

CONSULTANT AGREEMENT
(\$50,000 TO \$250,000)

THIS AGREEMENT ("**Agreement**"), is entered into and effective this the _____ day of _____, ("**Effective Date**") by and between ROMAN CATHOLIC CHURCH IN THE STATE OF HAWAII ("**Owner**") and _____
(*enter state where registered and entity type*) _____
 ("**Consultant**").

Recital 1. Owner is the property owner of the (*enter name of Parish\Facility*) _____ located (*at enter full address of Parish\Facility*) _____ (the "**Parish\Facility**" or the "**Site**").

Recital 2. Owner desires to engage Consultant for consulting services in connection with (*YbhYf VfjYZXYgWjdh]cb cZ\h Y`k cf_*) _____ at the Parish\Facility ("**Project**").

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 ("**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 SERVICES: The Consultant's scope of services shall consist of those professional services and related activities identified in and reasonably inferable from this Agreement and as set forth and more particularly described in **Exhibit A** ("**Scope of Services**"). Consultant shall prepare a list of any and all Deliverables as described in, required by or reasonably inferable from **Exhibit A** ("**Scope of Services**"). Any such Deliverables shall be prepared in such a manner as to reasonably and adequately describe the work to be performed by Owner's contractors. Any Deliverable that is a drawing to be priced shall be designed in accordance with the project budget ("**Project Budget**") provided to Consultant by Owner. Any redesign of such Deliverables required to meet the Project Budget will be performed by Consultant at no additional cost to Owner.

3. PROJECT SCHEDULE: Consultant has submitted to Owner, and Owner has approved, a schedule for the Project, which is attached hereto as **Exhibit B** ("**Project Schedule**"). Consultant shall commence promptly and pursue diligently completion of the Services within the time parameters, including all interim milestone dates, set forth in the Project Schedule ("**Contract Time**"). Consultant shall provide Owner with monthly updates to the current Project Schedule. Consultant's monthly updates shall include a brief report of any significant events that have occurred since the previous update that may affect the Contract Time.

4. COMPENSATION: As compensation for performance of the Services in full accordance with the Contract Documents, Consultant shall be paid a fixed fee in the amount of _____, **Dollars** (\$ _____) ("**Contract Price**"). The Contract Price shall be paid in proportion to the percentage of Services completed in accordance with the Project Schedule Except for Reimbursable

Expenses and Additional Services, each described below, the Contract Price shall be Consultant's sole and total compensation for all costs, overheads and profit, including but not limited to all cost of general conditions, federal, state, and local statutory benefit taxes, income taxes and sales, use and excise taxes which relate to the Services hereunder.

.1 Reimbursable Expenses. Consultant shall invoice all reimbursable expenses at the actual cost, without mark-up, and limited to the following categories of costs ("**Reimbursable Expenses**"):

- .a** Consultant shall use best efforts to obtain the lowest costs.
- .b** Costs of postage including the cost of air express mail and delivery services directly required by the Services.
- .c** Costs of long distance telephone communications including facsimile transmissions directly required by the Services.
- .d** All photocopying required in support of the Services.

.2 Non-Reimbursable Expenses. Consultant shall not be entitled to receive reimbursement for any cost not specifically and expressly included as a Reimbursable Expense above, including, without limitation ("**Non-Reimbursable Expenses**"):

- .a** Costs of all transportation and subsistence expenses within the metropolitan area of the Project.
- .b** All local telephone communications.
- .c** Costs of computer-aided design software and drafting equipment ("**CADD**") time used in support of the Services.
- .d** Costs of all materials, computer time, data processing and similar expenses incurred in support of the Services.
- .e** Costs of Internet and e-mail access fees and charges.

5. ADDITIONAL SERVICES: Consultant will be compensated separately for additional services not included in the Services or reasonably inferable from the Contract Documents ("**Additional Services**"). However, in no event shall the Consultant commence any Additional Services without Owner's express prior written authorization. Payment for all Additional Services shall be computed on either: (1) a time and expense basis measured by the hourly rates listed in **Exhibit C**, without mark-ups, plus Reimbursable Expenses directly related to such Additional Services, without mark-ups; or (2) on a fixed price basis as may be mutually agreed upon by the parties in advance and in writing.

6. CHANGES: Owner may, at any time, by written order ("**Change Order**"), make changes in the Services within the general scope of this Agreement. To be effective, a Change Order must be reflected on Owner's standard change order form and signed by both parties. Consultant shall proceed as directed and such Additional Services shall be compensated as set forth in Paragraph 5.

