

**CITY OF DETROIT BUILDING AUTHORITY  
CONSTRUCTION MANAGEMENT SERVICES AGREEMENT  
WITH  
KEO & ASSOCIATES, INC.**

THIS CONSTRUCTION MANAGEMENT SERVICES AGREEMENT (the "Agreement"), is dated and made effective as of the 19<sup>th</sup> day of March, 2020 (the "Effective Date"), by and between the **DETROIT BUILDING AUTHORITY**, a public authority and body corporate, organized and existing under the authority of Act 31, Public Acts of Michigan, 2008, as amended, with offices at 1301 Third Street, Suite 328, Detroit, Michigan 48226 (herein called the "DBA"), and **KEO & ASSOCIATES, INC.**, a Michigan profit corporation, with offices at 18286 Wyoming Avenue, Detroit, Michigan 48221 (hereinafter called the "Contractor").

**WITNESSETH:**

WHEREAS, the DBA desires to engage the Contractor to perform for and on behalf of the DBA certain Construction Management Services as described herein and as more specifically described in Schedule A – Scope of Services attached hereto (the "Services"), in furtherance of the remove, repair and replace the roof and defunct mechanical units for the Detroit Water & Sewerage Department located at 6425 Huber, Detroit, Michigan 48211, as more particularly described in Schedule B (the "Facility Improvements"); and

WHEREAS, the Contractor desires to perform the Construction Management Services (CM Services) for the DBA and submitted a Proposal to the DBA certifying that it possesses the requisite skills necessary to assist the DBA in completing the Facility Improvements and representing that it is fully qualified and capable of performing the Services as required by the DBA in accordance with the terms and conditions hereinafter set forth, which include any and all Exhibits and Schedules referenced herein; and

WHEREAS, the engagement of the Contractor for the CM Services has been approved by the DBA Board of Directors in and by its resolution, dated March 19, 2020.

NOW, THEREFORE, in consideration of the mutual covenants, promises, and agreements hereinafter set forth, the parties agree as follows:

**ARTICLE I**  
**Engagement of Contractor / Definitions**

1.01 The DBA hereby engages the Contractor and the Contractor agrees to perform the Services in accordance with the terms and conditions contained in

this Agreement and in the Proposal, which the Contractor hereby reconfirms the specific representations and prices stated therein.

1.02 This Agreement shall be effective commencing with the Effective Date of this Agreement and concluding on or before December 24, 2020 (the "Contract Term") and in accordance with the following milestone design and construction commencement dates:

Construction Commencement upon issuance of Notice to Proceed

1.03 The relationship of the Contractor and the DBA shall be that of an independent Contractor and no liability or benefits, such as retirement benefits or liabilities, pension rights or liabilities, holiday pay, sick pay, vacation pay, personal injury or property insurance rights or liabilities, or such other rights, provisions, or liabilities arising out of a contract of hire or employer/employee relationship either express or implied shall arise or accrue to either party as a result of this Agreement and undertaking.

1.04 Contractor agrees to pay, before delinquency, all taxes, levies, and assessments, arising from its activities in the course of providing the Services, including, but not limited to taxes arising out of the Services, taxes levied on its vehicles, property and equipment, taxes on compensation paid to Contractor pursuant to this Agreement, and all taxes relating to Contractor's compensation paid to its labor, staff, employees, Subcontractors, agents and representatives.

1.05 Contractor acknowledges and agrees that this is not an exclusive Agreement and that during the Contract Term the DBA may contract with other Contractors for like services at the Facility. Contractor shall not enter into agreements or contracts for the provision of Services at the Facility similar to those performed under this Agreement, either as a Subcontractor to any other DBA Contractors or any consultants engaged by the DBA, without the written approval of the DBA.

1.06 The DBA acknowledges the Contractor's right to perform similar services for other customers of the Contractor, provided that such other engagements do not adversely impact Contractor's ability to fully and timely perform the Services under this Agreement or otherwise cause the Contractor to neglect or default on Contractor's obligations set forth in this Agreement; and further provided that such other engagement does not create, in the opinion of the DBA, any conflict of interest with the DBA's completion of the Facility Improvements.

1.07 Definitions

The following words and expressions, or pronouns used in their stead, shall wherever they appear in this Agreement, be construed as follows, unless a different meaning is clear from the context:

"Additional Services" shall mean Services not identified in the Scope of Services which the DBA, upon specific authorization by the Board of Directors, may direct only by written amendment to this Agreement to be performed in connection with the Work.

"Agreement" or "CM Agreement" shall mean this Construction Management Services Agreement as executed between the DBA and Contractor for the performance of the Scope of Services as described in the Contract Documents.

"Board of Directors" shall mean the governing body of the DBA.

"City" shall mean the City of Detroit, a municipal corporation.

"City Departments" shall mean any and all City Departments.

"CM Services" shall mean the activities identified in the Scope of Services section of this Agreement performed by the Contractor's personnel and skilled trade labor, whether directly employed or subcontracted, to complete the Work.

"Construction Documents" shall mean construction documents for the Project prepared by the Project Architect/Engineer and approved in writing by the DBA.

"Contractor's Proposal" shall mean the Contractor's proposal in response to the DBA's RFQ/P for the Project, as accepted by the DBA.

"Contract Documents" shall mean this Agreement, the Contractor's Proposal, and the DBA's RFQ/P.

"Cost of the Project" shall mean the total cost of construction of the Project in accordance with the terms and conditions of the Agreement, including the Cost of the Work, General Conditions and Contractor's Professional Fee.

"Cost of the Work" shall mean costs that have been approved in writing by the DBA and incurred by the Contractor in connection with the performance of the Work and paid by Contractor for items, including, but not limited to, the following: Contractor labor and materials, insurance, permits, bonds, fees, taxes, and payments to Subcontractors.

"DBA" or "Owner" shall mean the Detroit Building Authority, a public body corporate, created by Act 31, Public Acts of Michigan, 1948 (First Extra Session), as amended.

"General Conditions" shall include the general conditions set forth in the DBA Request for Qualifications/Proposals for the Project and Contractor's Proposal.

"Facility" shall refer to the property located at 6425 Huber, Detroit, Michigan 48211.

"Key Personnel" shall mean the Contractor's personnel identified in the Contractor's Proposal.

"Notice" shall mean written notification conforming to Article XIV of this Agreement.

"Owner's Representative" means Tyrone Clifton or such other representative as is designated by the DBA.

"Plans and Specifications" shall mean documents approved by the DBA delineating the Work.

"Project" shall mean the removal, repair, and replacement of the roof and defunct mechanical units at 6425 Huber, Detroit, Michigan 48211.

"Project Architect/Engineer" shall mean NORR.

"Proposal" shall mean Contractor's response to the DBA's RFQ/P for the Project, dated February 22, 2020, as accepted by the DBA.

"Scope of Services" refers to the activities, terms, and conditions identified in the Schedule A attachment to this Agreement.

"Subcontract" shall mean any subcontract entered into by the Contractor in accordance with the terms of this Agreement, pursuant to which a Subcontractor agrees to perform Services hereunder.

"Subcontractor" shall mean any person, firm, or corporation, other than employees of the Contractor, who or which contracts with the Contractor to provide skilled trade labor to perform the Services.

"Work" means the Facility Improvements and upgrades to the Facility, as authorized by the DBA, as listed in Schedule B of this Agreement.

## ARTICLE II

### Level of Performance, Documents and Dispute Resolution

2.01 The Contractor warrants that its performance of the Services set forth in Schedule A shall be performed in accordance with the Contract Documents and shall be of a professional standard of care and skill recognized to be at least equal to or above the standard and commonly recognized in the southeastern Michigan construction industry. The Contractor agrees that all of the Services shall be subject to the approval of the DBA and such other representatives as may be designated by the DBA.

2.02 The Contractor shall, during the term of this Agreement, devote such time, attention, skill, knowledge, material, equipment, tools, supervision, labor, and administration as is necessary to carry out and perform the Services, as herein required.

2.03 In the event that there shall be any dispute between the parties with regard to the extent and character of the Services to be performed, the reasonable interpretation and determination of the DBA and such other representative as may be designated by the DBA, shall govern.

2.04 The Contractor shall maintain, at Contractor's sole cost and expense, any and all licenses, permits registrations, certifications and any other documentation required by any governmental and/or regulatory agency, in order for Contractor to perform the Services in compliance with all applicable laws and regulations, and shall, prior to commencing the performance of the Services and from time to time as requested by the DBA, provide written proof certifying that the Contractor maintains current and in effect at all times any and all licenses, permits registrations, certifications and any other documentation required by any governmental and/or regulatory agency.

### **ARTICLE III**

#### **Compensation**

3.01 The DBA agrees to pay the Professional Contractor for the proper performance of the Services described in Exhibit A hereto a fee not to exceed Four Million Seven Hundred Thirty-Four Thousand Nine Hundred Sixty-Four and 00/100 (\$4,734,964.00) Dollars.

3.02 It is understood and agreed by the parties hereto that the fee stated above for performance of Services is inclusive of any and all remuneration to which the Contractor may be entitled and that the Contractor shall not receive any fringe benefits including but not limited to overtime pay, holiday pay, sick pay, vacation pay, retirement benefits, pension benefits and insurance benefits in addition to or in lieu of those expressly stated herein.

3.03 Any additional services requested by the Authority of the Contractor shall be payable as mutually agreed upon in writing between the Authority and the Contractor.

3.04 Requests for progress payments shall be submitted by Chris Onzwuzurike or by another duly authorized representative of the Contractor to Tyrone Clifton or the current Director of the Authority. At the election of the Authority, the parties shall submit disputes regarding the retention of a portion of progress payments in accordance with MCLA 125.1564(1).

#### ARTICLE IV No Assignment by Contractor

4.01 The DBA entered into this Agreement based upon the professional qualifications of the Contractor. Contractor shall not assign, subcontract or transfer its rights, duties, obligations and interest in this Agreement.

#### ARTICLE V Personnel, Labor and Staffing

5.01 Contractor agrees to have available at all times during the Contract Term the appropriate levels of competent administrative, supervisory and skilled trade personnel required to perform the Services, associated with the Facility Improvements in a timely, efficient and professional manner and in full cooperation with the DBA.

