

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 considerations, the parties agree as follows:

1. Description of Work. Contractor shall perform the work (the "Work") described in Exhibit A attached hereto (the "Project"). 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. Owner agrees to pay Contractor to complete the Project a total contract price as set forth below (the "Contract Price"), subject to adjustment pursuant to Section 9 hereof. Payment of this amount shall be paid pursuant to the schedule set forth in Exhibit B attached hereto. Final payment shall not become due until the Contractor submits to the Owner releases and waivers of liens, and data establishing payment or satisfaction of obligations, such as receipts, claims, security interests or encumbrances arising out of the Contract. The Contract Price shall be [select one]:

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 Work to be performed pursuant to this Contract.

3. Starting and Completion Dates.

(a) Contractor shall commence Work on the Project on _____, 20__.

(b) Contractor shall complete the Project on or before _____, 20__.

4. Contract Documents. The contract documents ("Contract Documents") on which the agreement between Owner and Contractor is based, consist of:

(a) this Contract and the Exhibits attached hereto (provided, however, to the extent Exhibit A includes a Proposal, 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);

- (b) Work Change Orders issued pursuant to Section 9, if any.

The parties intend that the Work to be performed by Contractor pursuant to this Contract shall include all labor, materials, equipment, supplies, and all other items necessary for the execution and completion of the Project.

5. Responsibilities of Contractor. Contractor's duties and rights in connection with the Project are as follows:

(a) Responsibility for and Supervision of Work. Contractor shall be solely responsible for all Work performed under this Contract, including the techniques, sequences, procedures and means, and for coordination of all Work. Contractor shall prosecute the Work diligently, supervise and direct the Work to the in accordance with the highest industry standards, and give the Project all attention necessary for such proper supervision and direction, and complete the Work in a thorough and workmanlike manner.

(b) Discipline and Appropriate Skills. Contractor shall maintain at all times strict discipline among its employees and subcontractors, and agrees not to employ for work on the Project any person unfit or without sufficient skill to perform the job for which such employee was employed.

(c) Furnishing of Labor Materials, etc. Contractor shall provide and pay for all labor, materials and equipment, including tools, construction equipment, and machinery, transportation and all other facilities and services necessary for the proper completion of the Project in accordance with the Contract Documents.

(d) Taxes, Licenses and Permits. Contractor shall pay all taxes required by law in connection with the Work and completion of the Project and shall secure, at its expense, all licenses and permits necessary to conduct the Work and undertake the Project, and shall, at its expense, furnish Owner with all necessary affidavits from subcontractors, laborers and materialmen.

(e) Compliance with Laws and Regulations. Contractor shall comply with all laws and 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. If any of the Contract Documents are at variance therewith, Contractor shall notify Owner promptly on discovery of such variance.

(f) Safety Program. The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs, including without limitation all those required by OSHA and other laws, regulations, ordinances, codes, or local authorities in connection with performance of this Contract.

(g) Clean-Up. 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 Project, together with all of its tools, equipment, machinery and surplus materials.

Contractor agrees, on completion of its work at the site, to conduct general clean-up operations, including the cleaning of all glass surfaces, steps and interior floors and walls.

(h) Covenant Against Liens. Contractor shall keep all of the property of the Owner and every part thereof, 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. If, because of any act or omission of Contractor, any such lien shall be filed, Contractor shall, at its own cost and expense, cause the same to be discharged of record or bonded off within thirty (30) days after the filing thereof; and Contractor shall indemnify and save harmless Owner against and from all costs, liabilities, suits, penalties, claims and demands, including reasonable counsel fees, resulting therefrom. Owner shall have the right to retain out of any payment then due or thereafter to come due, an amount sufficient to indemnify completely the Owner against such lien or claim, including all costs, liabilities, suits, penalties, claims and demands, including reasonable counsel fees, resulting therefrom.

(i) Certification of No Asbestos Containing Materials Or Work.

(i) Contractor certifies that no asbestos containing materials or work will be provided, installed, furnished or added to the Project. The Contractor shall take all necessary measures to insure that all Contractor employees, suppliers, fabricators, materialmen, subcontractors, or their assigns, comply with this requirement.

(ii) All materials used in or on the Project 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.

Every subcontractor shall provide a notarized statement that no ACBM has been used, provided, or left on the Project.

(j) Encountering Asbestos or Suspected Asbestos. In the event that asbestos-containing materials or suspected asbestos-containing materials are discovered in any area included within the Project, 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 shall 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 shall become liable for all costs associated with the cleaning and clearance for occupancy of the Project Site.

(k) 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.

6. 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. 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) Liability Insurance. Contractor shall procure and maintain during the period of construction comprehensive liability insurance and property damage insurance with the following limits:

- | | | |
|------|--------------------|----------------|
| (i) | Each Occurrence: | \$1,000,000.00 |
| (ii) | General Aggregate: | \$2,000,000.00 |

The comprehensive liability insurance shall cover Contractor and 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) 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.

(f) 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.

(g) 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.

7. Warranty.

(a) Contractor Warranty. Contractor warrants that the Work completed under the Contract, and any Change Orders thereto, shall be in accordance with the plans and specifications described in Exhibit A attached hereto and shall conform to the specific requirements, performances and capacities indentified in the Contract Documents, and that the Project and each of its components will be free of defects in materials or workmanship for a period of _____ years from the date of final payment. Contractor represents and warrants to Owner that all materials used in the Project, and made a part of the Project, 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. It is agreed between the parties hereto 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.

(b) Manufacturer Warranty. In addition, Contractor will assign and pass through to Owner warranties from manufacturers of products installed in the Project. Such manufacturers' warranties are attached hereto as Exhibit C.

8. Indemnity. Contractor hereby agrees to assume all risks incident to its work in connection with the Project 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 a breach by Contractor 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.

(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 exists, 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.

(c) When the Owner terminates the contract for one of the reasons stated in Section 10(a), the Contractor shall not be entitled to receive further payment until the Work is finished and shall be liable to Owner for losses and damages resulting from such termination.

11. Notices. Whenever Owner or Contractor shall make any demand or serve any notice of a claim or of 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) when received or (ii) two (2) postal delivery service days after the same is sent, postage prepaid, by United States certified mail, addressed to:

If to Owner:

If to Contractor: _____

12. Inspection. Contractor shall permit Owner to visit and inspect the Work site at all times during normal business hours, provided that Owner shall not interfere with the Work of Contractor, its employees or subcontractors.

13. Time of the Essence. Time shall be of the essence throughout this Contract.

14. Complete Agreement. This Contract constitutes the entire agreement between the parties hereto. To the extent a Proposal is attached to Exhibit A to serve as a description of the Work to be performed pursuant to this Contract, no other provisions contained in such Proposal shall become part of this Contract, and all such terms shall be considered rejected by Owner.

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

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

17. Relationship. The Contractor acknowledges and agrees that no employment or other similar relationship is established hereby and that the Contractor shall 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.

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

[Signature Page Follows]

[Signature Page to Contract to Perform Work]

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

OWNER:

By: _____

Name: _____

Title: _____

CONTRACTOR:

By: _____

Name: _____

Title: _____

Exhibit A

Description of Work to be Performed

[To the extent a Contractor proposal or quotation may be attached to Exhibit A to serve as a description of the Work to be performed pursuant to this Contract, no other provisions contained in such proposal or quotation shall become part of this Contract, and all such terms shall be considered rejected by Owner.]

Exhibit B
Payment Schedule

Exhibit C
Manufacturer Warranty