

88-0008

**CITY OF DETROIT BUILDING AUTHORITY
CONSTRUCTION MANAGEMENT SERVICES AGREEMENT
WITH
Brinker Christman, A Joint Venture**

THIS CONSTRUCTION MANAGEMENT SERVICES AGREEMENT (the "Contract"), is dated and made effective as of May 23, 2023 (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 (hereinafter called the "DBA"), and **Brinker Christman**, a Joint Venture, with offices at 3633 Michigan Avenue, Detroit, Michigan 48216 (hereinafter called the "Contractor").

W I T N E S S E T H:

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 revitalization, expansion and improvement plans for the Coolidge Bus Maintenance Facility located at 14044 Schaefer Highway, Detroit, Michigan 48227 "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 on 5/19/23 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 Commissioners in and by its resolution, dated May 18, 2023.

WHEREAS, funding for the Project includes the Federal Transit Administration ("FTA"). Therefore, in addition to the applicable General Conditions, the Contractor shall comply with clauses required by FTA, which are incorporated herein. The words "Purchaser" and "Recipient," shall, as applicable, mean the DBA.

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

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

Construction Commencement by TBD.

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 Contract 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 Contract, 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 Contract 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 Contract, 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 Contract or otherwise cause the Contractor to neglect or default on Contractor's obligations set forth in this Contract; 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 Contract, 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 Contract to be performed in connection with the Work.

“Board of Commissioners” 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 Contract 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.

“Contract” 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 Schedule A of the Contract.

“Contract Documents” shall mean this Contract, the Contractor’s Proposal, and the DBA’s RFQ/P.

“Contractor’s Proposal” shall mean the Contractor’s proposal in response to the DBA’s RFQ/P for the Project, as amended on 5/19/23 at the request of the DBA, and as accepted by the DBA.

“Cost of the Project” shall mean the total cost of construction of the Project in accordance with the terms and conditions of the Contract, 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 14044 Schaefer Highway, Detroit, Michigan 48227.

“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 Contract.

“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 new Coolidge Bus Maintenance Facility located at 14044 Schaefer Highway, Detroit, Michigan 48227.

“Project Architect/Engineer” shall mean DLZ Michigan, Inc.

“Proposal” shall mean Contractor’s response to the DBA’s RFQ/P for the Project, as amended on 5/19/23 at the request of the DBA, and as accepted by the DBA.

“Scope of Services” refers to the activities, terms, and conditions identified in Schedule A attached to this Contract.

“Subcontract” shall mean any subcontract entered into by the Contractor in accordance with the terms of this Contract, 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 Contract.

ARTICLE II
Level of Performance and Documents

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 Construction 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 Contract, 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 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 shall pay the costs of construction in accordance with the terms and conditions of this Contract as follows:

a. Cost of the Work shall not exceed One Hundred Thirty-Four Million, Five Hundred Eighty-Six Thousand, Seven Hundred Eighteen and 00/100 (\$134,586,718) Dollars.

b. Contractor's Professional Fee shall not exceed 2.2% of the Cost of the Work.

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 Kyle Purdue 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 Public Act 524 of 1980, being MCLA 125.1564(1).

ARTICLE IV Assignment

4.01 The Contractor shall not assign any Purchase Order or Contract or any monies due therefrom without prior approval of the Owners Representative, Tyrone Clifton or such other representative designated by the DBA, Purchasing Director, the Finance Director, and in some cases, the City Council. Contact the Purchasing Agent for proper procedure.

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. In the event of necessary actions, the DBA will provide such results in writing to the Contractor and allow seven (7) business days for suitable replacement.

5.04 **Subcontractor Utilization Requirements.** A percentage (30 %) of the total contract amount, as indicated below, shall be subcontracted to Disadvantaged Business Enterprises (“DBEs”) who have been certified under the Michigan Unified Certification Program by either the DDOT Office of Contract Compliance, Wayne County or MDOT, or who are certified as small businesses (SBA-8a) by the U.S. Small Business Administration. All Contractors are responsible for making a good faith effort in meeting these goals and must document efforts accordingly. Disadvantaged Business Enterprises includes minority, women-owned and SBA-8a businesses.

5.05 Breach of the terms and conditions of this Article may be regarded as a material breach of this Contract, 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 Contract 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 Contract 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 Contract 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 Contract 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 Contract. 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.

6.05 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 Contract.