5.02 Contractor acknowledges that the DBA shall have approval rights with respect to certain Key Personnel assigned to the Project, and that Contractor shall not be permitted to remove such Key Personnel without the prior written consent of the DBA, which will not be unreasonably withheld. As of the Effective Date, the Key Personnel identified in the Contractor's Proposal are acceptable to the DBA.

5.03 Contractor further acknowledges and agrees that the DBA has the right to require the Contractor to remove and replace from the Facility, any of its direct employees or subcontracted personnel, including skilled trades who, at the sole discretion of the DBA, are not performing at the proper skill level or in the best interest of the DBA or are otherwise deemed detrimental to the DBA's service to its customers, patrons and invitees at the Facility.

5.04 In accordance with the United States Constitution and all federal legislation and regulations governing fair employment practices and equal employment opportunity, including, but not limited to, Title VI of the Civil Rights Acts of 1964 (42 USC SS2000(e) et seq), and in accordance with the Michigan Constitution, including but not limited to, the Michigan Civil Rights Act (P.A. 1976 No. 453) and the Michigan Handicappers Civil Rights Act (P.A. 1976 No. 220), the

Contractor agrees that it will not discriminate against an employee, or applicant for employment with respect to hire, tenure, terms, conditions or privileges of employment because of religion, race, color, national origin, age, sex, height, weight, marital status, or handicap that is unrelated to the individual's ability to perform the duties of a particular assignment or position. The Contractor recognizes the right of the United States and the State of Michigan to seek judicial enforcement of the foregoing covenants against discrimination against itself or its Subcontractors connected directly or indirectly with the performance of this Agreement.

5.05 The Contractor agrees that it will require in a written subcontract that the Contractor's Subcontractors comply with the obligations prescribed in Article 5.04 and, upon request by the DBA, provide to the DBA a copy of all subcontracts for verification purposes.

5.06 Breach of the terms and conditions of this Article may be regarded as a material breach of this Agreement, constituting an Event of Default.

- a. The Contractor hereby agrees neither employees nor Subcontractor employees are to be at any time considered employees of the DBA. The Contractor shall be, at all times during the Contract Term, fully responsible for the actions, activities, safety and conduct of its employees, agents, contracted personnel and the employees of its Subcontractor.
- b. The Contractor shall not employ on any basis whatever, regular or part-time DBA employees or relatives of DBA employees without the specific written authorization and approval of the DBA's Board of Directors.
- c. The Contractor agrees that it will not employ any DBA employees, agents, directors, or contracted personnel during the Contract Term and for a period of two years after the end of the Contract Term, without the specific written authorization and approval of the DBA's Board of Directors.

## ARTICLE VI

### Subcontractors

6.01 Except as otherwise agreed in writing by the DBA, none of the Work covered by this Agreement shall be subcontracted without the prior written approval of the DBA. The DBA reserves the right to withhold approval or require the termination of the Contractor's Subcontracts for any portion of the Services which the DBA may deem is not in the DBA's best interest.

6.02 Each Subcontract entered into shall provide that the provisions of this Agreement shall apply to the Subcontractor and his employees, agents, representatives and associates in all respects, as if it and they were employees of

the Contractor. The Contractor agrees to bind each Subcontractor and each Subcontractor shall agree to be bound by the terms of the Agreement insofar as applicable to its portion of the Services.

6.03 The Contractor agrees that no approval by the DBA of any proposed Subcontractor, nor any Subcontract, nor anything in this Agreement shall create or be deemed to create any rights in favor of a Subcontractor against the DBA, nor shall it be deemed or construed to impose upon the DBA any obligation, liability or duty to a Subcontractor, or to create any contractual relation whatsoever between a Subcontractor and the DBA. Any Subcontract entered into by the Contractor shall contain a clause substantially similar to this Section 6.03.

6.04 The Contractor agrees to indemnify and hold harmless from any claims initiated against the DBA pursuant to any Subcontracts it enters into in performance of this Agreement. The DBA's approval of any Subcontractors shall not relieve the Contractor of any of its responsibilities, duties and liabilities hereunder. The Contractor shall be solely responsible to the DBA for the acts, failures to act and/or defaults by its Subcontractors and of each of Subcontractor's employees, agents, representatives and associates, each of whom shall, for this purpose, be deemed to be the agent or employee of the Contractor.

Consistent with Schedule D, Contractor will ensure all appropriate insurance is obtained by the Contractor and, to the extent required, by Subcontractors to the benefit of the DBA to ensure the Contractor is able to indemnify and hold harmless the DBA from any and all claims initiated against the DBA pursuant to any provision within this Agreement.

## ARTICLE VII

### Events of Default and Remedies

7.01 The following acts and/or omissions shall constitute a default and material breach of this Agreement by the Contractor and shall be deemed an Event of Default if not cured within three (3) days after written notice of default has been sent to the Contractor, provided however, that if the default is such that more than five (5) days are required for a cure, then Contractor shall not be in default if it commences to cure the default within the five (5) day period and thereafter diligently prosecutes the same to completion:

- (a) Failure to comply with any of the material terms and conditions of this Agreement following written notice from the Owner and failure to cure; and/or
- (b) Failure to begin the Services in accordance with the terms of this Agreement; and/or



- (c) If the Contractor, in the judgment of the DBA, is unnecessarily or unreasonably or willfully delaying the performance and completion of the Services; and/or
- (d) The Contractor abandons the Services to be undertaken; and/or
- (e) The DBA is of the opinion that the Services cannot be completed within the time required, where in the DBA's judgment, the delay is attributable to conditions within the Contractor's control; and/or
- (f) The Contractor, without just cause, reduces its Work force to a number which in the judgment of the DBA, is insufficient to complete the Services within a reasonable time and fails to sufficiently increase such Work force when directed to do so by the DBA; and/or
- (g) The Contractor assigns, transfers, conveys or otherwise disposes of this Agreement, in whole, or in part, without prior approval of the DBA; and/or
- (h) Any DBA officer or employee acquires an interest in this Agreement so as to create a conflict of interest; and/or
- (i) The Contractor violates any law, charter provision, ordinance, rule, regulation, governmental order or directive; and/or
- (j) Failure to provide adequate inventory, vehicles, equipment and/or personnel; and/or
- (k) The filing of a voluntary or involuntary petition in bankruptcy or for reorganization or an arrangement, or an assignment for the benefit of creditors, or the adjudication of the Contractor as being bankrupt or insolvent, or the appointment of a receiver of, or for the Contractor if such appointment, adjudication, or similar order or ruling remains in force or unstayed for a period of thirty (30) days, or admit in writing its inability to pay its debts generally as they become due; and/or
- (l) The Contractor's level of performance of the Services, in the reasonable judgment of the DBA falls below the standard of care set forth in Article II hereof and/or
- (m) The Contractor ceases to conduct business in the normal course, and/or
- (n) The Contractor fails to comply with any material terms, conditions and/or obligations of Contractor set forth herein.
- (o) The Contractor fails to pay any labor, tax obligations, fringe benefit funds, insurance premiums, or Subcontractor invoices for Services which the Contractor has received payment from the DBA.

7.02 In the Event of Default by the Contractor, the DBA shall be entitled to exercise any and all remedies available at law and/or in equity, including, but not limited to the right to seek and sue for damages, any costs incurred to enforce,

or attempt to enforce this Agreement, including reasonable attorney's fees, which enforcement shall not be limited, and may include appeals of any decisions in lower courts, as well as collection efforts thereafter, , compensable damages and consequential damages, withhold and retain payment to the Contractor for the purpose of setoff until such time as the exact amount of damages due to the DBA from the Contractor is determined, seek injunctive relief and/or specific performance and such other equitable remedies that are available, as well as effectuate a termination of this Agreement, which may or could give rise to additional damages. It is expressly understood that the Contractor will remain liable for any damages the DBA sustains in excess of any set-off.

7.03 The Contractor and DBA waive claims against each other for the following damages arising out of or relating to this Agreement:

1. damages incurred by the DBA for rental expenses, for punitive damages, exemplary damages, lost income, lost profit, lost reputation, and for loss of management or employee productivity or of the services of such persons; and
2. damages incurred by the Contractor for principal office expenses, including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit.

#### ARTICLE VIII Termination

8.01 The DBA may terminate this Agreement, in whole or in part, in the Event of Default hereunder, upon giving written notice of termination (herein called "Notice of Termination") to the Contractor at least fifteen (15) days before the effective date of the termination. If this Agreement is so terminated, the DBA may take over the Services, and prosecute the same to completion on its own and/or by contract with another party or otherwise, and the Contractor shall be liable to the DBA for any and all costs incurred by the DBA thereby.

8.02 The Contractor may only terminate this Agreement, for cause, upon the Contractor giving Notice of Termination to the DBA in writing at least forty-five (45) business days before the effective date of the termination, should the DBA fail to fulfill in a timely and proper manner its obligations under this Agreement.

8.03 The DBA may terminate this Agreement without cause, in whole or in part, for its convenience, at any time, without incurring any further liability whatsoever, other than as stated in this Article VIII, by issuing a Notice of Termination to the Contractor of such termination, specifying the effective date thereof, at least fifteen (15) business days prior to the effective date of such termination. If this Agreement is so terminated, the DBA will pay the Contractor only for the Services rendered prior to such termination, including any retainage

for the Services previously performed. The amount of the payment shall be computed by the DBA on the basis of the Services rendered and accepted by the DBA; any expenses incurred prior to termination; any bona fide termination settlement costs reasonably incurred by the Contractor, as determined by the DBA, relating to the documented firm commitments by the Contractor which were reasonably committed by the Contractor prior to the Notice of Termination, but only to the extent that the Contractor cannot mitigate same; and such other costs, which in the judgment of the DBA, represent a fair value of the Services provided, less the amount of any previous payments made. Should the DBA or the DBA's designee undertake any part of the Services which are to be performed by the Contractor, to the extent such Services are being performed by the DBA or its designee, the Contractor shall not be entitled to any compensation for the Services so performed. The Contractor expressly acknowledges and agrees that in no case shall the DBA's obligation for total aggregate payment under this Section 8.03 exceed the compensation provided for in Article III hereof.

