

## PRECONSTRUCTION SERVICES AGREEMENT (DRAFT)

AGREEMENT made this 30th day of July, in the year 2018, between St. Peter Catholic Church the "Owner", and **Contractor Name (abbreviation)**, the "Preconstruction Manager", for Preconstruction Services for Cost Estimating Schematic Design Drawings ONLY, as may be authorized by the Owner in connection with the design and construction of St. Peter Chapel & Addition; in 155 N. Jefferson St., Monument, CO 80132, referred hereafter to as the "Project". The Owner and the Preconstruction Manager agree as set forth.

### ARTICLE 1 GENERAL

- 1.1. The Preconstruction Manager as agent of the Owner shall provide services in accordance with the terms and conditions of this Agreement. The Preconstruction Manager accepts the relationship of trust and confidence established between it and the Owner by this Agreement, and covenants with the Owner to furnish Preconstruction Manager's professional skill and judgment and to cooperate with the Design Architect and Architect's in furthering the interest of the Owner. Preconstruction Manager agrees to furnish efficient business administration and supervision, and to use its professional efforts at all times and in an expeditious and economical manner consistent with the interest of the Owner.
  - 1.1.1. Under this Agreement, the Preconstruction Manager shall provide Preconstruction Services as described in Article 3 for the design and construction of the Project, and all associated site improvements, all located in 155 N. Jefferson St., Monument, CO 80132.

### ARTICLE 2 - COMPENSATION TO PRECONSTRUCTION MANAGER

- 2.1. The compensation to Preconstruction Manager for Basic Services described in Article 3 shall be calculated in accordance with the following:
  - 2.1.1. Notwithstanding anything to the contrary herein contained, the total cost payable for the Preconstruction Services performed and incurred hereunder shall not exceed \$ **Preconstruction Fee**.
  - 2.1.2. All sums due hereunder, including payment for Basic Services are subject to the terms and conditions set forth above, and shall be payable, and pursuant to any termination as provided for in Article 9.
  - 2.1.3. ~~When compensation is based on a percentage of Construction Cost and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, based on (1) the lowest bona fide bids or negotiated proposals, or (2) if no such bids or proposals are received, the latest approved estimate of such portions of the Project.~~
  - 2.1.4. Payments on account of the Preconstruction Manager's Additional Services and for Reimbursable Expenses shall be made monthly upon presentation of the Preconstruction Manager's statement of services rendered or expenses incurred.
  - 2.1.5. No deductions shall be made from the Preconstruction Manager's compensation on account of penalty, liquidated damages or other sums withheld from payments to Contractors, or on account of the cost of changes in Work other than those for which the Preconstruction Manager has been found to be liable.

### ARTICLE 3 - TERMS AND CONDITIONS OF AGREEMENT BETWEEN OWNER AND PRECONSTRUCTION MANAGER

- 3.1. The Preconstruction Manager's Basic Services will consist of Preconstruction Services such as: Estimating, Scheduling, Value Engineering, and the application of Construction "know-how." Specifically, the duties of the Preconstruction Manager are described below:
  - 3.1.1. Define the Preconstruction goals.
  - 3.1.2. Assist in creating the project strategy.
  - 3.1.3. Establish an informational system to facilitate communication, control and coordination in a form acceptable to the Owner.
  - 3.1.4. Attend necessary meetings and work sessions with the Owner, Architect and Owner's consultants to gather and disseminate information on the Project.