ARTICLE VII

Dispute Resolution and Remedies

7.01 The parties agree to attempt to resolve any disputes arising from this Contract or in the performance of this Contract through good faith discussions prior to pursuing other available remedies.

7.02 Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of the City's Director of the Detroit Department of Transportation ("DDOT"). This decision shall be final and conclusive unless within ten (10) calendar days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Director of DDOT. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Director of DDOT shall be binding upon the Contractor and the Contractor shall abide by the decision.

7.03 Unless otherwise directed by the DBA, the Contractor shall continue performance under this Contract while matters in dispute are being resolved.

7.04 **Remedies.** Unless this Contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the DBA and the

Contractor arising out of or relating to this Contract will be decided by arbitration if the parties mutually agree to arbitration by entering into an arbitration agreement, or, if the parties do not so mutually agree to arbitration, in a court of competent jurisdiction within the State of Michigan.

7.05 Rights and Remedies - The duties and obligations imposed by the Contract and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the DBA or the Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

7.06 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 Contract, 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 Contract, 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.

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

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 and Events of Default

8.01 Termination for Convenience – The DBA may terminate this Contract, in whole or in part, at any time by written notice to the Contractor when it is in the DBA's best interest. The Contractor shall be paid its costs, including

contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the DBA to be to the Contractor. If the Contractor has any property in its possession belonging to the DBA, the Contractor will account for the same, and dispose of it in the matter the DBA directs.

8.02 Termination for Default (Construction) - If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the contractor fails to comply with any other provisions of this contract, the DBA shall terminate by delivering to the contractor a Notice of Termination specifying the nature of the default. In this event, the DBA may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the DBA resulting in the Contractor's refusal or failure to complete the work within the specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the DBA in completing the work

The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause if;

1. The delay in completing the work arises from unforeseeable, causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of the City, acts of another contractor in the performance of a contract with the City, epidemics, quarantine restrictions, strikes, freight embargoes; and
2. The Contractor, within ten (10) days from the beginning of the delay, notifies the DBA in writing of the causes of the delay. If in the judgment of the DBA, the delay is excusable, the time for completing the work shall be extended. The judgment of the DBA shall be final and conclusive on the parties, but subject to appeal under the disputes clause herein. If, after termination of the contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the DBA.

8.03 Events of Default. The following acts and/or omissions, in addition to those in 8.02 above, shall constitute a default and material breach of this Contract by the Contractor and shall be deemed an Event of Default if not cured as provided for in 8.05 below, at the discretion of the DBA, and thereafter diligently prosecutes the same to completion:

- (a) Failure to comply with any of the material terms and conditions of this Contract following written notice from the DBA and failure to cure; and/or
- (b) Failure to begin the Services in accordance with the terms of this Contract; and/or
- (c) If the Contractor, in the reasonable 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 Contract , in whole, or in part, in a way that is inconsistent with the requirements for assignment herein; and/or
- (h) The Contractor violates any law, charter provision, ordinance, rule, regulation, governmental order or directive; and/or
- (i) Failure to provide adequate inventory, equipment and/or personnel; and/or
- (j) 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
- (k) 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
- (l) The Contractor ceases to conduct business in the normal course, and/or
- (m) The Contractor fails to comply with any material terms, conditions and/or obligations of Contractor set forth herein, and/or
- (n) The Contractor fails to pay any labor, tax obligations, fringe benefit funds, insurance premiums.

8.04 **Contract termination: debarment** - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8.05 **Opportunity to Cure** – The DBA in its sole discretion may, in the case of a termination for breach or default, allow the Contractor up to ten (10)

calendar days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions.

If the Contractor fails to remedy to the DBA's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within ten (10) calendar days after receipt by the Contractor of written notice from the DBA setting forth the nature of said breach or default, the DBA shall have the right to terminate the contract without any further obligation to the Contractor. Any such termination for default shall not in any way operate to preclude the DBA from also pursuing all available remedies against the Contractor and its sureties for said breach or default.

8.06 Termination by Contractor. The Contractor may only terminate this Contract, 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 Contract.

8.07 **Waiver of Remedies for any Breach** – In the event that the DBA elects to waive its remedies for any breach by the Contractor of any covenant, term or condition of this Contract, such waiver by the DBA shall not limit the DBA's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

8.08 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;
- (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.

8.09 Upon completion or other termination of this Contract, 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 Contract 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.

8.10 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

9.01. 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 Contract 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 Contract 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 Contract to be void or invalid or otherwise relieve or release the Contractor from any of its obligations under this Contract, 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 Contract shall 1) expressly make reference to this Contract 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 Contract 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 Contract.