8.04 After receipt of a Notice of Termination, and except as otherwise directed by the DBA, the Contractor shall:

- (a) Stop the performance of the Services as of the date specified in the Notice of Termination from the DBA (the "Termination Date"); and
- (b) Terminate any obligations for payroll and other costs associated with the Services as of the Termination Date, cease and desist from the placement of orders and/or suppliers and/or subcontracts for materials, services or facilities, except as may be necessary for completion of the Services through the Termination Date; and
- (c) Terminate any commitments for materials, labor or otherwise relating the Services that would have been performed after the Termination Date; and
- (d) Preserve all records relating to the Services through the Termination Date and submit to the DBA such records and reports as the DBA shall specify, which may include or could include, an inventory of all furnishings, equipment, and other property purchased by Contractor to perform the Services, if any; and
- (e) Carry out such directives as the DBA may issue concerning the storage, safeguarding or disposition of records, reports, files and other property relating to the Services; and
- (f) Within thirty (30) days following the Termination Date, submit a final report and documentation, which shall include any and all documentation and information reasonably requested by the DBA, including, but not limited to all of the following:

- (i) all costs and expenditures actually incurred by Contractor in the performance of the Services through the Termination Date; and
- (ii) a list of all Employees, creditors, Subcontractors, lessors, and/or other parties to whom the Contractor is indebted for the performance of the Services through the Termination Date, if any; and
- (iii) return all Work Product, finished or unfinished for which the DBA has paid, whether in or whole or in part.

8.05 Upon completion or other termination of this Agreement, all finished or unfinished original documents or copies (when originals are unavailable), data, studies, briefs, drawings, maps, models, photographs, files, intermediate materials, estimates, memoranda, computations, papers, supplies, recordings, videotapes, notes or other materials prepared, obtained and/or utilized by the Contractor in connection with the Services, as well as those items used by the Contractor prior to the date of this Agreement in order to provide the Services (herein collectively called the "Work Product"), shall, at the option of the DBA, become the DBA's sole and exclusive property, whether or not in the Contractor's possession, free from any claims or retention of rights thereto on the part of the Contractor. The Contractor shall promptly deliver to the DBA upon the DBA's request, all Work Product. The Contractor acknowledges that any intentional failure or delay on its part to deliver the Work Product to the DBA will cause irreparable injury to the DBA not adequately compensable in damages and for which the DBA has no adequate remedy at law, and the Contractor accordingly agrees that the DBA may, in such event, seek and obtain injunctive relief in a court of competent jurisdiction to compel delivery of the Work Product. The DBA shall have full and unrestricted use of the Work Product for the purpose of completing the Services. The Contractor may retain copies of the Work Product, duplicated at its own expense, provided Contractor shall have obtained prior written approval from the DBA, which consent shall not be unreasonably withheld.

8.05.1 The DBA may use the Work Product provided by Contractor for any purpose, including, but not limited to, the Services that were supposed to have been provided by Contractor.

#### ARTICLE IX Amendments

- a. The DBA may, from time to time, consider it in its best interest to change, modify or extend a term, condition or covenant of this Agreement or require changes in the Services to be performed by the Contractor, or require the Contractor to perform additional services. Any such change, addition, deletion, extension or modification shall be incorporated by a written

- amendment to this Agreement subject to the prior authorization of the Board of Directors (collectively referred to as "Amendments").
- b. No Amendment shall cause any portion or provision of the Agreement to be void or invalid or otherwise relieve or release the Contractor from any of its obligations under this Agreement, except as expressly stated in the Amendment.
  - c. The Contractor shall not perform any amended additional or changed Services without a written and executed Amendment.
  - d. Any Amendment to this Agreement shall 1) expressly make reference to this Agreement and any prior Amendments and 2) be in writing, signed and acknowledged by duly authorized by the DBA.
  - e. No verbal orders, instructions, conversation, understanding, or agreement with any officer or employee of the DBA, or any other person, either before or after the execution of this Agreement and/or Amendments shall affect or modify any of the terms, conditions or obligations contained herein; the written Amendment shall be the full incorporation of any and all discussions and negotiations between the DBA and Contractor with respect to all terms of the Agreement.

#### ARTICLE X Conflict of Interest

10.01 The Contractor warrants and covenants that it does not have and that it will not have during the performance of this Agreement, any direct or indirect proprietary or other interest in any concern, business or entity which would conflict in any manner or degree with the performance of the Services under this Agreement. The Contractor further warrants and covenants that no officer, commissioner, member or employee of the DBA or any other public official who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of this established Professional Services Agreement has any personal or financial interest, direct or indirect in this Agreement or the proceeds hereof.

10.02 The Contractor warrants and covenants that it has received and reviewed a copy of the City's Ethics Ordinance, as it may be amended from time to time (the "Ethics Ordinance"), the terms of which are incorporated herein by reference, and that Contractor is not in violation of any standards and requirements set forth in the Ethics Ordinance.

#### ARTICLE XI Confidential Information

11.01 In order that the Contractor may effectively fulfill its obligations under this Agreement, it may be necessary or desirable for the DBA to disclose confidential and/or proprietary information to the Contractor pertaining to the Facility, the Services and/or the DBA's past, present and future activities.

11.02 "Confidential Information" shall include, without limitation, non-public information which the DBA designates as confidential, information relating to the DBA's operations and business strategy, business, financial affairs, methods, marketing strategies, pricing, competitor information, construction and/or renovation plans, client lists, research and development activities, financial results and/or models, trade secrets, commercial activities, and such other confidential or proprietary information as shall be designated by the DBA.

11.03 Contractor agrees to treat all information and/or documentation received in performing the Services to be confidential and/or proprietary to the DBA, unless it (i) is or becomes generally available to the public other than as a result of a disclosure by us, or owners, officers, employees, agents and/or representatives; (ii) was available on a non-confidential basis prior to its disclosure by us, or owners, officers, employees, agents and/or representatives of (iii) becomes available to a party on a non-confidential basis from a source other than the DBA and such source is not bound by a confidentiality agreement.

11.04 Contractor acknowledges that the Confidential Information is and shall always remain, the sole and exclusive property of the DBA and shall be used by the Contractor solely for the purposes for which the DBA has authorized. Upon the expiration or termination of this Agreement, the Contractor shall return all Confidential Information to the DBA without retaining a copy.

## ARTICLE XII

### Indemnity and Insurance

12.01 The Contractor agrees to indemnify and hold harmless the DBA and the City to the degree of Contractor's fault against and from any and all liabilities, obligations, damages, penalties, claims, costs, charges, losses and expenses (including, without limitation, fees and expenses of attorneys, expert witnesses and other consultants) ("Claims") which may be imposed upon, incurred by or asserted against the DBA by reason of any negligent acts of the Contractor and/or its Employees, during the term of this Agreement.

12.02 Without limiting the foregoing indemnity, the Contractor specifically acknowledges that the foregoing indemnity to the degree of Contractor's fault shall include:

- a. any and all claims for injury to the person or damage to the property of, or any loss or expense incurred by, the DBA, its officers, directors, employees, agents, representatives and/or independent Contractors (collectively, the "DBA Indemnified Persons") which arise out of the negligent and/or tortious performance of the Services by the Contractor and/or its

- Employees and/or its affiliates and/or subsidiaries ("Contractor Indemnifying Persons"); and
- b. any failure by the Contractor Indemnifying Persons to perform its obligations, whether express or implied, under this Agreement; and
- c. any act, failure to act, misrepresentation, whether intentional or unintentional, by Contractor Indemnifying Persons.

12.03 In the event any Claim shall be brought against the DBA and/or the City related to the Services provided by the Contractor, to the degree of Contractor's fault, the Contractor, shall at the Contractor's sole cost and expense, resolve or defend the same, with counsel of the Contractor's choice, provided said counsel is acceptable to the DBA; or if Contractor's counsel is not acceptable to DBA, DBA may select its own legal counsel to defend the Claim and Contractor shall pay all fees, costs and expenses associated therewith.

12.04 Contractor's indemnification herein shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor, including any limitation that may be applicable under Workers' compensation acts or other employee benefit acts. Contractor agrees that Contractor's indemnification herein includes the requirement for Contractor to pay any deductible incurred by the DBA regarding any insured Claim to the degree of Contractor's fault.

12.05 Contractor agrees to hold the DBA harmless for any loss or damage to Contractor's property, equipment and/or materials ("Contractor's Property") used in connection with the Services, it being Contractor's responsibility, and not the responsibility of the DBA, to assure that Contractor's employees and subcontracted skilled trades safeguard, store, secure, supervise and use the Contractor's Property in a safe and secure manner.

12.06 Contractor agrees that it will require in a written contract between the Contractor and each of the Contractor's Subcontractors, consultants, agents or contracted personnel, the same indemnification of the DBA that Contractor has provided herein. The obligations of the Contractor under this Article XII shall not expand the liability of the Contractor to include liability for services within the scope of services of the Project Architect/Engineer or the Project Architect/Engineer's consultants, and agents and employees.

12.07 Contractor shall, at its own expense, secure and deliver to the DBA, and shall keep in force at all times during the Term of this Agreement, the minimum insurance policies ("Minimum Insurance Requirements") set forth on Schedule D attached hereto and made a part hereof.

12.08 If during the Contract Term, changed conditions or other pertinent factors should, in the reasonable judgment of the DBA, render inadequate the

insurance limit, or types of coverage required herein, the Contractor will furnish on demand such additional coverage as may reasonably be required under the circumstances. All such insurance shall be under valid and enforceable policies, issued by insurance companies duly authorized to issue such policies in the State of Michigan and having a rating of at least "A-" as rated in Best's Rating Guide or a successor or substitute rating services acceptable to the Contractor and the DBA.