- 3.1.5. Immediately develop an overall project schedule in a form acceptable to the Owner that coordinates and integrates the Architect's design efforts with construction schedules.
- 3.1.6. Identify, set decision dates, and make recommendations to the Owner and the Architect on procurement of the long lead delivery items.
- 3.1.7. Monitor the overall Project schedule to keep it up to date, and identify deviations and changes.
- 3.1.8. Prepare a budget estimate of construction costs in a form acceptable to the Owner, reflecting the anticipated scope of the Project and isolate costs for the major building components.
- 3.1.9. Provide recommendations and consultation from a construction viewpoint as to how to construct the Project, recognizing the Owner's operational needs and the Architect's design schedule.
- 3.1.10. Provide value engineering and life cycle costing for alternative systems and equipment mutually agreed upon in order to determine the best possible value to the Owner.
- 3.1.11. Review the drawings and specifications as they are being prepared, recommending alternative solutions whenever design details affect budget, construction feasibility or schedules, without, however, assuming any of the Architect's customary responsibilities for design.
- 3.1.12. Assist the Owner and Architect as necessary in interfacing with the building department and other local authorities having jurisdiction over the Project.
- 3.1.13. Prepare and monitor estimates of the construction cost based on a quantity survey of the drawings and specifications during the design development phase and advise the Owner and the Architect if it appears that the Project Budget would not be met, and make recommendations for corrective action.
- 3.1.14. Prepare a construction billing and cash flow forecast and update with each construction cost estimate report.
- 3.1.15. Prepare a detailed schedule for the construction operations of the Project, including realistic activity sequences and durations, bid packages, permits, allocation of labor and materials, processing of shop drawings and samples, delivery of products requiring long lead time procurement, and include the Owner's occupancy and furnishings and equipment installation interface requirements.
- 3.1.16. Prepare a detailed layout of the access locations, service roads, fences, gates, barricades, office and storage trailer locations, and submit to the Owner and Architect for approval.
- 3.1.17. Make recommendations to the Owner and the Architect regarding the division of work in the drawings and specifications to facilitate the bidding and awarding of subcontracts and supplier contracts.
- 3.1.18. Review drawings and specifications with the Architect to (1) eliminate areas of conflict and overlapping in the work to be performed by the various subcontractors, (2) verify that all work has been included, and (3) allow for phased bidding and construction.
- 3.1.19. Prepare bid criteria for the evaluation of subcontractors.
- 3.1.20. Review and pre-qualify subcontractors and vendors.
- 3.1.21. Prepare approved subcontractor and vendor lists for Owner/Architect approval.
- 3.1.22. Stimulate the interest of pre-qualified subcontractors and vendors to bid on the various packages of the project.
- 3.1.23. Prepare bidding instructions and bid forms.
- 3.1.24. Conduct subcontractor pre bid conferences if necessary.
- 3.1.25. Issue drawings, specifications and addenda for bidding.
- 3.1.26. Receive and evaluate bids.
- 3.1.27. Negotiate and award subcontracts and purchase orders.
- 3.1.28. Visit proposed manufacturing, fabrication and testing facilities to investigate production capabilities, quality of work and ability to deliver critical products to the Project on time.
- 3.1.29. File construction documents with the building department, monitor and expedite the plan checking process, and obtain the building permits on a timely basis for the phased construction activities.

#### **ARTICLE 4 - COSTS NOT INCLUDED IN THIS AGREEMENT**

- 4.1. Services of third-party professional consultants retained by the Preconstruction Manager, such as mechanical, electrical, or specialty consultants, shall be billed to the Owner at the rate charged by the consultants. Consultant's fees are subject to approval of the Owner prior to the commencement of the services. Additionally, the Owner shall reimburse the Preconstruction Manager for incidental expenditures

("Reimbursable Expenses") incurred at their cost with no additional mark up. Example of such Reimbursable Expenses would include but not be limited to out-of-town travel expenses, reprographic and distribution charges, and partnering meetings.

- 4.2. Unless otherwise provided in this Agreement, the Preconstruction Manager and the Preconstruction Manager's consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials in any form at the Project site including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances.