ARTICLE X
Conflict of Interest

10.01 Prohibited Interest.

- (1) No member of, or delegate to, the Congress to the United States shall be admitted to any share or part of this Contract or to any benefit arising therefrom.
- (2) No member, officer, or employee of the DBA or of a local public body during his tenure or one year thereafter shall have an interest, direct or indirect, in this Contract or the proceeds thereof.

10.02 The Contractor warrants and covenants that it does not have and that it will not have during the performance of this Contract, 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 Contract.

10.03 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 Contract, 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 DBA, or owners, officers, employees, agents and/or representatives; (ii) was available on a non-confidential basis prior to its disclosure by DBA, or owners, officers, employees, agents and/or representatives of DBA (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 Contract, 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 Contract.

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 Contract; 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 Contract, 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 Contract, 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 Contract.

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 Section 13.01.

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 2012 City of Detroit Charter and the Detroit City Code.

13.03 Nondiscrimination – In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

13.04 Equal Employment Opportunity – The following equal employment opportunity requirements apply to the Contract:

(a). Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(b). Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §§ 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(c). Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

- (1) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

(d). Veteran - Contractors working on a capital project funded using such assistance give a hiring preference, to the extent practicable, to veterans (as defined in section 2108 of title 5) who have the requisite skills and abilities to perform the construction work required under the contract. This subsection shall not be understood, construed or enforced in any manner that would require an employer to give a preference to any veteran over any equally qualified applicant

who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

13.05 Compliance with Regulations. The Contractor shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the U.S. DOT Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (herein referred to as the Regulations), which are herein incorporated by reference and made a part of this Contract.

13.06 Solicitation for Subcontracts, Including Procurements of Materials and Equipment. In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this contract and the regulations relative to nondiscrimination on the grounds of race, religion, color, sex, age, or national origin.

13.07 Information and Reports. The Contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the Federal Transit Administration (FTA) to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information is required or a bidder/contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the Recipient, or the FTA, as appropriate, and shall set forth what efforts it has made to obtain the information.

13.08 Sanctions for Noncompliance. In the event of the Contractor's noncompliance with the nondiscrimination provisions of this Contract, the City shall impose such contract sanctions as it or the FTA may determine to be appropriate, including, but not limited to:

- a. Withholding of payments to the Contractor under the Contract until the Contractor complies, and/or,
- b. Cancellation, termination or suspension of the Contract, in whole or in part.

13.09 In accordance with the Michigan Constitution, including but not limited to, the Michigan Elliot-Larson Civil Rights Act (P.A. 1976 No. 453) and the Michigan Persons with Disabilities 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 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 Contract.

13.10 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 17-5-221 through 17-5-231, "Prevailing Wage and Fringe Benefit Rates Required for City "Projects", as amended.

13.11 The Contractor shall include the provisions of this Article 13 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Contractor shall take such action with respect to any subcontract or procurement as the Recipient, DBA or the FTA may direct as a means of enforcing such provisions including sanctions for noncompliance: provided, however, that, in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Contractor may request the DDOT to enter such litigation, and/or the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

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

ARTICLE XIV Notices

14.01 All notices, consents, approvals, requests, reports and other communications (herein collectively called "Notices") required or permitted under this Contract 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
Fax: (313) 224-4998
Email: tclifton@detroitmi.gov

THE ALLEN LAW GROUP, PC
3011 W. Grand Blvd.
Suite 2500
Detroit, Michigan 48202
Attention: Floyd E. Allen, Esquire
Fax: (313) 871-0517

Email: fallen@alglawpc.com

If to Contractor: LS Brinker Company
3633 Michigan Avenue
Detroit, Michigan 48216
Attention: Agnes Arbuckle Email:
aarbuckle@brinkergroup.com

The Christman Company
3011 W. Grand Blvd.
Suite 2600
Detroit, Michigan 48202
Attention: Sam Ruegsegger
Email: sam.ruegsegger@christmanco.com

With a copy to: FCWSH&L, PLLC
1301 W. Long Lake Road, Suite 250
Troy, Michigan 48098
Attention: J. Christian Hauser, Esq.
(248) 334-6767
Email: ch@frascap.com

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 Contract 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 Contract 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 Contract 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 herein.
- (c) Contractor represents and warrants that it has full power and authority to enter into this Contract, 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 Contract (the "RFQ/P"), on the Effective Date and throughout the Contract Term of this Contract, 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 Contract.
- (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 Contract 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, is in effect

which would conflict with or in any way prevent the execution, delivery or enforcement of the terms of this Contract.