12.09 The Contractor shall provide the DBA with an insurance certificate, including at least the Minimum Insurance Requirements, which shall specifically state that the Detroit Building Authority, and the City included as "additional insureds" for all of the Contractor's policies and insurance coverage required herein. In addition, the certificate shall confirm that the DBA will receive thirty (30) days advance written Notice of any modification of and/or the termination of any of the policies and insurance coverage required herein. The DBA shall have the right at any time during the Contract Term to reasonably request that the Contractor provide written proof that it maintains the Minimum Insurance Requirements at all times.

12.10 The Contractor shall include all Subcontractors as named insureds under its policies or shall furnish separate evidence of insurance as stated above for each approved Subcontractor, so that each Subcontractor shall have in force, insurance policies with at least the Minimum Insurance Requirements set forth above.

12.11 The Minimum Insurance Requirements, represent the DBA's minimum requirements and do not relieve the Contractor of its obligation to meet or exceed any requirements of federal and state regulatory bodies having jurisdiction over the Contractor's operations and/or the Transportation Services. Contractor hereby acknowledges that the Minimum Insurance Requirements set forth herein, shall in no way limit the liabilities or obligations of Contractor under this Agreement, including without limitation, Contractor's indemnification obligations under Section 5.06 above.

12.12 Certificates of insurance evidencing at least the Minimum Insurance Requirements shall be submitted to the DBA on or before the Effective Date and at least fifteen (15) days prior to the expiration dates of expiring policies. Upon request, the Contractor shall provide the DBA with copies of all required policies.

12.13 The Contractor shall be responsible for payments of all deductibles required under any of the insurance policies required hereunder. The requirement that Contractor maintain Minimum Insurance Requirements shall not be construed as a waiver or restricting on Contractor's indemnification obligations set forth in this Agreement.



12.14 Nothing contained in this Article XII shall be construed to require indemnification by the Contractor to a greater degree than that permitted by Act 165 of the Michigan Public Acts of 1966, being MCLA 691.991.

### ARTICLE XIII

#### Equal Employment Opportunity and Anti-Discrimination Practices

13.01 Compliance with Fair Employment Laws. The Contractor agrees that, in connection with the Project, it shall comply with the United States Constitution and all federal, state, and local laws, rules, and regulations governing fair employment practices and equal employment opportunity. The Contractor shall promptly furnish any information requested by the City of Detroit or its Human Rights Department with respect to this subsection a.

13.02 The Contractor shall comply with the rules and procedures applicable to the Contractor adopted by the Human Rights Department of the City of Detroit pursuant to the 1997 City of Detroit Charter and the Detroit City Code.

13.03 The Contractor voluntarily agrees that it shall use its best efforts in the performance of the Work, and shall require all Subcontractors hired to perform portions of the Work to use their best efforts, to comply with goals equal to those set forth in City of Detroit Ordinance No. 20-93, codified as Detroit City Code 18-5-60 through 18-5-66, "Prevailing Wage and Fringe Benefit Rates Required for City Projects", as amended.

13.04 Upon commencement of the Construction Work, the Contractor shall thereafter submit to the Owner, at the time it makes application for payment pursuant to Attachment A, monthly written reports evidencing its compliance with City of Detroit Executive Order Nos. 2014-4 and 2014-5 and Subsection 13(d). The Contractor shall require similar reports from each of its Subcontractors and shall submit the Subcontractor's monthly reports along with its report. Upon receipt of such monthly reports they shall be submitted to the City of Detroit Human Rights Department ("HRD") as part of its contract information tracking system ("CITS"). Contractor agrees to provide all information required by HRD to conform to CITS. It further agrees to require by subcontract all if its Subcontractors to provide all information required by HRD in relation to the CITS.

13.05 The Contractor shall incorporate in all Subcontracts entered into by the Contractor for Work associated in any way with the Project the obligations imposed by this Section 13 when soliciting Subcontractors and shall include all applicable provisions of this Section 13 in any Subcontract related to the Work. The Contractor shall take such action with respect to any Subcontract as the City may reasonably direct as a means of enforcing such provisions, including sanctions for non-compliance, but shall not otherwise be liable for non-compliance by a contracting party.

13.06 The Contractor is required to adhere to City of Detroit Ordinance No. 20-93, codified as Detroit City Code 18-5-60 through 18-5-66, and with the goals of City of Detroit Executive Orders No. 2014-4 and 2014-5.

13.07 DBE, SBE, PARTICIPATION. The Contractor shall, through self-performance or through Subcontractor utilization, make every effort ("good faith effort") to utilize Detroit Based Businesses and Detroit Headquartered Businesses in the performance of the Work consistent with the goals of the City of Detroit's Executive Order Nos. 2014-4 and 2014-5.

A breach of the terms and conditions of this Section XIII shall be regarded as a material breach of this Contract Agreement.

#### ARTICLE XIV Notices

14.01 All notices, consents, approvals, requests, reports and other communications (herein collectively called "Notices") required or permitted under this Agreement shall be in writing and addressed as follows:

If to DBA: Detroit Building Authority  
1301 Third Street, Suite 328  
Detroit, Michigan 48226  
Attention: Tyrone Clifton, Director

The Allen Law Group, PC  
3011 W. Grand Blvd.  
Suite 2500  
Detroit, Michigan 48202  
Attention: Floyd E. Allen, Esquire

If to Contractor: KEO & Associates, Inc.  
18286 Wyoming Street  
Detroit, Michigan 48221  
Attention: Chris Onwuzurike, President

14.02 Notices shall be deemed received three (3) days after the day of mailing via U.S. Mail and may also be transmitted via overnight courier service, hand delivery, facsimile or email to the numbers and addresses listed hereinabove. If transmitted via hand delivery, facsimile or email, receipt of the transmittal is deemed to be the date of delivery, if via overnight courier service, delivery shall be deemed to be the actual date of delivery as evidenced by a receipt confirmation from the overnight delivery service. In the event a Notice is sent by email or facsimile it shall be the sending party's responsibility to obtain a confirmation of receipt before the Notice will be acknowledged. Either party to this Agreement may

change its address for the receipt of Notices at any time by giving Notice thereof to the other as herein provided. Any Notice given by a party hereunder must be signed by an authorized representative of such party.

14.03 Service of process upon the Contractor at the address provided herein, as Contractor may change the address in the future, shall be deemed to be sufficient service of process for any claims or actions arising out of this Agreement and Contractor waives any defenses to such service.

#### ARTICLE XV Representations and Warranties

15.01 Contractor represents and warrants that all of the following statements are true and shall remain true from the Effective Date of this Agreement throughout the Term:

- (a) The Contractor covenants that it is not, and will not become, in arrears to the DBA upon any contract, debt or other obligations.
- (b) The Contractor is fully qualified and capable and has the requisite skills necessary to perform the Services pursuant to the terms and conditions set forth therein.
- (c) Contractor represents and warrants that it has full power and DBA to enter into this Agreement, to enter into the obligations described herein, to execute and deliver this as well as any and all other documents to be executed and/or delivered in connection therewith, and to incur the obligations provided for herein and therein, all of which have been duly authorized by all proper and necessary action of the Contractor.
- (d) Contractor represents and warrants that, as of the date of the Contractor's proposal ("Proposal") submitted by Contractor to the DBA in response to the DBA Request for Proposal that precipitated this Agreement (the "RFQ/P"), on the Effective Date and throughout the Contract Term of this Agreement, Contractor has not been and is not in arrears to the State of Michigan for any debts whatsoever (including, but not limited to, back taxes), nor is or was Contractor in default or in litigation regarding any issues with the State of Michigan, US Federal Government, Wayne County, Oakland County, Macomb County or the City of Detroit.
- (e) Contractor represents and warrants that it has the necessary financial resources, Employees, vehicles and equipment and operation available to provide the Services to meet and exceed the DBA's expectations, as required by this Agreement.

- (f) Contractor represents and warrants that it is not, jointly or severally, party to any contract or agreement or subject to any other restriction or unusually burdensome order of any regulatory commission, court, board or agency, which may materially and adversely affect its ability to provide the Services, its business, properties and/or assets and/or its condition, financial or otherwise. The execution and performance of this Agreement and the documentation related thereto, will not result in the creation of any other encumbrance or charge upon any asset of Contractor pursuant to the terms of any other agreement. No provisions of any existing mortgage, indenture, contract or agreement affecting Contractor's operations and/or assets, in effect which would conflict with or in any way prevent the execution, delivery or enforcement of the terms of this Agreement.
- (g) To the best of Contractor's knowledge, it has not received any written notice from any governmental authority that the Contractor is now in violation of any governmental orders, regulations, statutes or ordinances dealing with the Contractor's operations. In the event any such notice from any governmental authority is received by Contractor between the Proposal Date and throughout the Term, which Contractor does not reasonably contest, Contractor shall correct the same, at Contractor's expense, as promptly as possible.
- (h) Contractor has not entered into any contracts or made any commitments which would bind the DBA as a successor in interest.
- (i) Contractor has not entered into any other existing agreements which will or would conflict with its obligations hereunder.
- (j) To the best of Contractor's knowledge, all documents heretofore and hereafter provided to the DBA are, and shall be complete, true, and accurate in all material respects.
- (k) Contractor has not contracted for the furnishing of labor or materials which will not be paid in full by Contractor in the ordinary course. Contractor shall indemnify the DBA from all loss, claims, and costs which the DBA may incur from the imposition of construction and/or storage/bailment liens, if any, arising from the acts and/or omissions of Contractor.
- (l) Contractor has no notice of, and there is no pending or threatened litigation, administrative action or examination, claim or demand whatsoever relating to the Contractor and/or its operations and/or assets, or the Services contemplated herein, before any court or any federal, state or municipal government department, commission, board, bureau, agency or instrumentality thereof, the outcome of which may materially adversely affect Contractor and/or Contractor's

ability to perform the Services in accordance with this Agreement.

- (m) That no federal, state or local taxing authority has asserted any tax deficiency, lien, or assessment against the Contractor which has not been paid or the payment for which adequate provision has not been made, to DBA's satisfaction.
- (n) That Contractor has performed, in all material respects, all obligations required to be performed by Contractor, and Contractor is not in default under any agreement, lease, mortgage or any other document to which Contractor is or has been a party.
- (o) That Contractor and the principals and/or partners and/or owners and/or officers of Contractor are citizens of the United States of America as defined in Section 1445 of the Internal Revenue Code.
- (p) This Agreement, and all related documents will, when executed and delivered by Contractor, be the valid, legal and binding agreements or obligations of the Contractor, enforceable in accordance with their respective terms, having been duly authorized by all requisite corporate action.
- (q) Contractor hereby warrants and represents to and covenants with the DBA that each and every warranty, representation, and covenant set forth in this Agreement shall be true for the period from the date of the Proposal and throughout the Term of this Agreement.

#### ARTICLE XVI

##### Payment Bond, Guaranty and Warranty Requirements

16.01 The Contractor shall provide a payment and performance bond, guaranty and/or warranty, the terms and conditions governing such matters shall be set forth in Schedule E – Performance Bond, Guaranty and Warranty Requirements, attached hereto.

#### ARTICLE XVII

##### Uncovering and Correction of Work

17.01 If any portion of the Work should be covered contrary to the request of the Project Architect/Engineer or to requirements expressed in the Contract Documents, it must, if required by the Project Architect/Engineer, be uncovered for the Project Architect/Engineer's observation and shall be replaced at the Contractor's sole expense. If any other portion of the Work has been covered which the Project Architect/Engineer has not specifically requested to observe prior to being covered, the Project Architect/Engineer may request to observe such Work and it shall be uncovered by the Contractor. If such Work be found in accordance with the Contract

Documents, the cost of uncovering and covering shall, by appropriate change order, be charged to the DBA. If such Work be found not in accordance with the Contract Documents, the Contractor shall pay such costs.

17.02 The Contractor shall promptly correct all Work rejected by the Project Architect/Engineer as defective or as failing to conform to the Contract Documents whether observed before or after the substantial completion date and whether or not fabricated, installed or completed. The Contractor shall bear all costs of correcting such rejected Work without waiving its right to appeal the determinations of the DBA. If, within one year after the substantial completion date or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be defective or not in accordance with the Contract Documents, the Contractor shall correct it promptly after receipt of a written notice from the DBA to do so. This obligation shall survive termination of the Agreement. The DBA shall give such notice promptly after discovery of the condition.

The Contractor shall remove from the Project site all portions of the Work which are defective or non-conforming and which have not been corrected, unless removal is waived in writing by the DBA. If the Contractor fails to correct defective or non-conforming Work, the DBA may correct it and charge the cost to the Contractor. If the Contractor does not proceed with the correction of such defective or non-conforming Work within a reasonable time fixed by written notice from the Project Architect/Engineer, the DBA may remove it and may store the materials or equipment at the expense of the Contractor. If the Contractor does not pay the cost of such removal and storage within ten days thereafter, the DBA may upon ten (10) additional days' written notice sell such Work at auction or at private sale and shall account for the net proceeds thereof. If such proceeds of sale do not cover all costs which the Contractor should have borne, the difference shall be charged to the Contractor, and an appropriate change order shall be issued. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the DBA within thirty (30) days of the date on which the DBA requests such payment.

The Contractor shall bear the cost of making good all Work of the Authority or its Subcontractors destroyed or damaged by such correction or removal. Nothing contained in this Article XVII shall be construed to establish a period of limitation with respect to any other obligation which the Contractor may have under the Contract Documents. The establishment of the time period of one year after the substantial completion date or such longer period of time as may be prescribed by law or by the terms of any warranty required by the Contract Documents relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which its obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to its obligations other than specifically to correct the Work.

17.03 If the Authority prefers to accept defective or non-conforming Work, the Authority may do so instead of requiring its removal and correction, in which case a Change Order will be issued to reflect a reduction in the compensation to be paid to the Construction Manager hereunder, where appropriate and equitable. Such adjustments shall be effected whether or not final payment has been made.

#### ARTICLE XVIII Contractor's Accounting Records

18.01. Records of costs pertaining to Services performed by the Contractor under the Contract Documents for which the Contractor is to be reimbursed shall be kept in accordance with generally accepted construction industry accounting principles, consistently applied, and shall be available to the DBA during normal business hours, and the Construction Manager shall preserve all such records for a period of seven (7) years, or such longer period as may be required by applicable law, after the substantial completion date for the Work.

#### ARTICLE XIX Discounts

19.01. The Contractor shall notify the DBA of the availability of any cash discounts in sufficient time for the Authority to supply funds to obtain such discounts. If the DBA makes the funds available in a timely manner, such discounts shall accrue to the DBA; if, however, the DBA fails to make such funds available in a timely manner, such discounts shall accrue to the Contractor. All trade discounts, rebates and refunds, and all returns from the sale of surplus materials and equipment shall accrue to the DBA, and the Contractor shall make them available to the DBA.

#### ARTICLE XX Changes in the Work

20.01 If the DBA orders changes in the Work, the fixed professional fee and the substantial completion date and/or final completion date affected thereby may be adjusted to the extent affected by such change. Changes in the Work and/or the foregoing adjustments, if any, shall only be authorized by change orders or Amendments.

20.01.1 Each adjustment, if any, resulting from a change order shall clearly separate the fixed professional fee, from the cost of the Work.

20.01.2 Each adjustment, if any, resulting from a change order authorizing a change in the Work shall be determined by the reasonable increase or decrease in:

- a. The cost of the Work included within or attributable to such change in the project; plus or minus
- b. The amount allocated to the fixed professional fee.

20.01.3 Should Unforeseen Site Conditions be encountered in the performance of the Work below the surface of the ground or should concealed or unknown conditions in an existing structure be at variance with the conditions indicated by the Plans, Specifications, or DBA-furnished information or should unknown conditions below the surface of the ground or should concealed or unknown conditions in an existing structure of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in Work of the character provided for in this Agreement, be encountered, the project budget and the substantial completion date may be equitably adjusted by change order approved in writing by the DBA upon written claim by the Contractor within thirty (30) days after the first observance of the conditions.

#### 20.02 Claims For Additional Cost or Time

20.02.1. If the Contractor desires to make a claim for an increase in the cost of the Work, the fixed professional fee or an extension in the substantial completion date and/or final completion date, the Contractor shall give the DBA written notice thereof within a reasonable time after the occurrence of the event giving rise to such claim. Claims arising from delay shall be made within thirty (30) days after the Contractor becomes aware or should have reasonably become aware of the circumstances of the delay. No such claim shall be valid unless so made. Any change in the cost of the Work, the fixed professional fee, or the substantial completion date and/or final completion date resulting from such claim shall be authorized by a change order approved by the DBA and in the form of Amendment hereto. The Contractor shall not be entitled to suspend or further delay the Work by reason of the filing or pendency of any such claim by the Contractor.

#### 20.03. Minor Changes in the Work

20.03.1 The Project Architect/Engineer will have the authority to order minor changes in the Work, or any Phase or designated portion thereof not involving a change in the Work or an adjustment in the fixed professional fee, or the substantial completion date and/or final completion date. Such minor changes may be affected by written order of the Project Architect/Engineer and shall be binding on the DBA and the Contractor. The Contractor shall carry out such written orders promptly.



#### 20.03.2 Emergencies

20.03.2 In any emergency affecting the safety of persons or property, the Contractor shall act, at its discretion, to prevent threatened damage, injury or loss. Any adjustment in the cost of the Work, fixed professional fee or substantial completion date and/or final completion date claimed by the Contractor on account of emergency Work shall be determined as provided in this Article with respect to changes in the Work.

### ARTICLE XXI General Provisions

21.01 The parties hereto agree that at any time or from time to time after the execution of this Agreement, they shall, upon request of the other, execute and deliver such further documents and do such further actions and things as may be reasonably requested in order to fully effect the purposes of this Agreement.

21.02 Except as otherwise expressly provided herein to the contrary, all covenants, representations, agreements, conditions, obligations and undertakings hereunder survive.

21.03 This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Michigan, without giving any effect to any choice-of-law principles that would require the application of laws of a different jurisdiction. Both Michigan substantive and Michigan procedural law will be applied in construing this provision and interpreting this Agreement in total other than those incidences where federal law may apply. Any disputes hereunder shall be litigated in the State or federal courts, as applicable, located in Detroit, Wayne County, Michigan. Each party hereby consents and submits to the personal jurisdiction of such courts for the purpose of litigating any such action.

21.04 This Agreement embodies the entire agreement and understanding by and among the Parties relating to the subject matter hereof, and this Agreement may not be amended, waived or discharged, except by an instrument in writing executed by both Parties.

21.05 This Agreement may be executed in any number of counterparts, none of which may have been executed by all the Parties hereto, each of which shall be deemed an original, and all of which when taken together shall constitute one and the same instrument.

21.06 Whenever possible, each provision of this Agreement and all related documents shall be interpreted in such a manner as to be valid under applicable law, but to the extent any provision is invalid or prohibited under applicable law, such provision shall be ineffective to the extent of such invalidity or prohibition

without invalidating the remainder of such provision or the remaining provisions of this Agreement.

21.07 No failure or delay on the part of any Party hereto in the exercise of any power or right hereunder shall operate as a waiver of such power or right with respect to any other term, provision, or condition hereof and all rights and remedies hereunder are cumulative and shall not be deemed exclusive of any other rights or remedies provided by law. The DBA reserves and shall have any and all rights and remedies provided in this Agreement and at law or in equity, including, but not limited to the equitable remedy of specific performance.

21.08 All exhibits, schedules and other documentation referred to in this Agreement, but not attached hereto on the Effective Date hereof, shall be completed as needed. Any documents, exhibit, and/or schedule referenced herein is a part of this Agreement and shall be deemed to have been incorporated herein.

21.09 This Agreement shall be binding upon and inure to the benefit of the heirs, legal representatives, successors and assigns of the Parties hereto.

21.10 Wherever the singular and masculine is used in this Agreement, it shall be construed as if the plural or feminine or neuter, as the case may be, had been used where the nature of the Party or Parties hereto so requires and the rest of any sentence shall be construed as if the grammatical and terminological changes thereby rendered necessary had been made.

21.11 All article, section and paragraph headings are for quick reference and convenience only and do not alter, amend, explain, or otherwise affect the terms and conditions appearing in this Agreement.

21.12 This Agreement and any of the rights and obligation of the Contractor hereunder may not be assigned by the Contractor. The DBA shall be permitted to assign its rights and obligation of the DBA hereunder without the consent of the Contractor.

21.13 No amendment or modification of this Agreement shall be valid or binding on the Parties unless made in writing and signed on behalf of each of the Party by their respective duly authorized representatives.

21.14 Any rights and remedies specifically referenced herein are not exclusive and shall be in addition to any of the rights and remedies provided at law or in equity.

21.15 Force majeure events shall include, but not be limited to, acts of God, tornadoes, floods, hurricanes, earthquakes, tidal waves, blizzards or other natural disasters, strikes, labor disputes, fires, unusually severe or abnormal weather

conditions, epidemics, quarantine restrictions, acts of the state or federal government in their sovereign capacity, wars, terrorism, incidence of disease or other illness that reaches outbreak and epidemics, which affect the area in which the Project is located and/or the Contractor's labor and/or supply chain, .

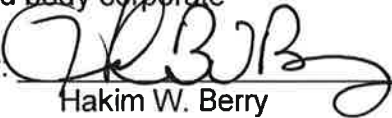
21.16 Contractor and each of its Subcontractors shall comply with all anti-kickback laws, including the Copeland Anti-Kickback Act (18 USC §874) and is prohibited from inducing, by any means, any person employed in connection with the Project to give up any part of the compensation to which he/she is otherwise entitled. Contractor shall insert substantially similar language to the language in this Section to ensure compliance by Subcontractors with the terms of this Section.

21.17 Contractor and each of its Subcontractors are prohibited from paying or accepting any bribe in connection with securing this Agreement or in connection with performing under the terms of this Agreement. Contractor shall insert substantially similar language to the language in this Section to ensure compliance by Subcontractors with the terms of this Section.


21.18 Contractor acknowledges and agrees that the DBA shall be permitted to audit the Contractor's financial records pertaining to the Contractor's performance of this Agreement, which right to audit may be assigned by the DBA to its designee, including the Detroit City Council and the City Auditor General.

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

CITY OF DETROIT BUILDING  
AUTHORITY, a Michigan public authority  
and body corporate


By:   
Hakim W. Berry

Its: Chairman

By:   
Christopher T. Jackson

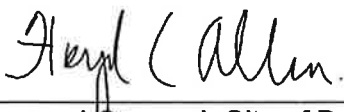
Its: Treasurer

KEO & Associates, Inc., a Michigan  
profit corporation

By: 

Its:   
PRESIDENT

APPROVED AS TO FORM:

  
General Counsel, City of Detroit  
Building Authority

## **LIST OF ATTACHMENTS**

**Schedule A – Scope of Services**

**Schedule B – Facility Improvements**

**Schedule C – Invoice Format – Rates - Method of Payment**

**Schedule D – Minimum Insurance Requirements**

**Schedule E - Payment Bond, Guaranty and Warranty Requirements**

## **Schedule A**

### **Scope of Services**

Services shall be performed in accordance with the Construction Manager's proposal, including Construction Manager's fees and expenses, attached hereto and made a part of this Schedule A. The Services are outlined on the plans and specifications issued by NORR on 6/11/19 and incorporated by reference. In general, the scope of work entails the following:

**a. Bid Pack No 1**

- i. Demo the designated rooftop units and exhaust fans and cap the existing roof curb openings
- ii. Removal of said rooftop units shall be salvaged and staged in area on-site designated by the Owner.
- iii. Install protection boards over the roofing material
- iv. Disconnect plumbing, electrical and gas lines to units scheduled to be removed.
- v. In general, all roof curbs are intended to be re-used and capped as specified. However, if a roof curbs must be removed, use Detail #7 to address this condition. Notify DBA and/or Architect if any curb(s) can't be re-used.
- vi. Remove roof penetrations servicing the demoed equipment; and provide a watertight seal.
- vii. All areas scheduled for equipment removal are shown on the plans.

**b. Bid Pack No 2**

- i. Demo the roof sections shown on the plans to be removed and replaced/repared per specifications.
- ii. Existing roof system is coal tar pitch built-up roofing system. Remove and replace with new EDPM 60 mil single ply membrane over 1/2" high density ISO board adhered to 2" polyisocyanurate; mechanically attached to existing steel deck.
- iii. Existing roof system is specified on the plans.
- iv. Remove all existing flashings, blocking and other elements of the existing roof system that aren't required for the new roof system.
- v. Provide protection board over new roofing material throughout construction.
- vi. All new roofing penetrations and/or repairs shall be made watertight with joint sealant, etc.
- vii. Submit pricing by area as listed on the Proposal form.
- viii. Roofing repair work shall include preparing and prime painting existing rusted roof deck surfaces; repair existing roof deck with flat stock sheet metal where noted; and removal and replacement of existing metal decking where noted as required per plans and specifications
- ix. Assume 10% of wood blocking replacement
- x. ALTERNATE PRICING: Submit alt for the use of 75 mil EPDM single ply membrane

- xi. New flashings at top of parapet walls, roof curbs, etc. are included in this scope
- c. Protect the areas below the roof where fireproofing patching/new installation will occur
- d. Miscellaneous scope of work items are articulated in the plans and specifications.
- e. Site Walk-through is required to have a good understanding of scope unless said vendor participated in the walk-through last summer.
- f. Interior protection is intended to cover equipment and materials below roof area being worked on.
- g. For the purpose of bidding, assume 25% of the area below each area of roof replacement scope of work will be draped protection of equipment and materials.
- h. New fireproofing will be performed by others (DWSD).
- i. Roofing contractor is not responsible to carry any cost for QA inspection in their bid proposal.
- j. Permits are required for this scope of services.
- k. In regard to fire alarm equipment installed at the units, If the units are not powered on, the fire equipment will not operate. If there is equipment attached to the unit and will not be placed back onto a new unit, the devices must be removed and deprogrammed from the fire alarm panel. Circuiting should terminate below the roof in a junction box. Simplex/Johnson Controls Fire Protection would be the company who can do the deprogramming as the panel is Simplex 4100.
- l. Staging areas shall be coordinated with DWSD on-site designated personnel.
- m. DWSD will de-energize each piece of equipment scheduled to be removed.
- n. The gas lines for each unit being removed shall be terminated and capped below the roof deck at a convenient and logical location relative to the specific location and piping layout. Service to other locations shall not be interrupted.
- o. Electrical lines/conduit for each unit being removed shall be terminated below the roof deck at a convenient and logical location relative to the specific location and distribution system.
- p. Details 7/A3-01, 8/A3-01, 9/A3-10, and 10/A3-01 are all associated with metal panel detailing. The panels should be cut at the specified distance above the roof surface, and new heavy gage steel installed in the space where the existing siding

was removed and stitched to the existing metal panels. If there is a horizontal girt in the vicinity, then the heavy gage steel should be terminated to the girt. In the event the next horizontal girt is much higher and it is field determined that the assembly requires more stiffening to support lateral loading, then additional C-channel sub-girts will be added between the columns. Installation of c-channel would be handled on a time and material basis.

Other Services need as required:

1. Work cooperatively with the Project Architect/Engineer.
2. Consult with, advise, assist and make recommendations to the DBA on all aspects of planning for the Project.
3. Review and assist in the preparation of necessary documentation required by any grant regulation applicable to Project funding, if any.
4. Review architectural, civil, mechanical, electrical and structural plans and specifications and advise on the design, selection of systems and materials, and make recommendations with respect to such factors as construction feasibility, suggested economics, availability of materials and labor, time requirements and construction costs. None of the Services described in this paragraph shall be construed to constitute the practice of architecture by the Contractor and the Contractor shall not be liable for the design of the Project Architect/Engineer or its Subcontractors.
5. Purchase and expedite long lead-time procurement of equipment, materials, and supplies to ensure delivery by the required dates.
6. Prepare the standard construction contract forms for the Work and prepare all construction documents for execution by the Contractor's Subcontractors.
7. Review the plans, specifications and schedule to eliminate areas of conflict and overlapping jurisdiction among the separate Contractor's Subcontractors on the job so that the Work on the Project may be completed as expeditiously as possible.
8. Obtain the DBA's concurrence on the method to be used for selecting Contractors and awarding contracts.
9. Prepare a mailing list of bidders. Establish bidding schedules and conduct pre-bid conferences to familiarize bidders with the bidding documents and with any special systems, materials or methods. Prepare and place advertisements for bids in publications.



10. Receive bids, prepare a bid analysis, obtain all required clearances such as Civil Rights, Inclusions and Opportunity and City of Detroit income tax, and make award of contracts in consultation with DBA.
11. Develop Contractor interest in the Project and take competitive bids on the Work of the various Subcontractors of the Contractor.
12. Prepare standard construction contract documents for approval by the DBA and for execution by the Contractor's Subcontractors.
13. Implement the Contractor's equal employment opportunity policy as delineated in Article XIII herein, by developing and formulating bid packages in an effort to maximize opportunities for minority Contractors and suppliers to participate in the Project.
14. Develop a Project time schedule for each separate item of Work in the Project and a master time schedule for the entire Project, which coordinates and integrates the Contractor's services with construction schedules. Update the Project time schedule incorporating a detailed schedule for the construction operations of the Project, including realistic activity sequences and duration, allocation of labor and materials, processing of shop drawings and samples, and delivery of products requiring long lead-time procurement. Include the DBA's occupancy requirements showing portions of the Project having occupancy priority.
15. Maintain a list of personnel to be stationed at the Project site and at the Contractor's main office. The Contractor shall notify the DBA in writing and obtain approval from the DBA within thirty (30) days of any changes in personnel on said list. All personnel engaged in the Work shall be supervised by the Contractor's project manager; and site operations shall be supervised by the Contractor's project superintendent.
16. Monitor the Work of all of its Subcontractors and coordinate the Work with the activities and responsibilities of the DBA and complete the Project in accordance with the Contract Documents, including but not limited to those concerning the Project cost, time and quality.
17. Maintain a competent full-time staff at the Project site to coordinate, monitor and provide direction of the Work and progress of its Subcontractors on the Project.
18. Establish on-site organization and lines of authority in order to expeditiously complete the Project.

19. Establish and implement procedures for coordination among the DBA Projects, Project Architect/Engineer, its Contractors and Contractor with respect to all aspects of the Project.
20. Schedule, conduct and document in writing all progress meetings deemed necessary by the DBA at which the Contractor's Subcontractors Contractors, the DBA, the Project Architect/Engineer and the Contractor may discuss such matters as procedures, progress, problems and scheduling.
21. Provide regular monitoring of the schedule as construction progresses. Identify potential variances between scheduled and probable completion dates. Review the schedule for Work not started or incomplete and recommend to the DBA and Contractor's Subcontractors adjustments in the schedule to meet the probable completion date. Provide summary reports of each monitoring and document all changes in the schedule.
22. Determine the adequacy and ability of its Subcontractors' personnel and equipment and the availability of materials and supplies to meet the schedule. Recommend courses of action to the DBA when requirements of a contract are not being met.
23. Provide all supervision, labor, materials, construction equipment, tools and trade contract items necessary for the completion of the Project provided by either its Subcontractors or the DBA. Contractor shall not, however, perform any of the Work with his own forces.
24. Observe the Work of its Subcontractors to assure Work is being performed in accordance with the requirements of the Construction Documents. Inspect the Work of Subcontractors for defects and deficiencies in the Work. Protect the DBA against defects and deficiencies in the Work. The Contractor shall have the right to stop the Work or reject Work of any Subcontractor, or any portion thereof that does not conform to the Contract Documents, and require special inspection or testing of any Work, whether or not such Work is then fabricated, installed or completed.
25. Develop and monitor an effective system of Project cost control. Revise and refine the line item estimates in the cost of the Project as it is affected by the construction cost, incorporate approved changes as they occur, and develop cash flow reports and forecasts as needed. Identify variances between actual and budgeted or estimated costs and advise the DBA whenever projected costs exceed estimated line item prices.
26. Maintain cost accounting records on authorized Work performed under unit costs, actual costs for labor and material, or other bases requiring accounting records. Afford the DBA access to these records and retain

such records for a period of seven (7) years after final payment. After the period of seven (7) years, these records shall be turned over to the DBA.

27. Develop and implement a system for the preparation, review and processing of change orders. Recommend necessary or desirable changes to the DBA, review requests for changes, submit recommendations to the DBA, and assist in negotiating change orders.
28. Develop and implement a procedure for review, processing and payment of applications by Subcontractors for progress and final payments.
29. Assist the DBA in obtaining all building permits and special permits for permanent improvements, excluding permits for inspection or temporary facilities required to be obtained directly by the various Subcontractors.
30. If requested by the DBA, assist the DBA in selecting and retaining, or retain directly with the DBA's approval, the professional services of a surveyor, testing laboratories and special consultants, and coordinate these services.
31. Consult with the DBA and the Project Architect/Engineer, any Subcontractor requests for interpretations of the meaning and intent of the Plans and Specifications, and assist in the resolution of any questions which may arise.
32. Review the safety programs of the Subcontractors and make appropriate recommendations. Conduct the CM Services hereunder, and ensure that any contracts the Contractor enters into pursuant to this Agreement, are conducted in compliance with all federal, state and local statutes, rules, regulations and orders applicable to the conduct of the Work. The performance of such services by the Contractor shall not relieve the Subcontractors of responsibility for safety of persons and responsibility for safety of persons and property, and for compliance with all federal, state and local statutes, rules, regulations and orders applicable to the conduct of the Work.
33. Allow access to the Project, upon reasonable notice, at all times by the DBA, its agents and representatives.
34. Establish and implement procedures for expediting the processing and review of shop drawings and samples submitted to the Project Architect/Engineer for its approval. The Contractor shall furnish copies of all drawings and specifications necessary for the execution of the Work.
35. Record the progress of the Project. Submit written monthly progress reports to the DBA including information on Subcontractors' Work, the

percentage of completion, and the number and amount of change orders. The Contractor shall keep a daily log at the job site available to the DBA.

36. Maintain at the Project site on a current basis: records of all necessary contracts, drawings, samples, purchases, materials, equipment, maintenance and operating manuals and instructions, and other construction related documents, including all revisions. Obtain data from Subcontractors and maintain a current set of record Drawings, Specifications and operating manuals.
37. Propose a date for Substantial Completion of the Work or designated portions thereof for concurrence by the Project Architect/Engineer and DBA, and prepare for the DBA a punchlist and a schedule for completion of each item. After the Project Architect/Engineer certifies the Substantial Completion Date, the Contractor shall supervise the correction and completion of the Work.
38. With the DBA's maintenance personnel, direct the checkout of utilities operational systems and equipment for readiness and assist in initial startup and testing.
39. Recommend a date for Final Completion, for concurrence by the Project Architect/Engineer and the DBA.
40. Warrant that all materials and equipment included in Work performed by Subcontractors under contract with the Contractor are new unless otherwise specified, and that such Work is of good quality, free from improper Workmanship and defective materials and in conformance with Plans and Specifications. All Work not conforming to these requirements, including substitutions, not properly approved and authorized may be considered defective. With respect to the same Work, the Contractor further agrees to correct all Work defective in materials and Workmanship for a period of one (1) year from the Substantial Completion Date or for such longer periods of time as may be set forth with respect to specific warranties contained in the trade sections of the Specifications. The Contractor shall collect and deliver to the DBA any specific written warranties given by others. All warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work.
41. The Contractor hereby warrants that title to all Work, materials and equipment covered by an application for payment shall pass to the DBA, either by incorporation in the construction or upon receipt of payment by the Contractor, whichever comes first, free and clear of all liens, claims, security interests or encumbrances; and that no Work, materials or equipment covered by an application for payment will have been acquired

by the Contractor or by any other person performing his Work at the Project site or furnishing materials and equipment for his Work, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Contractor or such other person. All Subcontractors shall agree that title shall so pass upon receipt of payment from the Contractor.

42. Maintain copies of the job progress schedule at the Project site to reflect current conditions and provide copies to the DBA with periodic reports as to deviations from the schedule, causes of deviations, and corrective action taken.
43. Review and process all applications by Subcontractors for progress payments and final payments and make payments to Subcontractors.
44. [INTENTIONALLY OMITTED].
45. The Contractor shall in all respects cooperate with the DBA, and keep the DBA's Director or other representative designated by the DBA informed as to the progress of the day to day services performed by the Contractor. In the event that there shall be any dispute between the cooperating parties with regard to the extent and character of the Services to be performed, the decision of the Director of the DBA shall govern.
46. The Contractor shall perform no Work with its own forces and all Work shall be performed under contracts with Subcontractors. The Contractor shall request, receive and review proposals from Subcontractors in consultation with the DBA in accordance with the agreed upon procedure. Except with respect to contracts relating to the identification and removal of hazardous waste, the Contractor shall be entitled to award all contracts, provided that all applicable affirmative action and labor standards requirements are met.
47. All contracts with Subcontractors shall be directly between the Contractor and the Subcontractors. The form of all such contracts, including the general and supplementary general conditions thereto, shall be determined by the Contractor but shall not be inconsistent with the Contract Documents, provided that all such contracts shall contain or incorporate all requirements of the Occupational Safety and Health Act of 1970 (P.L. 91-596, 84 Stat. 1590; 20 U.S.C.A. 651 et. seq.), as amended, all necessary affirmative action, fair employment and labor reporting standards provisions mandated by this Agreement or by the legitimate requirements of any governmental body or agency providing financing for the Project.

48. Nothing contained in the Contract Documents shall be deemed to create any contractual relationship between the DBA and/or the City and any of the Subcontractors (any contractual relationship between the Contractor and any Subcontractor shall arise solely from and by virtue of an express contract between such parties), nor shall anything in the Contract Documents be deemed to give any third party any claim or right of action against the DBA and/or the City under the Contract Documents.

**Schedule B**  
**Facility Improvements**

Facility Improvements shall include the completion of in furtherance of the remove, repair and replace the roof and defunct mechanical units for the Detroit Water & Sewerage Department located at 6425 Huber, Detroit, Michigan 48211 in accordance with the Construction Documents for the Work prepared by the Project Architect/Engineer, as approved by the DBA Preliminary Plans and Specifications are attached to this Schedule B.

All Work shall be performed in accordance with the DBA's RFQ/P for the Project and Contract's Proposal (attached hereto), both of which are incorporated herein by this reference.

**Schedule C**  
**Invoice Format – Rates - Method of Payment**

The DBA shall issue payment to the Contractor for the proper performance of Services required hereunder shall be made within forty-five (45) days of receipt of an acceptable application for payment from Contractor.

1. The Project Architect/Engineer will review all Applications for payment. An advance copy of the application for payment for each month shall be submitted to the DBA by the Contractor on or about the 25th day of the prior month. This advance copy will be reviewed by the Contractor and the DBA on or about the 27th day of the prior month for their information only. The monthly application for payment will be submitted by the Contractor on or about the first day of the month in which payment will be due. The Project Architect /Engineer will certify to the DBA the amounts to be paid pursuant to the final application for payment within ten (10) days of receipt of same. Such amount as the Project Architect/Engineer may certify for payment shall be payable by the DBA following the submission of the final application for payment by the Contractor. Notwithstanding anything herein to the contrary, all such payments for each Phase, or designated portion thereof, if any, shall be subject to a retainage of ten (10%) percent until such time as the Work for such Phase shall be fifty (50%) percent complete, after which, no additional retainage will be taken out. However, a retainage of 10% may be continued on all additional payments if the DBA reasonably determines that the Contractor is not making satisfactory progress towards substantial completion of the Work for any other reason relating to the Contractor's performance under the Contract Documents. There shall be no retainage of the professional fee and general conditions items. Pursuant to Act No. 524 of the Michigan Public Acts of 1980, all disputes regarding the DBA's right to retain funds as herein described shall at the option of the DBA be submitted to an agent, as that term is defined in the aforementioned Public Act, for resolution. All retained funds held by the DBA shall be deposited with a regulated financial institution in the State of Michigan in a separate interest bearing account; however, the DBA is not required to deposit retained funds in an interest bearing account if the retained funds are to be provided under a State or Federal grant and the retained funds have not been paid to the DBA.
2. In taking action on the applications for payment, the Project Architect/Engineer shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor and shall not be deemed to have approved the Work on behalf of the DBA or represent to have made audits of the supporting data, exhaustive or continuous on-site inspections or examination to ascertain how or for what purposes the Contractor has expended funds previously paid pursuant to the Contract Documents.