#### **ARTICLE 5 - THE OWNER'S RESPONSIBILITIES**

- 5.1. The Owner shall furnish the Preconstruction Manager with detailed program requirements. The Owner and Contractor shall jointly agree on the Project Budget, prepared by the Preconstruction Manager for the Project.
- 5.2. Ashley Fritz, or such other person as is designated, shall be Owner's representative authorized to act on its behalf with respect to the Project. The Owner reserves the right to change the designated representative at any time by giving written notice of such change to the Preconstruction Manager.
- 5.3. The Architect shall design and prepare construction documents for the Project. The Architect's services, duties and responsibilities are described in the Agreement between the Owner and the Architect, pertinent parts of which will be furnished to the Preconstruction Manager and will not be modified without written notification to the Preconstruction Manager by the Owner.
- 5.4. The Owner shall furnish such legal, accounting and insurance counseling services as may be necessary, and such auditing services as he may require to ascertain how or for what purposes the Preconstruction Manager has used the monies paid to him under this Agreement.
- 5.5. The Owner and/or Architect shall furnish the Preconstruction Manager with a sufficient quantity of drawings and specifications required for the Preconstruction Services and bidding of the subcontractor and supplier trades.
- 5.6. The Owner shall be responsible for rezoning applications; platting legal, topographical, and utility surveys; soils investigations and reports; testing and inspections; utility service company capital costs, development fees, and/or plant investment fees.
- 5.7. If the Owner observes or otherwise becomes aware of any fault or defect in the Project or non-conformance with the Contract Documents, he shall give prompt written notice thereof to the Preconstruction Manager.
- 5.8. The services, information, surveys and reports required by paragraphs 5.3 through 5.6, inclusive, shall be furnished at the Owner's expense and the Preconstruction Manager shall be entitled to rely upon the accuracy and completeness thereof, unless otherwise notified by the Owner, to the extent that it is reasonable to do so.
- 5.9. The Owner shall furnish information required as expeditiously as necessary for the orderly progress of the work.

#### **ARTICLE 6 - RESPONSIBILITY FOR CONSTRUCTION COST**

- 6.1. Evaluations of the Owner's Project budget, preliminary estimates of construction cost and detailed estimates of construction cost prepared by the Preconstruction Manager represent the Preconstruction Manager's best judgment as a person or entity familiar with the construction industry. It is recognized, however, that neither the Preconstruction Manager nor the Owner has control over the cost of labor, materials or equipment, over contractors' methods of determining bid prices or over competitive bidding, market or negotiating conditions. Accordingly, the Preconstruction Manager cannot and does not warrant or represent that bids or negotiated prices will not vary from the Project Budget proposed, established or approved by the Owner, or from any cost estimate or evaluation prepared by the Preconstruction Manager.
- 6.2. No fixed limit of construction cost shall be established as a condition of this Agreement by the furnishing, proposal or establishment of a Project Budget unless such fixed limit has been agreed upon in writing and signed by the parties hereto. If such a fixed limit has been established, the Preconstruction Manager shall be permitted to include contingencies for design, bidding and price escalation, and shall consult with the Architect to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents, to suggest reasonable adjustments in the scope of the Project, and to suggest inclusion of alternate bids in the Construction Documents to adjust the Construction Cost to the

fixed limit. Fixed limits, if any, shall be increased in the amount of any increase in the Contract Sums occurring after execution of the Contracts for Construction.

#### **ARTICLE 7 - EQUAL EMPLOYMENT OPPORTUNITY**

- 7.1. Provisions of any Federal, State or Local statutes or ordinances relating to equal employment opportunity shall be complied with in the performance of work under this Agreement.

#### **ARTICLE 8 - TIME OF COMPLETION**

- 8.1. Time is of the essence of this Agreement. All effort shall be made to complete the several phases in a prompt and efficient manner. The Preconstruction Manager agrees to complete the work in accordance with the dates set forth herein and with a Schedule of Work prepared in coordination with the Owner and the Architect. See Attachment A" to this Agreement for the Owner's Preliminary Preconstruction Progress Schedule dated July 17, 2018, which anticipates the critical Preconstruction and Activity Dates for the Project.
- 8.2. The appropriate representative of the Owner shall review documents submitted by the Preconstruction Manager and shall render decisions pertaining thereto promptly and within the time limits established by the Schedule of Work noted above.

#### **ARTICLE 9 - TERMINATION OF AGREEMENT**

- 9.1. This Agreement may be terminated by either party upon fifteen (15) calendar days written notice should the other party fail to perform in accordance with its terms through no fault of the other.
- 9.2. The Owner may, upon seven (7) days' written notice, terminate the requirement of the Preconstruction Manager's services under this Agreement, in which case the Preconstruction Manager shall be entitled to that compensation earned under this Agreement. Payments shall be made promptly upon receipt by the Owner of the Preconstruction Manager's documented request for such payment, and receipt of work product pursuant to Article 16 below.
- 9.3. If this Agreement is not terminated pursuant to paragraphs 9.1 and 9.2, this Agreement shall terminate on payment in full of all sums owing to Preconstruction Manager subject to and on the terms and conditions of Article 2 of this Agreement, and such payment shall be made not later than 60 days after invoicing.