- (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 Contract.
- (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 under the Contract.
- (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, being 26 USC §1445.

- (p) This Contract, 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 Contract shall be true for the period from the date of the Proposal and throughout the Term of this Contract.

15.02 Program Fraud and False or Fraudulent Statements and Related Acts.

- (1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the Contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the Contract or the FTA assisted project for which this Contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.
- (2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.
- (3) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the Subcontractor who will be subject to the provisions.

ARTICLE XVI
Payment Bond, Guaranty and Warranty Requirements

16.01 Bonding Requirements.

(a). Bid Security

A bid bond must be issued by a fully qualified surety company acceptable to the DBA and listed as a company currently authorized under 31 CFR, Part 223 as possessing a Certificate of Authority as described hereunder.

This section 16.01(a) is not applicable to the Contract.

(b). Rights Reserved

In submitting this bid, it is understood and agreed by the bidder that the right is reserved by the DBA to reject any or all bids, or part of any bid, and it is agreed that the bid may not be withdrawn for a period of ninety (90) days subsequent to the opening of bids, without the written consent of the DBA. It is also understood and agreed that if the bidder should withdraw any part or all of his bid within ninety (90) days after the bid opening without the consent of the DBA, shall refuse or be unable to enter into this Contract, as provided above, or refuse or be unable to furnish adequate and acceptable Performance Bonds and Labor and Material Payment Bonds, as provided above, he shall forfeit his security bonds to the extent of the DBA's damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement provide adequate security therefor. It is further understood and agreed that to the extent the defaulting bidder's bid bond, certified check, cashier's check, treasurer's check, and/or official bank check (excluding any income generated thereby which has been retained by the DBA as provided in "Instructions To Bidders" section of the IFB, shall prove inadequate to fully compensate the DBA for the damages occasioned by default, then the undersigned bidder agrees to indemnify the DBA and pay over to the DBA the difference between the bid security and the DBA's total damages so as to make the DBA whole.

This section 16.01(b) is not applicable to the Contract.

16.02 Performance and Payment Bonding Requirements. The Contractor shall be required to obtain performance and payment bonds as follows:

(a). Performance bonds

1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless DBA or DDOT determines a lesser amount would be adequate for their protection.

2. DBA may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in the contract price. DBA may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(b). Payment bonds

1. The penal amount of the payment bonds shall equal:

- (i). Fifty percent of the contract price if the contract price is not more than \$1 million;
- (ii). Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
- (iii). Two and a half million dollars if the contract price is more than \$5 million.

16.03. Advance Payment Bond Requirements. The Contractor may be required to obtain an advance payment bond if the contract contains an advance payment provision and a performance bond is not furnished. DBA shall determine the amount of the advance payment bond necessary to protect DBA.

This section 16.03 is not applicable to the Contract.

16.04. Patent Infringement Bonding Requirements. The Contractor may be required to obtain a patent indemnity bond if a performance bond is not furnished and the financial responsibility of the contractor is unknown or doubtful. The DBA shall determine the amount of the patent indemnity to protect the DBA.

This Section 16.04 is not applicable to the Contract.

16.05. Warranty of the Work and Maintenance Bonds.

1. The Contractor warrants to the DBA, the Architect and/or Engineer that all materials and equipment furnished under this contract will be of the highest quality and new unless otherwise specified by the DBA, free from faults and defects and in conformance with the Contract Documents and Construction Documents. All work not so conforming to these standards shall be considered defective. If required by the DBA, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

2. The work furnished must be of first quality and the workmanship must be the best obtainable in the various trades. The work must be of safe, substantial and durable construction in all respects. The contractor hereby guarantees the

work against defective materials or faulty workmanship for a minimum of one year after Substantial Completion and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to the DBA. As additional security for these guarantees, the contractor shall, prior to release of final payment, furnish a separate maintenance (or guarantee) bonds in form acceptable to DBA written by the same corporate surety that provides the performance bond and labor and material bond for this contract. These bonds shall secure the contractor's obligation to replace or repair defective materials and faulty workmanship for a minimum period of one (1) year after final payment and shall be written in an amount equal to one hundred percent (100%) of the contract sum, as adjusted (if at all).

16.06. 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.

16.07 The warranty period for any performed Service that fails due to Workmanship or the fault of the Contractor shall continue for one additional year only after the last required repair made during the initial warranty period.

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 and Construction 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 and Construction 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 and Construction 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 and Construction 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 and Construction 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 Contract. 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

Access to Contractor's Records and Reports

18.01. The DBA is a local government authority and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 18.36(i). The Contractor agrees to provide the DBA, the FTA Administrator, the Comptroller

General of the United States or any of their authorized representatives, including the DBA and its representatives, access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. The Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

18.02. The Contractor agrees to permit the DBA to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

18.03. The Contractor agrees to maintain all books, records, accounts and reports required under this Contract for a period of not less than three years from the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case the Contractor agrees to maintain same until the , DBA, DDOT, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

18.04. FTA does not require inclusion of these requirements in subcontracts.

18.05. In addition to the above retention requirements, 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.

18.06 The Contractor agrees to provide DBA, DDOT, FTA, the Comptroller General of the United States, and any of their authorized representative's access to any books, documents, papers and records of the contractor which are directly pertinent to this contract for the purpose of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide FTA or his authorized representatives including any PMO contractor access to contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal assistance through programs described at 49 U.S.C. 5307,5309 or 5311. The contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably necessary.

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 Contract, 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 **Contractor Changes.** Any proposed change in this contract shall be submitted to the DBA for its prior approval.

20.03. Claims For Additional Cost or Time

20.03.1. 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.

20.04. Minor Changes in the Work

20.04.1 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.

20.05. Emergencies

20.05.1 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
Office of the Inspector General

21.01. In accordance with Section 2-106.6 of the City Charter, this Contract shall be voidable or rescindable at the discretion of the Mayor or Inspector General at any time if a Public Servant who is a party to the Contract has an interest in this Contract and fails to disclose such interest.

21.02. This Contract shall also be voidable or rescindable if a lobbyist or employee of the contracting party offers a prohibited gift, gratuity, honoraria or

payment to a Public Servant in relation to the Contract in accordance with Section 2-106.6 of the City Charter.

21.03. A fine shall be assessed to the Authority in the event of a violation of Section 2-106.6 of the City Charter. If applicable, the actions of the Authority, and its representative lobbyist or employee, shall be referred to the appropriate prosecuting authorities.

21.04. Pursuant to Section 7.5-310 of the City Charter, it shall be the duty of every Public Servant, contractor, subcontractor, and licensee of the City, and every applicant for certification of eligibility for a City contract or program, to cooperate with the Inspector General in any investigation pursuant to Article 7.5, Chapter 3 of the City Charter.

21.05. In accordance with Section 7.5-310 of the City Charter, any Public Servant who willfully and without justification or excuse obstructs an investigation of the Inspector General by withholding documents or testimony, is subject to forfeiture of office, discipline, debarment or any other applicable penalty.

21.06. As set forth in Section 7.5-308 of the City Charter, the Inspector General has a duty to report illegal acts. If the Inspector General has probable cause to believe that any Public Servant or any person doing or seeking to do business with the City has committed or is committing an illegal act, then the Inspector General shall promptly refer the matter to the appropriate prosecuting authorities.

ARTICLE XXII General Provisions

22.01 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.

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

22.03 This Contract 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 Contract 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.

22.04 In accordance with Federal legislation and regulations governing the use of the United States Department of Transportation, Federal Transit Administration (FTA) funds, the Contractor agrees to comply with all applicable statutory and regulatory requirements for third party procurements as set forth in FTA Circulars 4220.IF, dated 2013, as amended, incorporated herein by reference. The Contractor agrees to obtain compliance from its subcontractors and to incorporate the statutes and regulations in any subcontract agreement resulting from this procurement. Low bidders must supply certifications for restrictions on lobbying and debarment and suspensions as called for in FTA and OMB regulations and circulars.

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

22.05 This Contract 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.

22.06 Whenever possible, each provision of this Contract 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 Contract.

22.07 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 Contract and at law or in equity, including, but not limited to the equitable remedy of specific performance.

22.08 All exhibits, schedules and other documentation referred to in this Contract, 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 Contract and shall be deemed to have been incorporated herein.

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

22.10 Wherever the singular and masculine is used in this Contract, 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.

22.11 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 Contract.

22.12 This Contract 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.

22.13 No amendment or modification of this Contract 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.

22.14 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.

22.15 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, pandemics, 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.

22.16 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.

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

22.18 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 Contract, which right to audit may be assigned by the DBA to its designee, including the Detroit City Council and the City Auditor General.

ARTICLE XXIII

No Federal Government Obligations to Third Parties

23.01 The DBA and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of this Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities of the DBA, Contractor, or any other party (whether or not a party to the contract) pertaining to any matter resulting from the Contract or any underlying contract.

23.02 The Contractor agrees to include the immediately above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the Subcontractor who will be subject to its provisions.

ARTICLE XXIV

Changes in Federal Requirements

The Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the City and/or DDOT and FTA, as they may be amended or promulgated from time to time during the term of this contract. The Contractor's failure to comply shall constitute a material breach of this Agreement. Contractor is signing this agreement in good faith without the opportunity and benefit of reviewing the Master Agreement. Once provided by the DBA, The Contractor will review within fourteen (14) days of receipt and provide written comments and applicable schedule and cost impacts to the DBA Representative. If applicable, the Contractor will produce a formal change order and/or amendment to this agreement for execution between all parties.

ARTICLE XXV

Disadvantaged Business Enterprise

25.01 This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. A contract goal of 30 % has been established for this procurement.

25.02 The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the Contractor to carry out

these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as DDOT deems appropriate. Each subcontract the Contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

25.03 Contractor must pay subcontractors for satisfactory performance of their contracts no later than 30 days following the receipt of each payment made by DDOT to the prime contractor. This includes the prompt return of retainage payments from the prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed. DDOT may apply appropriate penalties for failure to comply with these terms and conditions. Any delay or postponement of payment among parties may take place only for good cause, and only with the prior written permission of DDOT. Contractors must include in their subcontracts language providing the appropriate alternative dispute resolution mechanisms to resolve payment disputes. Prime contractors will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.

25.04 The Contractor must promptly notify DDOT's Office of Contract Compliance whenever a DBE Subcontractor performing work related to this Contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The Contractor may not terminate any DBE Subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the DDOT's Office of Contract Compliance. Thus, a supplier of materials which will become an integral part of the construction is a "subcontractor" if the supplier fabricates or assembles the goods or materials in question specifically for the construction project and the work involved may be said to be construction activity. If the goods or materials in question are ordinarily sold to other customers from regular inventory, the supplier is not a "subcontractor." The requirements of this section do not apply to contracts or subcontracts for the purchase of supplies or materials or articles normally available on the open market.

25.05 That no contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

25.06 That in the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages

shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$ 10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

25.07 Withholding for unpaid wages and liquidated damages - DDOT shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in this section.

25.08 Subcontracts - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

25.09 Veterans Hiring Preference – DDOT and its sub recipients are recipients of federal financial assistance in this contract. The contractor shall give a hiring preference, to the extent practicable, to veterans (as defined in section 2108 of title 5 CFR) who have the requisite skills and abilities to perform the construction work required under the contract. This subsection shall not be understood, construed, or enforced in any manner that would require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

ARTICLE XXVI

Incorporation of Federal Transit Administration (FTA) Terms

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, as amended, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any City requests which would cause the City to be in violation of the FTA terms and conditions.

ARTICLE XXVII
Government-Wide Debarment and Suspension

This Contract is a covered transaction for purposes of 49 CFR Part 29. As such, the Contractor is required to verify that the Contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are not excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The Contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

ARTICLE XXVIII
Buy America

Contractors shall submit with the bid a completed Buy America Certificate indicating that the Contractor will comply with the requirements of 49 U.S.C. 5323(j) and 49 CFR Part 661, in effect as of the effective date of this contract and as amended throughout the project, which provide that Federal funds may not be obligated unless steel, iron and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by the FTA or the product is subject to a general waiver. Separate requirements for rolling stock are set out at 5323(j) (2) (C) and 49 CFR 661.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have a 60 per cent domestic content.

The Contractor shall submit the appropriate Buy America certification with all bids on FTA-funded contracts except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification shall be rejected as non-responsive. This requirement does not apply to lower-tier subcontractors.

Upon written request to the Secretary, DDOT may request a waiver of the above provisions. Such waiver may be granted if the Secretary determines;

- 1) That their application would be inconsistent with the public interest;
- 2) That materials for which a waiver is requested are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality;
- 3) The inclusion of a domestic item or domestic material will increase the cost of the overall project contract by more than 25 per percent.

This clause shall be included in all subcontracts in excess of \$150,000.

For additional information regarding Buy America requirements for FTA-funded projects, and the United States Code and Federal Regulations referenced in this provision, please see <https://www.transit.dot.gov/buyamerica>.

ARTICLE XXIX
Lobbying

Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the City.

ARTICLE XXX
Clean Air

30.01 The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the DBA and understands and agrees that the DBA will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

30.02 The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

ARTICLE XXXI
Clean Water Requirements

31.01 The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the DBA and understands and agrees that the DBA will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

31.02 The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

ARTICLE XXXII
Cargo Preference Requirements

The Contractor agrees to:

A. Use privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separate for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.

B. To furnish, within 20 working days following date of loading for shipments originating with the United States, or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, Aonboard@commercial ocean bill-of-lading in English for each shipment of cargo described in the paragraph above to the FTA Administrator and the Procuring Agency (through the prime contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, D.C. 20590.

C. To include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

ARTICLE XXXIII
Davis Bacon and Copeland Anti-Kickback Acts

33.01 Background and Application:

The Davis-Bacon and Copeland Acts are codified at 40 U.S.C 3141, et seq. and 18 U.S.C 874. The Acts apply to DDOT construction contracts and subcontracts that "at least partly are financed by a loan or grant from the Federal Government." 40 U.S.C 3145(a), 29 CFR 5.2(h), 49 CFR 18.36(i) (5). The Acts apply to any construction contract over \$2,000. 40 USC 3142(a), 29 CFR 5.5(a). 'Construction,' for purposes of the Acts, includes "actual construction, alteration and/or repair, including painting and decorating." 29 CFR 5.5(a). The requirements of both Acts are incorporated into a single clause (see 29 CFR 3.11) enumerated at 29 CFR 5.5(a) and reproduced below.

33.02 Minimum wages

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate

on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii) (A) The Purchasing Agent shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The Purchasing Agent shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
- (4) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Purchasing Agent agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the Purchasing Agent to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Purchasing Agent or will notify the Purchasing Agent within the 30-day period that additional time is necessary.

(C) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the Purchasing Agent do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Purchasing Agent shall refer the questions, including the views of all interested parties and the recommendation of the Purchasing Agent, to FTA for determination. FTA, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Purchasing Agent or will notify the Purchasing Agent within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(v) (A) The Purchasing Agent shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The Purchasing Agent shall approve an additional classification and

wage rate and fringe benefits therefor only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Purchasing Agent agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the Purchasing Agent to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Purchasing Agent or will notify the Purchasing Agent within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the Purchasing Agent do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Purchasing Agent shall refer the questions, including the views of all interested parties and the recommendation of the Purchasing Agent, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with 30 days of receipt and so advise the Purchasing Agent or will notify the Purchasing Agent within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

33.03 Withholding – DDOT shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be

considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract.

In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the Detroit Department of Transportation may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

33.04 Payrolls and basic records - (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b) (2) (B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit monthly for each week in which any contract work is performed a copy of all payrolls to the DDOT for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a) (3) (i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The

prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

33.05 Apprentices and trainees - (i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed

when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractors registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) **Trainees** - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe

benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) **Equal employment opportunity** - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

33.06 Compliance with Copeland Act requirements - The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

33.07 Subcontracts - The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the FTA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

33.08 Compliance with Davis-Bacon and Related Act requirements - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

33.09 Disputes concerning labor standards - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

33.10 Certification of eligibility - (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C.1001.

ARTICLE XXXIV

Contract Work Hours and Safety Standards Act

34.01 Overtime requirements - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

34.02 Violation; liability for unpaid wages; liquidated damages - In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

34.03 Withholding for unpaid wages and liquidated damages – DDOT shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as

may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

34.04 **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

ARTICLE XXXV Seismic Safety

The Contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The Contractor also agrees to ensure that all work performed under this Contract including work performed by a Subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

The Contractor does not assume liability for the design of the Project.

ARTICLE XXXVI Patent Rights in Data and Copyright Requirements

36.01 Rights in Data - The following requirements apply to each contract involving experimental, developmental or research work:

(1) The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

(2) The following restrictions apply to all subject data first produced in the performance of the Contract:

(a) Except for its own internal use, the Purchaser or Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Purchaser or Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.

(b) In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.

1. Any subject data developed under that contract, whether or not a copyright has been obtained; and

2. Any rights of copyright purchased by DDOT or Contractor using Federal assistance in whole or in part provided by FTA.

(c) When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, the Contractor performing experimental, developmental, or research work required by the contract agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c), however, does not apply to adaptations of automatic data processing equipment or programs for the Purchaser or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.

