

# Memorandum of Agreement

made this \_\_\_\_\_ day of \_\_\_\_\_, 19<sup>87</sup>, by and between

Austin Organs, Incorporated, of Hartford, Connecticut, U.S.A.

hereinafter called Builder, and ST. JAMES EPISCOPAL CHURCH

355 West Maple Street

of Birmingham, Michigan 48011

hereinafter called Purchaser.

## WITNESSETH:

\*WHEREAS, Purchaser desires to have an Austin Organ built and installed as hereinafter specified; and WHEREAS, Builder is willing to build and install such an organ for Purchaser, subject to certain conditions;

NOW, THEREFORE, in consideration of the premises and the mutual agreements and obligations hereinafter contained, the parties hereto do hereby agree as follows:

### BUILDER AGREES:

1. That it will build an organ according to the annexed specifications, and that it will erect it in St. James Episcopal Church, 355 West Maple Street, Birmingham, Michigan ready for use 12 - 14 months from date of acceptance of this contract or as soon thereafter as possible in the event of delays caused by Purchaser, or otherwise beyond Builder's control.

2. That the organ when completed shall be free from defects in material or workmanship, and that it warrants the action and construction of the organ for a term of five (5) years from date of completion, and agrees to correct defects in materials or workmanship that may be brought to its attention within that time, without cost to Purchaser. This does not include tuning or ordinary maintenance of the organ (or electric motors, blowers, rectifiers, console lights, or clocks, which are under separate warranty by their manufacturers).

3. This warranty is in lieu of all other guarantees or warranties, express or implied, including without limitation express or implied warranties of merchantability of fitness for a particular purpose and is in lieu of all other representations to the Purchaser. Builder shall not be liable for any other obligations or liabilities, including liability for any incidental or consequential damages on the part of Austin Organs, Inc.

### PURCHASER AGREES:

4. That it will pay to AUSTIN ORGANS, INC. or order, the sum of \$ 14,205.00  
FOURTEEN THOUSAND TWO HUNDRED FIVE DOLLARS & 00/100 As Follows:

15% - **FIRST PAYMENT** - On signing of this contract.

TWO THOUSAND ONE HUNDRED THIRTY DOLLARS & 75/100 2,130.75

25% - **SECOND PAYMENT** - When design work on the organ is essentially completed and work on components of the windchests of the organ has begun.

THREE THOUSAND FIVE HUNDRED FIFTY ONE DOLLARS & 25/100 3,551.25

25% - **THIRD PAYMENT** - When the organ is ready for pre-assembly at the factory.

THREE THOUSAND FIVE HUNDRED FIFTY ONE DOLLARS & 25/100 3,551.25

25% - **FOURTH PAYMENT** - When the organ is ready for shipment and installation.

THREE THOUSAND FIVE HUNDRED FIFTY ONE DOLLARS & 25/100 3,551.25

10% - **FIFTH PAYMENT** - Upon completion of the installation of the organ.

ONE THOUSAND FOUR HUNDRED TWENTY DOLLARS & 50/100 1,420.50

5. In addition, if the organ or the sale thereof is subject to any sales tax in Purchaser's state or to the Federal excise tax on musical instruments or to any local property tax which might be imposed upon Builder, Purchaser agrees to pay such tax or reimburse Builder therefor.

6. Purchaser agrees to pay interest at New York Prime rate on any payment which is not made within thirty (30) days of the date when it becomes due.

7. That when the organ is ready for shipment and delivery is delayed by the inability, for any reason, of the Purchaser to accept the shipment and permit the installation of the organ to proceed; the assembly and/or commencement of installation payments shall immediately become due.

8. That it will provide spaces suitable to receive the organ, the console and the blower; that the building will be in proper condition for the installation of the organ 5 weeks previous to the completion date provided in Paragraph 1 hereof; that it will allow, free from interruption, suitable convenience and opportunity for the installation in the building; that it will provide such a condition of quiet as is necessary for the proper tone regulation and tuning of the instrument; and that it will provide the necessary light, heat, seasonal air conditioning when available, and power.

9. That the completion date stipulated in Paragraph 1 will be dependent upon the availability of complete and accurate dimensions of the space or spaces to receive the organ in ample time to permit the preparation of final drawings and fabrication of the organ in the Builder's factory.

10. That it will insure the organ or its parts against loss by fire, water, extended coverage risks, etc., as soon as the organ or any parts thereof are placed in the building, for the benefit of the parties hereto, as their interests may appear.

11. That it will provide for the blower foundation and enclosures when necessary; that it will furnish and install all wind conductors between blower and organ; that it will do all wiring connected therewith, will install such lights as may be needed for the erection and future care of the organ; and that it will do any necessary cutting of floors, partitions, or other parts of the building; and furnish electrical conduits, or other special equipment.

12. That it will carry out the terms of Paragraph 11 hereof promptly and diligently and that it will coordinate all such work with the work of the Builder, so that Builder's work may progress without interruption.

\*=Addition to Opus 2642 per the attached specification.