#### **ARTICLE 10 - DISPUTE RESOLUTION**

- 10.1. The undersigned parties agree that all claims and disputes by and between them shall be submitted to mediation by a mediator mutually agreeable to the parties. The cost of such mediation shall be borne equally by the parties. The foregoing agreement to mediate shall be specifically enforceable.

#### **ARTICLE 11 - SUCCESSOR AND ASSIGNS**

- 11.1. The Owner and the Preconstruction Manager each binds himself, his partners, successors, assigns and legal representatives to the other party of this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither the Owner nor the Preconstruction Manager shall assign, sublet or transfer his interest in this Agreement without the written consent of the other.

#### **ARTICLE 12 - EXTENT OF AGREEMENT**

- 12.1. This Agreement represents the entire and integrated agreement between the Owner and the Preconstruction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Preconstruction Manager.

#### **ARTICLE 13 - GOVERNING LAW**

- 13.1. This Agreement shall be governed, construed, and interpreted in accordance with the laws of the State of Colorado, and the sole forum for resolving disputes arising under or relating in any way to this Agreement is the County or District for the County of El Paso, State of Colorado.

#### **ARTICLE 14 - TITLES AND HEADINGS**

- 14.1. The titles and headings of the articles in sections of this Agreement have been inserted for convenience of reference only and shall in no way affect the construction or interpretation of this Agreement.

#### **ARTICLE 15 - NO THIRD PARTY BENEFICIARIES**

- 15.1. There are no third party beneficiaries of this Agreement.

#### **ARTICLE 16 - OWNERSHIP OF THE DOCUMENTS AND WORK PRODUCT**

- 16.1. Upon termination of this Agreement by the Owner pursuant to Article 9, or in any event upon payment by the Owner to the Preconstruction Manager of all sums due hereunder, all drawings, specifications, schedules, estimates and work product prepared in connection with the Project shall become the property of the Owner.

#### **ARTICLE 17 – INSURANCE**

##### **17.1 Worker's Compensation**

- a. State of Colorado: Statutory
- b. Applicable Federal: Statutory
- c. Employer's Liability: \$100,000 per accident  
\$500,000 disease/policy limit  
\$100,000 disease/each employee

##### **17.2 Commercial General Liability (incl Premises Operations; Independent Contractor's Protective; Contractual; Personal & Advertising Injury; Products & Completed Operations; Broad Form Property Damage**

- a. Bodily Injury & Personal Damage Combined Single Limits (CSL)
  - General Aggregate \$2,000,000
  - Products-Completed Operations Aggregate \$2,000,000
  - Personal and Advertising Injury \$2,000,000
  - Each Occurrence \$2,000,000
  - Fire Damage (any one fire) \$ 100,000
  - Medical Expenses (any one person) \$ 5,000
- b. Products and Completed Operations Insurance shall be maintained for a minimum of three years after final payment and the Contractor shall continue to provide evidence of such coverage to the Owner on an annual basis during the aforementioned period.
- c. Property Damage Liability Insurance (incl X(Explosion), C(Collapse), and U(Underground))

- 17.3 Excess Liability \$1,000,000 over primary/\$10,000 retention

- 17.4 Automobile Liability incl Non-owned/Hired \$1,000,000 CSL

##### **17.5 Other Insurance**

Builder's Risk coverage will be provided by the Owner for projects less than \$1,000,000 in scope. The \$2500 deductible will be the responsibility of the Contractor. For projects \$1,000,000 and greater in scope, the Contractor will provide a Builder's risk policy for the project.

- 17.6 Additional Insured: The Diocese of Colorado Springs and the OWNER will be named as additional insured on the above liability policies to include a 30 day cancellation clause.

#### **OWNER:**

On behalf of:  
Fr. Gregory Golyzniak  
55 N. Jefferson St.  
Monument, CO, 80132

By Authorized Representative:  
Fr. Gregory Golyzniak

Signature:

#### **PRECONSTRUCTION SERVICES MANAGER:**

On behalf of:  
Preconstruction Manager Name  
Preconstruction Manager Address  
Preconstruction Manager City, State, Zip

By Authorized Representative:  
Authorized Name and Title

Signature: