2. Contractor shall provide all coordination required for completion of the Project including provision of a full time, on-site Project superintendent and a Project manager. Contractor shall be responsible for conducting, taking and distributing minutes of weekly Project meetings.
3. Required submittals shall be made in accordance with the drawings, specifications and other Contract Documents. In the event of conflict between documents provided by Owner's Architect/Consultant and this Agreement, the Agreement shall take precedence. Owner's Project Manager shall be provided with complete copies of all submittals made directly to Owner's Architect and/or other consultants.
4. The Work shall include the receiving, unloading, checking, counting, storing if required, signing for, handling, hoisting, safe keeping and distributing of any and all items furnished by Owner, Parish/Facility for installation by Contractor. Contractor shall dispose of any crates, boxes, and/or debris generated by Owner, Parish/Facility items that are installed by this Contractor.
5. The Parish/Facility Certificate of Occupancy will remain in force and will be valid during the entire construction phase, therefore, Contractor will take extreme care in maintaining all existing life safety systems, such as (but not limited to) sprinklers, stand pipes, alarm panels and devices, Fire Department connections, elevator in readiness emergency power, required means of egress, and all fire lane access. Contractor will reconnect expeditiously any such system, which is put out of order by Contractor, or any of Contractor's subcontractors at no cost to Owner. Contractor's proposal includes any necessary temporary and/or permanent connections of new life safety systems included in the scope of this Agreement into existing systems. Contractor will notify the Parish/Facility in writing at least seven (7) days in advance of any system shutdown.
6. Contractor will develop a comprehensive phase plan for all activities that affect Parish/Facility operations. This plan shall be submitted to Project Manager and shall be continuously maintained to reflect current Parish/Facility operation requirements through the course of the Work.

- 7.** Subject to the terms of the Agreement, Contractor is responsible for all shift work, overtime and out of sequence work due to discontinuous operations required to meet schedule dates and the logistical requirements of the Project. All costs associated with this Project are included in the Contract Price. Absolutely no claims will be entertained for shift work, overtime or out of sequence work required to meet overall schedule and interim milestone dates.
- 8.** Contractor shall be responsible for providing any and all required lodging and meals at its sole cost and expense.
- 9.** Contractor shall secure and pay for a dumpster for all refuse and waste material. The dumpster location will be determined by the Parish/Facility.
- 10.** All finishes are to be protected during Contractor's Work.
- 11.** If required for the Project (as reasonably determined by Parish/Facility) Contractor shall erect and maintain dust-barriers (as reasonably directed by Parish/Facility) to separate occupied and public areas from areas of construction. Barriers shall remain in place during construction unless otherwise directed by Project Manager. Contractor shall provide necessary protection for phased work as required by Parish/Facility operations. Contractor shall provide adequate protection for existing finishes and Owner furnished equipment.
- 12.** In the event of a utility shutdown, Contractor will diligently schedule work with the Parish/Facility operations staff through the Project Manager. Contractor will give the Project Manager at least seven (7) days advance notice of any proposed utility shutdown to operational areas. Utility shutdowns may be permitted only after normal working hours at discretion of the Parish/Facility operations staff.
- 13.** Contractor will be responsible for protecting elevators being used to perform the Work. Elevator use will be shared with Owner personnel and other contractors.
- 14.** Contractor is to provide security as reasonably required by Parish/Facility and Project Manager. Contractor shall maintain strict security of all Owner supplied material (furniture and hardware) and existing materials. Contractor will replace, at its sole cost and expense, all lost, stolen, damaged and misplaced items.
- 15.** Contractor shall comply with all of the legal regulations, including, but not limited to, OSHA safety regulations and regulations of municipal, city, local, and other government agencies having jurisdiction concerning the Work. Contractor shall give all notices and comply with all laws, ordinances, codes, rules and regulations bearing on the conduct of the Work. If Contractor performs any Work that is contrary to such laws, ordinances, codes, rules, and regulations, it shall make all changes to comply therewith and bear all costs arising there from.
- 16.** All permits, except the actual building permit, required for any part of Contractor's Work, including those to be obtained in the Owner's name, shall be procured and paid for by Contractor.

**17.** Contractor shall do pre-punch list work prior to the Substantial Completion Punchlist and shall complete punch list items to maintain schedule. Completed and approved punch list work shall be signed off by Contractor, with a written copy provided to Project Manager.

**18.** Contractor shall provide a list of all items remaining when the job is completed, including quantities and sizes.

**19.** Contractor shall thoroughly clean, vacuum, and dust areas of construction prior to turnover.

**EXHIBIT F**  
**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 \$2,000,000 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 scope of 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, at its option, purchase insurance to cover its personal property. In no event shall Owner be liable for any damage to or loss of personal property sustained by Contractor, whether or not it is insured, even if such loss is caused by the negligence of Owner, its employees, officers, Managers, or agents.

Contractor waives on behalf of itself and its insurers all rights against Owner and its agents, officers, Managers, 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 with evidence of compliance with the above requirements. Thirty (30) days' written notice to Owner prior to cancellation or material change is required. The words "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives" shall be deleted from a certificate's cancellation provision, if applicable. Contractor shall further provide certified copies of all insurance policies required above within ten (10) days of Owner's written request for said copies.