**IT IS MUTUALLY AGREED:**

13. That the Purchaser will examine the organ on completion of the installation in the presence of a representative of the Builder in order to establish fulfillment of the contract and acceptance of the organ.
14. That the Builder will start the organ installation only after the progress of alterations in an existing building or of new construction in a new building has reached a point where dirt, dampness or any other condition caused by building operations shall not be injurious to the organ or to any of its parts, or prove a hindrance to the Builder's work of starting the organ installation.
15. That the installation of the organ shall remain in the authority of the Builder and if for any reason the Builder should be required to relinquish such authority in any area of installation by the employment of outside personnel, the additional cost of such outside labor in excess of Builder's normal cost, shall be borne by the Purchaser. Builder shall not be liable for the action or omissions of such outside personnel. This does not relate to the provisions of Paragraph 11, or to the employment of local, unskilled labor by Builder's personnel.
16. That in consideration of any preparations made for future additions or stops, such stops and additions shall be installed by the Builder at prices then in force.
17. That this contract shall be binding after, but not before, acceptance at Hartford, Connecticut, by Builder, and it is to be conclusively presumed that the conditional sale hereby made is made and consummated at said Hartford, Connecticut, where said organ is to be constructed in the plant of Builder, and to be transported in interstate commerce to the building of the Purchaser.
18. That the organ, when completed and installed, even though it may become attached to the real property of the Purchaser, will in every event be and be deemed to be, and treated as personal property; and that the title to and ownership of the organ shall be and remain in the Builder until the purchase price hereinbefore mentioned, together with any and all promissory notes given in respect thereof have been fully paid, with applicable interest, after which the instrument shall become the property of Purchaser; and it is further agreed that, until the completion of payment the organ shall be held by purchaser and/or any other owner or lessee of the premises in which the organ is contained, free and excluded from any lien, mortgage, pledge and other incumbrance, except such as shall be expressly subject and subordinate to the right and title of Builder, as herein expressed.
19. That in the event the Purchaser shall fail to comply with the terms of this contract as herein provided, Builder shall be entitled to compensatory damages equal to the costs incurred by it prior to the date of breach in designing, assembling, delivering or installing the organ or otherwise incurred in connection herewith, plus incidental and consequential damages allowable according to law, and may retain all sums paid by Purchaser as a credit against the amount thereof, refunding any excess to Purchaser.
20. That when conditions are such as to require special rigging or hoisting apparatus and/or labor to raise the organ parts into a gallery or into chambers situated above the main or ground floor level of the building, and in any situation where the physical design of the organ structure requires that organ parts be hoisted, the Purchaser will bear the expense of such hoisting operations and assume responsibility for any and all damage to person and property incidental thereto.
21. That in the event that factory production or installation of the organ is stopped or delayed as a result of regulations, laws, strikes, civil disturbances, embargos or other causes beyond Builder's control, or if Purchaser is unable to accept installation of the organ through non-completion of its building, alterations to same or other causes so as to prevent completion by the date provided in Paragraph 1 hereof, and as a result of which delay Builder expects financial loss through increased labor and material costs in completing this contract, then the parties hereto will negotiate in good faith for a reasonable increase in price; in the event of failure to agree upon such increase within 60 days of commencement of negotiations, either party may cancel this Agreement by written notice to the other. In the event of such cancellation, Builder shall retain and/or be entitled to the collection of such sums as represent its actual costs and expense in performing its obligations under this Agreement, which shall not be less than 3% (percent) of the contract price, as compensation for its engineering, drafting, and other services. Upon retention by or payment to the Builder of such sums, or refund of excess to the Purchaser, all rights and liabilities under the Agreement shall cease and terminate.
22. That advisors or consultants if involved by the church, or the arrangements therewith, shall be changed only by mutual agreement of Purchaser and Builder after the acceptance of the contract.
23. That this Agreement shall be construed in all respects, including the event of a dispute, in accordance with the laws of the State of Connecticut.
24. That this Agreement and the terms herein shall be binding upon the parties hereto and their successors and assigns.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed and their respective seals hereunto affixed the day and year first written above.

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF:

AUSTIN ORGANS, INCORPORATED  
Hartford, Connecticut

By

Its

REPRESENTATIVE

Builder.

*Rogn Wilden*  
RECTOR, ST. JAMES

(L. S.)  
Purchaser.

This contract is not binding until accepted by an Officer of Austin Organs, Inc., at Hartford, Connecticut.  
ACCEPTED: HARTFORD, CONNECTICUT

19 June 1987

AUSTIN ORGANS, INCORPORATED

By

Its

PRESIDENT



# AUSTIN ORGANS, INC.

## ORGAN ARCHITECTS AND BUILDERS

CONTROLLING EXCLUSIVELY ALL AUSTIN PATENTS

156 WOODLAND STREET  
HARTFORD, CONNECTICUT 06105-1284



Since 1893

June 10, 19 87

AN ORGAN  
DESIGNED FOR

ST. JAMES EPISCOPAL CHURCH

BIRMINGHAM, MICHIGAN

### SPECIFICATIONS

ADDITION TO OPUS NO. 2642

TROMPETTE EN CHAMADE, T.C. 8'

49 Pipes

MATERIALS TO BE OF POLISHED TIN

AT  
NOT  
9/11/87

To be mounted vertically on both sides of rear stained glass window on wind pressure from existing Antiphonal Division.

# Austin Organs Inc.

Hartford, Connecticut 06105

U. S. A.

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Contract No. 2642-A (xx08190)

WITH

ST. JAMES EPISCOPAL CHURCH

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355 West Maple Street

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Birmingham, Michigan 48011

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