3. Final payment, constituting the entire unpaid balance of the cost of the Work and the fixed professional fee shall be paid by the DBA to the Contractor within sixty (60) days after the final completion date for the Work, unless otherwise stipulated in the certificate of substantial completion. If, on the substantial completion date, there should remain minor items to be completed as identified by the Contractor and reviewed and approved by the Project Architect/Engineer the Contractor shall deliver, in writing, its unconditional promise to complete such items within a reasonable time thereafter. The DBA may retain a sum equal to 110% of the estimated cost of completing any unfinished items as determined by the Project Architect/Engineer. Thereafter, the DBA shall pay to the Contractor, monthly, the amount retained for such incomplete items as each of said items is completed based upon an application for payment in accordance herewith.
4. The Contractor shall submit to the DBA and Project Architect/Engineer with each application for payment its sworn statement that the Work covered by the application for payment has been completed, and such information and documents relating to the Work and payment therefor as the DBA shall request. Except for final payment on the Project, unconditional waivers of lien from the Contractor and each Subcontractor shall be obtained and submitted to the DBA by the Contractor no later than fifteen (15) days after payment is made.
5. Retainages held by the DBA relating to any portion of the Work as the DBA in its sole discretion may determine may be released upon the written recommendation of the Project Architect/Engineer.
6. If the Work is suspended for more than three (3) months or abandoned through no fault or negligence of the Contractor, the Contractor shall be paid the fixed professional fee for that portion of the Work performed and approved prior to such suspension or abandonment of the Work, together with the Cost of the Work then due. If the Work is resumed after being suspended for more than three months, the cost of the project, fixed professional fee, the substantial completion and/or final completion date may be adjusted.
7. If construction of the Project has started and is delayed by reason of: (i) any act or neglect of the DBA; (ii) by any separate Contractor employed by the DBA; (iii) by changes in the Work; (iv) by labor disputes, fire, unusual delay in transportation, adverse weather conditions or unavoidable casualties provided that such events are not reasonably anticipatable by the Contractor; or (v) by delay authorized by the DBA pending litigation or arbitration; then in any of such events the DBA may extend the Substantial Completion Date and/or the Final Completion Date to the extent of any such delay. The DBA shall reimburse the Contractor for increases in the cost of the Work directly attributable to the delay, and an appropriate adjustment may be made to the fixed professional fee to reflect the increased costs resulting from such delays;

- provided, however, that any such delay materially affects the substantial completion or final completion dates, the cost of the Work, and/or the fixed professional fee, as the case may be. Upon direction by the DBA, the Contractor shall reduce the size of its Project staff after a thirty (30) day delay, or sooner if requested by the DBA, for the remainder of the delay period.
8. If the Contractor concludes that: (a) any Work ordered to be completed as Work by the Project Architect/Engineer, is extra Work and not Work required under this Agreement, (c) any determination or order of the DBA violates the terms and provisions of this Agreement, the Contractor shall promptly notify the DBA in writing of its contentions with respect thereto and request a final determination thereof.
  9. Such determination of the Project Architect/Engineer shall be given in writing to the Contractor. If the Project Architect/Engineer determines that the Work in question is extra Work and not Work, or the determination or order complained of requires performance by the Contractor beyond that required by the Construction Documents or violates the terms and provisions of the Agreement, thereupon the Project Architect/Engineer shall cause either (a) the issuance of a written order by the DBA covering the extra Work, or (b) the determination or order complained of to be rescinded or so modified so as to not require performance beyond that required by or so as not to be in violation of the terms and provisions of the Agreement.
  10. If the Project Architect/Engineer determines that the Work in question is Work required under this Agreement and not extra Work, or that the determination or order complained of does not require performance by the Contractor beyond that required by this Agreement or that the Work in question does not violate the terms and provisions of the Agreement, the Project Architect/Engineer will direct the Contractor to proceed and the Contractor must promptly comply. However, in order to preserve its right to claim compensation for such Work or damages resulting from such compliance, the Contractor must, within ten (10) days after receiving the Project Architect/Engineer's determination and direction, notify the Project Architect/Engineer in writing that the Work is being performed, or that the determination and direction is being complied with under protest.
  11. If the Contractor fails to so appeal to the Project Architect/Engineer for a determination or, having so appealed, should the Contractor thus fail to notify the Project Architect/Engineer in writing of its protest, the Contractor shall be deemed to have waived any claim for extra compensation or damages therefor. No oral appeals or oral protests, no matter to whom made, shall be deemed even substantial compliance with the provisions of this Section.
  12. If the Contractor shall claim to be sustaining damages by reason of any acts or omissions of the DBA, its officers, or employees, the Contractor shall within five (5) days after such acts or omissions occur, notify the DBA in writing with

a copy to the Project Architect/Engineer, except that if the claim is of a continuing character and the notice of claim is not given within the five (5) days of its commencement, the claim will be considered only for a period commencing two (2) days prior to the receipt by the DBA of the notice thereof. Within ten (10) days after the date of notification, or within such additional time as may be granted in writing by the Project Architect/Engineer upon the Contractor's written request therefor, the Contractor shall submit to the Project Architect/Engineer verified detailed statements of the damages sustained together with documented evidence of such damages. On failure of the Contractor to fully comply with the foregoing provisions, such claims shall be deemed waived and no right to recover on such claims shall exist.

13. In addition to the foregoing statements, the Contractor shall, upon notice from the DBA, produce for examination at the Contractor's office, for the representatives of the DBA all books of record, showing all acts and transactions in connection with or relating to or arising by reason of this Agreement. At such examination, a duly authorized representative of the Contractor may be present
14. Unless the aforesaid statements shall be made and filed within the time aforesaid and the aforesaid records submitted for examination, the DBA shall be released from all claims arising under, relating to, or by reason of this Agreement, except for the sums certified by the DBA to be due under the provisions of this Agreement. It is further stipulated and agreed that no person has power to waive any of the foregoing provisions, and that in any action against the DBA or City to recover any sum in excess of the sums certified by the DBA to be due under or by reason of this Agreement, the Contractor must allege in its complaint and prove, at trial, compliance with the provisions of this Section
15. In connection with the examination provided for herein, the DBA, upon demand therefor, will also produce for inspection by the Contractor, such records as the DBA may have with respect to such disputed Work or Work performed under protest pursuant to order of the DBA, except those records and reports which may have been prepared for the purpose of determining the accuracy and validity of the Contractor's claim.

## **Schedule D**

### **Minimum Insurance Requirements**

Contractor and any Subcontractors shall, at its own expense, secure and deliver to the DBA, and shall keep in force at all times during the Term of this Agreement, the following minimum insurance policies ("Minimum Insurance Requirements"):

- (a) Commercial General Liability insurance policy, covering the operations, products and completed operations of the Contractor, including but not limited to its services, with limits for bodily injury and property damage (including damage to the Work) of at least Two Million Dollars (\$2,000,000.00) each occurrence; products-completed operations aggregate and general aggregate with an Excess Liability (umbrella) coverage not less than \$5,000,000.00.

Coverage shall be written on an occurrence basis and shall include the following coverages: (a) products liability and completed operations coverages, (b) Contractor's protective liability protecting against claims arising out of the acts and operations of independent Contractors; and (c) coverage for business income of the DBA that could be lost in the event DBA's operations are temporarily interrupted as a result of the negligent or wrongful conduct of Contractor; and

- (b) Automobile liability insurance for all owned, non-owned, or hired automobiles utilized by Contractor, with a combined single limit for bodily injury and property damage (CSL) of at least Two Million Dollars (\$2,000,000).
- (c) Workers Compensation insurance for all of Contractor's Employees (and its Subcontractors where such Contractors do not carry such insurance) with statutory limits required by the State of Michigan where the Services are to be performed and employer's liability coverage with limits of at least \$500,000 /\$500,000/\$500,000.

The certificate shall name the Detroit Building Authority and the City of Detroit as "additional insured" for the coverages in (a) and as "Loss Payee" with respect to property coverage, if applicable.

Subcontractors: If a supplier subcontracts any of the Work/Services, the supplier/Subcontractor must provide DBA with the identity of each Subcontractor, a description of the Work to be performed by each Subcontractor and proof that each Subcontractor has in force, the insurance coverages and limits required above.

### **Waiver of Subrogation**

To the extent commercially reasonable, the DBA and Contractor waive all rights against each other, the City and any and all Subcontractors for damages caused by perils covered by insurance provided hereunder except such rights as they may have to the proceeds of such insurance held by the DBA and Contractor as trustee. The Contractor shall require similar waivers from any and all Subcontractors. The DBA and Contractor waive all rights against each other, the City and any and all Subcontractors for loss or damage to any equipment used in connection with the Project and covered by any property insurance. The Contractor shall require similar waivers from all Subcontractors. If the policies of insurance referred to in this Article require an endorsement to provide for continued coverage where there is a waiver of subrogation, the owners of such policies will cause them to be so endorsed.

## **Schedule E**

### **Payment Bond, Guaranty and Warranty Requirements**

The Contractor shall be required to provide a Performance and Payment Bond for 100% of the not-to-exceed value of this Agreement.

Fully executed original copies of the Performance and Payment Bond in the form acceptable to the DBA must be received by the DBA prior to the performance of the Services at the Facility.

The cost of the bond is included in the not-to-exceed amount of this Agreement.

The Contractor shall warranty the performed Services for a period of one year from the time of the provision of the Service and shall resolve all issues or repairs to the satisfaction of the DBA. The warranty period for any performed Service that fails due to Workmanship or the fault of the Contractor shall continue for a period of one year after the last required repair made during the initial warranty period.