

**AGREEMENT FOR PRE-CONSTRUCTION SERVICES AND
CONSTRUCTION CONTRACT
FOR A CONSTRUCTION MANAGER AT RISK**

Date: _____

Owner: The Most Reverend Joe S. Vasquez, Bishop of the Catholic Diocese of Austin, and His Successors in Office for the benefit of the Parish.

Parish: _____

**Owner's Construction
Manager:**

Patrick Baker
6225 US Highway 290 E
Austin, Texas 78723
512-949-2400; patrick-baker@austindiocese.org

**Parish's Construction
Representative:**

Contractor (CMR):
Contractor's Address:

_____, Texas _____

Contractor is a Construction Manger of Risk (CMR). "CMR" means "Contractor" and "Contractor" means "CMR".

Architect/Engineer:

Architect/Engineer's Address:

_____, Texas _____

Project:

The Project is generally described as follows and is also referred to as the "Work":

_____. The Work is more particularly described in the Contract Documents.

Approved Project Budget: \$ _____

Contract Documents: The following documents are collectively known and referred to as the “Contract Documents” and are incorporated into agreement:

- (1) this agreement and any amendments;
- (2) General Conditions of the Contract for Construction dated _____ (the “General Conditions”);
- (3) Drawings, Plans, and Specifications identified in this agreement or as later made part of this agreement;
- (4) Construction Documents developed pursuant to this agreement;
- (5) Subcontractors’ and material suppliers’ bids obtained pursuant to this agreement; and
- (6) CMR’s Proposal.

In event of a conflict between any of the Contract Documents, each shall prevail in the order as listed above.

Drawings, Plans & Specifications:	<u>Name of Document</u>	<u>Date</u>	<u>Professional</u>
Architectural:	_____		
Civil Engineer:	_____		
Landscape:	_____		
Mechanical, Electrical, Plumbing:	_____		

The foregoing are collectively known as the “Drawings, Plans, and Specifications” or as the “Plans and Specifications.”

CMR’s Compensation

for Preconstruction Services: \$ _____ payable after CMR develops and delivers the Guaranteed Maximum Price to Owner and when all CMR’s preconstruction services under this agreement are complete. The CMR’s Compensation for Preconstruction Services shall be invoiced separately and shall not be part of the GMP.

CMR’s Compensation

for Construction Services: If Owner engages CMR to be the general contractor for the construction of the Project, Owner shall pay CMR _____% of the cost of the Work CMR is to perform as the general contractor.

Guaranteed Maximum Price:

The Guaranteed Maximum Price, also referred to as the “GMP,” shall be the cost of the Project, as defined in Paragraph 4, plus CMR’s Compensation for Construction Services. The GMP excludes CMR’s Compensation for Preconstruction Services. The GMP shall be calculated using current laws, codes, regulations and the Construction Documents.

TERMS AND CONDITIONS

1. CMR will work with Owner and Parish through their construction managers in an effort to successfully complete the construction of the Project for a cost not to exceed the Approved Project Budget.
2. The Approved Project Budget shall not be increased except by a written amendment to this agreement executed by Owner.
3. CMR will perform the following preconstruction services.
 - A. CMR shall:
 - (1) advise Owner and Architect/Engineer on all matters related to the use of the site on which the Project is to be constructed, improvements to the site, materials to be used in the construction, and the design or choice of building systems or equipment to be used in the construction;
 - (2) provide recommendations to Owner and Architect/Engineer concerning the feasibility of construction of the Project, materials to be selected for the construction of the Project, labor costs, the availability of materials, time needed for obtaining materials, the installation of such materials, and costs of the Project, including but not limited to costs of alternatives in the preliminary designs or budgets as well as possible cost savings; and
 - (3) review the Drawings, Plans and Specifications for the purposes of providing recommendations about the Project to Owner and to identify possible errors or conflicts in the Drawings, Plans and Specifications.
 - B. Based upon the Architect/Engineer's schematic design and design development drawings, CMR will prepare an initial assessment of probable construction cost. The initial assessment of probable construction cost will be used to determine whether any disparities exist between the Approved Project Budget and the costs projected by the CMR.
 - C. Should CMR's estimate(s) or assessment(s) indicate a higher probable cost than the Approved Project Budget, then the Parish, Architect/Engineer, and CMR will develop a consensus proposal for either modifying the scope of the Project to meet the Approved Project Budget or increasing the Approved Project Budget. Any increase in the Approved Project Budget must be authorized by written amendment to this agreement executed by the Owner.
 - D. CMR will work with the Parish, Owner, and Architect/Engineer to determine, as additional construction documents are developed, whether the Project can be constructed within the Approved Project Budget. CMR shall at all times that this agreement is in effect provide the Architect/Engineer and Owner with CMR's professional opinions regarding alternative systems, materials, means, methods, and other items that might achieve the desired Project, but result in cost savings.