7. CONSULTANT'S REPRESENTATIONS:

.1 Consultant represents that it is duly licensed and legally authorized to perform the Services contemplated by this Agreement in the State of Hawaii and Consultant shall be required to maintain all required licenses and certifications throughout the duration of the Project. Consultant shall furnish its best skill and judgment and will cooperate with Owner in furthering the best interests of Owner and the Project. Consultant shall comply with all applicable laws, regulations, restrictions and requirements of all governmental authorities in performing the Services. Consultant shall not: (a) undertake any activity or employment; (b) have any significant undisclosed financial or other interests; or (c) accept any contributions, if it would reasonably appear that such actions could compromise Consultant's professional judgment or prevent Consultant from serving the best interests of Owner and the Project.

.2 Consultant represents that Consultant's Services shall be carried out by personnel who are experienced, skilled and competent in their respective professions and shall be performed in full compliance with all applicable laws, regulations and ordinances issued by public authorities and agencies having jurisdiction over Consultant's Services and the Project. All Deliverables prepared by Consultant shall be prepared and/or carried out in accordance with the standards of care applicable to nationally recognized consulting companies who are regularly engaged in providing the same or similar Services on construction projects in the United States. Consultant shall be responsible for all costs of correcting errors and omissions in its Services that violate this representation.

8. EQUIPMENT AND MATERIALS: Consultant shall provide at its expense, without remuneration or reimbursement of any kind, all equipment, materials, tools, machinery and other supplies necessary to complete the Services in accordance with this Agreement.

9. COORDINATION: Consultant agrees to continuously coordinate its activities with Owner, and where applicable, with Owner's other contractors and consultants to ensure that all Services performed hereunder shall be completed in a timely manner and shall not delay the activities of Owners' other contractors or consultants. Consultant's Services may include coordination with the other consultants to develop an integrated design for the Project.

10. SUBCONSULTANTS: Consultant may engage subconsultants and vendors to perform all or any portion of the Services ("**Subconsultants**"). Consultant shall be fully responsible for the timely and proper performance of the Services by all Subconsultants to the same extent as if all such Services were performed by Consultant's own personnel. All costs of Services performed by the Subconsultants are included in the Contract Price and shall be paid directly by the Consultant. Prior to entering into subcontracts, Consultant shall provide Owner with a written list of the names of Consultant's proposed Subconsultants for review and consent by Owner. Consultant acknowledges that all duties and responsibilities set forth in this Agreement flow-down and shall be an integral part of all subcontract documents with any Subconsultants.

11. INDEPENDENT CONTRACTOR: Consultant shall act as an independent contractor in providing the Services hereunder. The means and methods Consultant employs to provide the Services are matters entirely within its discretion and control in accordance with

accepted industry practices. Consultant has no authority to act as an agent of Owner, except as expressly provided otherwise herein. Consultant 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 Consultant to provide services to the Owner, including, but 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.

12. EMPLOYEES: Owner may, from time to time, establish reasonable rules and regulations relating to standards to be met by Consultant regarding the appearance or conduct of employees or agents of Consultant employed in connection the Services provided to Owner. Consultant will remove, or cause to be removed, from the Site any persons to whom Owner may reasonably object and will ensure that such person(s) shall not thereafter be employed by Consultant in connection with the Services to be provided hereunder.

13. AUTHORIZED REPRESENTATIVES:

.1 Owner's Project Director. Owner has designated _____ Telephone: _____ Facsimile: _____ as its project director ("**Project Director**") authorized to represent Owner with respect to the Project.

.2 Consultant's Project Representative. Consultant has appointed _____ Telephone: _____ Facsimile: _____ to be its representative, who is assigned solely to this Project, and is authorized to act on Consultant's behalf with respect to the Project and whose decisions, notices and directives shall be binding upon Consultant with respect to this Agreement.

14. TIME OF THE ESSENCE: Performance of Consultant's Services shall commence timely and shall continue until Consultant satisfactorily performs its Services and Owner duly accepts the Services as complete. Consultant acknowledges that **TIME IS OF THE ESSENCE** of this Agreement. In this regard, Consultant hereby accepts and confirms that the time allowed in the Project Schedule is reasonable for completing the Services and hereby agrees to dedicate such personnel and other resources as may be necessary to guarantee that the Services are continuously managed and performed in a diligent, skilled and professional manner in accordance with Owner's objectives of cost, time and quality.