- E. When the Construction Documents are approximately 60% complete, CMR will perform a detailed construction cost analysis to determine whether the Project remains feasible within the Approved Project Budget. If cost estimates are shown to be in excess of the Approved Project Budget, CMR will offer to Architect/Engineer and Owner a written proposal for cost reduction. CMR will also provide a written analysis indicating the reasons why cost estimates exceed the Approved Project Budget. After receiving the written proposal and analysis, Owner shall promptly notify CMR if Owner elects:
- (1) to not to proceed with the Project, which notice shall terminate this Agreement;; or
 - (2) to proceed with the Project and if so the CMR and Owner shall promptly execute any appropriate amendments to the Contract Documents and Owner shall instruct Architect/Engineer to complete the Project's Construction Documents reflecting any applicable revisions in the scope or detail of the Project.
- F. Upon completion of the final Construction Documents, CMR shall render a written opinion as to whether the Project remains feasible within the Approved Project Budget. Owner shall then promptly notify CMR of its election:
- (1) to not proceed with the Project, which notice shall terminate this Agreement; or
 - (2) to proceed with the Project and if so, the CMR and Owner shall promptly execute any appropriate amendments to the Contract Documents and Owner shall instruct Architect/Engineer to issue the final Construction Documents to CMR for the development of a GMP for the Project.
- G. If Owner elects to instruct Architect/Engineer to issue final Construction Documents, CMR will develop the GMP in consultation with Owner and Parish through their construction managers. CMR will, upon request, provide copies and all information to Owner and Parish related to any bid, insurance cost, general conditions, cost estimates, and financial information that CMR uses to develop the GMP.
- (1) CMR shall obtain competitive pricing (bids) from not less than 3 subcontractors or material suppliers reasonably acceptable to Owner for each and every trade or construction material with a construction value of \$1,000.00 or greater. CMR may provide a bid to perform any construction itself if it submits a proposal or bid in the same manner as any subcontractor.
 - (2) Owner and Parish retain the right to review each subcontractors' and material suppliers' bid.
 - (3) Owner has the right to reject or select, in its sole discretion, any of the subcontractors' and material suppliers' bids submitted.
 - (4) Where it is impractical or not possible for CMR to obtain 3 bids, CMR must promptly notify Owner in writing before completing its development of the GMP.
 - (5) CMR will develop the GMP from:
 - (a) the bids approved by Owner;
 - (b) CMR's cost to satisfy Owner's General Conditions;
 - (c) any allowances or contingencies approved by Owner; and
 - (d) CMR's Compensation for Construction Services.
 - (6) Together with its proposal for or estimate of GMP, CMR shall provide Owner:
 - (a) a tabulation of all subcontractors' bids listing each subcontractor, their bid, and the CMR's recommendation;
 - (b) a detailed listing of general condition items;

- (c) a summary sheet in CSI format including all costs, allowances, contingencies, and contractors' fees in the GMP; and
 - (d) a list of any clarifications or assumption the CMR uses to establish the GMP.
 - (7) If the GMP is not within the Approved Project Budget, CMR shall promptly provide Owner a written explanation as to why the GMP exceeds the Approved Project Budget and offer suggestions for cost reductions.
 - H. After CMR develops the GMP, Owner shall submit the GMP to its building commission for consultation with and recommendation to Owner. Thereafter, Owner shall notify CMR of Owner's election to:
 - (1) approve the construction of the Project and authorize CMR to proceed as the general contractor for the Project and the parties shall execute an amendment to this agreement on the then current "Guaranteed Maximum Price Amendment" form published by the Diocese of Austin, (a copy of the Guaranteed Maximum Price Amendment form, as currently published, is attached for illustrative purposes); or
 - (2) terminate this agreement and the neither party shall have any further rights or obligations under this Agreement.
 - I. If Owner elects to approve the construction of the Project pursuant to Paragraph H(1), but the parties are not able to or fail to promptly execute the then effective Guaranteed Maximum Price Amendment on the form published by the Diocese of Austin, this agreement shall terminate and neither party shall have any further rights or obligations under this Agreement. The parties must execute the Guaranteed Maximum Price Amendment before CMR is authorized to begin any construction work on the Project.
 - J. The GMP shall not be changed except:
 - (1) that it shall be modified for changes in the Project pursuant to the Contract Documents (e.g., change orders); or
 - (2) as authorized by Owner in writing in an amendment to the Contract Documents.
 - K. In making a determination as to whether to terminate this Agreement under any provision under this Paragraph 3, Owner makes no representation that the Project will not be built using a different contractor or construction manager at risk. The parties recognize and agree that Owner has the sole discretion to choose a different contractor to build the Project other than CMR.
4. Cost of the Project.
- A. The term "Cost of the Project" shall mean costs necessarily incurred in the construction of the Project and shall include:
 - (1) all engineering and related fees and expenses incurred in constructing the Project and borne by the contractor;
 - (2) actual wages paid for labor in the direct employ of the contractor in the performance of the Work.
 - (3) actual salaries of Contractor's:
 - (a) employees when stationed at the Project field office who are fully and solely dedicated to work on the Project;