15. APPLICATIONS FOR PAYMENT: Consultant will be paid monthly, based upon the progress of the Services ("**Progress Payments**") and within thirty (30) days of final completion of the Services ("**Final Payment**"). On or before the twentieth (20th) day of each month, Consultant shall submit its monthly application for payment for the preceding month ("**Application for Payment**") to the Project Director in a format and supported by such documentation to verify entitlement as Owner reasonably may require, including lien waivers from all Subconsultants in a format approved by Owner. Each such monthly Application for Payment shall identify clearly, itemize and attribute all cost items in a manner that facilitates review by Owner and shall itemize separately the following:

.1 The amount due for Services provided during the preceding month.

.2 The amount of Reimbursable Expenses related to the Services performed during the preceding month.

.3 The amount of Additional Services completed during the preceding month.

Progress Payments shall be paid within thirty (30) days after Owner's receipt of Consultant's approved Application for Payment if the Application for Payment is received by the Parish\Facility on or before the twentieth (20th) of each month.

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

17. LIENS: Consultant 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 Services performed or materials furnished hereunder and Consultant 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 Project. If a lien is filed by a Subconsultant, Consultant will immediately take whatever action is necessary to remove such lien at Consultant's expense. Consultant's obligations under this Paragraph 17 shall apply unless Owner has failed to pay Consultant any undisputed amount after thirty (30) days written notice of such non-payment.

18. INDEMNIFICATION: Consultant shall defend, indemnify and hold harmless Owner and the Parish\Facility and each of their respective successors and assigns and each of their directors, officers, employees, agents, representatives and assigns (collectively referred to as the "**Indemnitees**") from and against any and all claims, causes of actions, damages, liabilities, losses, costs and expenses, including reasonable attorneys' fees, arising out of or connected with the performance of Consultant's Services, including the acts, errors or omissions by the Consultant, its employees and agents, or others for whom the Consultant is responsible in the performance of its Services under this Agreement. In the event that any claim is made or an action or proceeding is brought against Indemnitees, arising out of Consultant's Services, any such Indemnitee may, by notice to Consultant, require Consultant, at Consultant's expense, to resist such claim or take over the defense of any such action or proceeding and employ counsel for such purpose. Any counsel chosen by Consultant is subject to Indemnitees prior written approval, which approval shall not be unreasonably conditioned, delayed or denied. In the case of counsel acting for the Consultant's insurance underwriters, Indemnitees approval is deemed to have been given. Consultant's obligations under this Paragraph 18 shall survive termination of this Agreement.

19. INSURANCE: Consultant shall procure and maintain at its expense policies of insurance of the types and in amounts no less than the minimum coverages specified in **Exhibit D** attached hereto. Consultant shall maintain such policies of insurance for the duration of the Services and for a period of at least two (2) years thereafter if no other time period is specified herein.

20. TERMINATION: Owner shall have the right to terminate this Agreement as follows:

.1 Owner may terminate this Agreement if Consultant 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 Consultant of such

violation or breach. Upon the effective date of termination, Consultant will be paid for Services 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 Consultant ("**Convenience Notice**"), without regard to any fault or failure to perform by Consultant or any other party. In the event of a termination for convenience, Consultant shall be paid for all Services satisfactorily performed up to the date of such Convenience Notice, plus an additional amount for reasonable, unavoidable and direct costs of demobilization for a maximum of ten (10) days following receipt of the Convenience Notice.

.3 Owner shall have no liability to Consultant for compensation, expenses, additional fees or anticipated profits for unperformed Services, lost business opportunities, impaired bonding capacity, or any overhead or general conditions costs attributable to a termination by Owner, except as provided in Paragraphs 20.1 and 20.2 hereof. All amounts payable by Owner shall be subject to Owner's right of audit and offset.

21. ASSIGNMENT: The Services to be provided by Consultant hereunder are personal in nature and accordingly, Consultant may not assign or encumber this Agreement or any rights or obligations of Consultant hereunder.

22. OWNERSHIP OF DOCUMENTS: Consultant agrees that its Services are personal to Owner and considered work for hire and that title to all original reports, drawings, renderings, specifications, estimates, field notes and other documents prepared by Consultant and any Subconsultant pursuant to this Agreement shall be the property of Owner. To the fullest extent permitted by law, Consultant hereby assigns or shall cause to be assigned to Owner, all proprietary rights which Consultant and any Subconsultant may have in such documents, including all copyrights. Upon completion of the Services, or upon an earlier termination of this Agreement, Designer shall promptly deliver to Owner the originals of all such documents. Consultant may retain one (1) set of reproducible copies for information and reference purposes only. Owner agrees that any re-use of such documents for purposes other than the Project shall be at Owner's sole risk and Consultant shall be relieved of any liability hereunder.

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

24. ADVERTISING AND USE OF NAME: Consultant 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 Owner in each instance.