- (b) employees engaged away from the field office fully and solely dedicated to expediting the production or transportation of material and equipment; and
- (c) employees who are not fully and solely dedicated to work on the Project or expediting the production or transportation of material and equipment provided, however, that the Cost of Project shall only include the prorated amount of such employee's salary for actual documented time dedicated to the Project;
- (4) actual cost of all employee benefits and taxes for such items as unemployment compensation and social security, insofar as such cost is based on wages, salaries or other remuneration paid to employees of the Contractor working on the Project;
- (5) actual cost of all materials, supplies and equipment incorporated in the Project, including costs of transportation;
- (6) payments made by the Contractor to subcontractors for the Work;
- (7) rental charges incurred by Contractor for necessary machinery and equipment, exclusive of hand tools, used at the site of the Work, including installations, repairs and replacements, dismantling, removal, costs of lubrication, transportation and delivery costs;
- (8) actual cost of electricity, water, telephone and internet services used in performance of the work;
- (9) actual cost of the premiums for all bonds and insurances which the Contractor is **required** to procure by Owner;
- (10) sales, use, gross receipts or similar taxes (but not income, franchise or similar taxes) related to the Project, imposed by any governmental authority, and for which the Contractor is liable;
- (11) permit fees, and licenses, for which the Contractor is responsible;
- (12) actual cost of office supplies and materials purchased exclusively for the Project (does not include any allocation of general office supplies) and,
- (13) actual cost of removal of all debris, general and final clean-up of the Project.

B. The Cost of Project does not include:

- (1) salaries or other compensation of the Contractor's
 - (a) employees except employees listed in Paragraph 4A;
 - (b) employees not dedicated to the performance of the Work;
 - (c) project executive or other high level supervision;
 - (d) officers or owners not performing the duties of a Project Manager or Project Superintendent;
- (2) bonuses, profit sharing and other compensation;
- (3) general operating expenses of the Contractor's offices including insurance premiums not directly incurred because of the Project;
- (4) any part of the Contractor's capital expenses, including interest on the Contractor's capital employed for the Project;
- (5) overhead or general expenses of any kind, except as may be expressly included in Paragraph 4A;
- (6) any cost, including transportation and maintenance, of materials, supplies, equipment, temporary facilities and hand tools not owned by the Contractor or any workmen, which are not consumed in the performance of the Work;
- (7) losses, expenses or damages to the Project to the extent not compensated by insurance or otherwise;

- (8) the cost of corrective work to the Project caused by Contractor or a subcontractor;
 - (9) the cost of labor, material, equipment and any other cost associated with pre-construction services;
 - (10) dues, fees and costs associated with membership in a professional organization such as AGC or ABC;
 - (11) the cost of meals, entertainment, team-building activities, and promotional activities;
 - (10) costs in excess of the Guaranteed Maximum Price.
5. Owner reserves the right to audit CMR's financial records related to the Project for a period of 2 years after final payment is made under the Contract Documents, including but not limited to job cost records, payroll records, materials invoices, subcontracts, payment records, timesheets, insurance records and general conditions cost.
6. Owner reserves the right, without cause, to cancel the Contract Documents or to suspend, delay or interrupt the Project in whole or in part for such period of time as the Owner may determine in its sole discretion. Upon such cancellation, suspension, delay or interruption, CMR shall be equitably paid for Work completed, whereupon neither party shall have any further rights or obligations under the Contract Documents.

OWNER:

CONTRACTOR:

The Most Reverend Joe S. Vasquez,
Bishop of the Catholic Diocese of Austin
and His Successors in Office

By: _____

By: _____

Name: Very Reverend James A. Misko

Name: _____

Title: Vicar General and Attorney-in-Fact for
the Most Reverend Joe S. Vásquez

Title: _____

Date: _____

Date: _____