25. OWNER'S AUDIT RIGHTS: Consultant shall maintain all Project-related records ("**Project Records**") for a period of two (2) years after the Contract Time has ended ("**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 Services 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.

26. OWNER'S RIGHT TO SUPPLEMENT: If Consultant 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 Consultant.

27. 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 Consultant's failure to perform the Services in accordance with the requirements of this Agreement or under any other circumstance that Owner deems such withholding necessary.

28. CLAIMS AND DISPUTES:

.1 General. The validity, interpretation and effect of this Agreement shall be governed by laws of the State of Hawaii. The existence of any claim, dispute or legal proceeding shall not relieve Consultant of its obligation to properly perform its Services as set forth herein. In the event of a dispute with respect to amounts payable under a request for payment from the Consultant, Owner shall pay all undisputed amounts and Consultant shall continue performing any remaining Services hereunder. Neither party shall initiate a legal proceeding nor shall the applicable statute of limitations not commence to run until the Services are 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.

29. 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: Owner's Rep: _____
Facsimile No.: _____

If to Parish\Facility:

Parish\Facility Name: _____
Parish\Facility Address: _____
Parish\Facility Address: _____
Attn: Parish\Facility Rep: _____
Facsimile No.: _____

If to Consultant:

Name of Consultant: _____
Address of Consultant: _____
Address of Consultant: _____
Attn: Consultant's Rep: _____
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 29.

30. 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.

31. 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.

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

33. 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.

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

ROMAN CATHOLIC CHURCH IN THE STATE OF HAWAII

By: _____
Name: _____
Title: _____

PARISH

By: _____
Name: _____
Title: _____

NAME OF CONSULTANT

By: _____
Name: _____
Title: _____

Diocesan form reviewed by:
ASHFORD & WRISTON
A Limited Liability Law Partnership LLP

By: _____
Name: _____
Title: _____

EXHIBIT A
Scope of Services and List of Deliverables

EXHIBIT B
Project Schedule
(Attach Schedule)

EXHIBIT C
Hourly Rates

EXHIBIT D

Insurance Requirements

At Consultant's expense, Consultant shall maintain insurance coverage of the following types continuously throughout the term of this Agreement or during any period Services are performed relating to this Agreement:

Consultant 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.

Consultant shall carry Commercial General Liability (CGL) insurance on an occurrence form with a limit of not less than \$1,000,000 each occurrence covering liability arising from independent Consultants, 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 Consultant's Services require or involve the ownership, maintenance or use of an auto, Consultant 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.

Consultant 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 Consultant, whether or not it is insured, even if such loss is caused by the negligence of Owner, its employees, officers, directors, or agents.

Consultant shall carry professional errors and omissions coverage in an amount of not less than \$1,000,000 per claim which shall include the coverage for attorney fees and investigation. Such policy shall cover claims arising out of negligent errors or omissions during the performance of professional services. The retroactive date of the policy must be shown on the certificate of insurance and must be before the date of this Agreement. If the coverage is canceled or not renewed and it is not replaced with another policy with a retroactive date that precedes the date of this Agreement, the Consultant must provide extended reporting coverage for a minimum of two years after completion of this Agreement or the work on the former policy. Consultant shall keep such insurance in force during the course of this Agreement and for a period of not less than two (2) years after the date of Substantial Completion of the Work in accordance with the terms of this Agreement. Consultant shall require its subconsultants to provide the same Professional Liability Insurance coverage, unless otherwise agreed by Owner in writing.

Consultant waives on behalf of itself and its insurers all rights against Owner and its agents, officers, directors, 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 Consultant. The requirements contained herein shall not be

construed in any manner to relieve or limit Consultant's indemnification obligations for any loss or claim arising out of this Agreement.

Insurance policies shall contain a clause that the insurers will not cancel or change the insurance without giving the Roman Catholic Church in the State of Hawaii (30) days' prior written notice. Such notice shall name the Roman Catholic Church in the State of Hawaii and its parishes or schools, its officers, officials, employees and volunteers as an Additional Insured.¹

Prior to the execution date of this Agreement or commencement of any activity contemplated under this Agreement, whichever is earlier, Consultant shall furnish Owner (the Roman Catholic Church in the State of Hawaii and [*enter name of parish and school*], its officers, officials, employees and volunteers are hereby named as an additional insured), with evidence of compliance with the above requirements. Consultant shall further provide certified copies of all insurance policies required above within ten (10) days of Owner's written request for said copies.²

¹ Paragraph addition - November 17, 2008

² Paragraph addition - November 17, 2008