(d) Unless prohibited by state law, upon request by the Federal Government, the Contractor agrees to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract.

Neither DDOT nor the Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

(e) Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.

(f) Data developed by DDOT or Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the contract is exempt from the requirements of subsections (b), (c), and (d) of this clause, provided that DDOT or Contractor identifies that data in writing at the time of delivery of the contract work.

(g) Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

36.02 Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e. a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

36.03 The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

ARTICLE 37

Energy Conservation Requirements

To the extent this provision is applicable to Contractor's Services, the Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the State of Michigan energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

ARTICLE 38

Access Requirements for Persons with Disabilities

Contractor shall comply with 49 USC 5301(d), stating Federal policy that the elderly and persons with disabilities have the same rights as other persons to use mass transportation services and facilities and that special efforts shall be made in planning and designing those services and facilities to implement that policy. Contractor shall also comply with all applicable requirements of Sec. 504 of the Rehabilitation Act (1973), as amended, 29 USC 794, which prohibits discrimination on the basis of handicaps, and the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments thereto.

ARTICLE 39
Toxic Material Removal

The Contractor will be responsible to manage the DBA's subcontractor for removal of hazardous materials identified by the Construction Documents. The Contractor is not liable for the proper identification, packaging, testing, removal, transfer and disposal of all potentially toxic materials including asbestos materials and oil-filled transformers in compliance with all local, State, and Federal Laws and Regulations.

ARTICLE 40
Geographic Restrictions

The Contractor agrees to refrain from using state or local geographic preferences, except those expressly mandated or encouraged by Federal statute, and as permitted by FTA [Acquisition of Management, Architectural and Engineering Services 49 U.S.C. Section 5325 (d)].

ARTICLE 41
Protection of Sensitive Security Information

Contractor must protect and take measures to ensure that its subcontractors protect sensitive security information made available to contractor during the course of the contract.

ARTICLE 42
Federal Cost Principles

All costs must be necessary, reasonable, and allocable to the project, authorized by DDOT, and not prohibited by Federal law or regulation.

ARTICLE 43
Texting While Driving Distracted Driving

Texting while Driving Distracted Driving- To encourage safety among contractors while conducting business in behalf of DDOT, DDOT encourages contractors to adopt and promote texting while driving and distracted driving policies and programs for its employees and other personnel that operate company owned, rented, or personally operated vehicles.

ARTICLE 44
Seatbelt Usage

To encourage compliance with Federal Executive Order 13043 DDOT encourages contractors to adopt and promote an on-the-job seat belt use policies and programs for its employees and other personnel that operate company owned, rented, or personally operated vehicles.

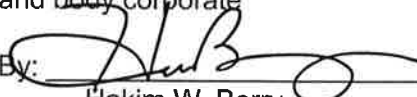
ARTICLE 45
Recovered Materials

The Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.


[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto have executed this Contract 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

BRINKER/CHRISTMAN, a JOINT
VENTURE

By: 
Larry Brinker Jr.


Its: President

BRINKER/CHRISTMAN, a JOINT
VENTURE

By: 
Steven F. Rozrowski

Its: President and CEO

APPROVED AS TO FORM:



General Counsel, City of Detroit
Building Authority

LIST OF ATTACHMENTS

Schedule A – Scope of Services

Schedule B – Invoice Format – Rates - Method of Payment

Schedule C – Minimum Insurance Requirements'

Exhibit A – DBA Monthly Progress Report

Schedule A
Scope of Services

The Construction Manager will be responsible for providing professional and comprehensive Construction Management Services necessary and incidental for securing DBA Project approval, and contracting the Work, for the complete construction of the Project, and for administering and for supervising the preconstruction, construction and completion/ start- up and commissioning of the Work, including coordination at all times with the DBA.

The CM Services shall without being limited to, include:

- Preparing and recommending detailed Project management and administration procedures.
- Preparing conceptual Project schedules, and cash flow projections.
- Preparing individual and consolidated monthly updated schedules, budgets, progress status reports and cash flow projections.
- Coordinating with the DBA the Furniture, Fixtures, and Equipment Package and the Security Package.
- Providing a 100% performance and 100% payment bond for the full amount of the cost of the Work.
- Executing, administering, and providing direct supervision for all construction contracts for the construction and commissioning of the Project approved by the DBA.
- Processing and verifying invoices for construction contracts, and assembling monthly invoices in cooperation with the DBA.
- Obtaining, organizing and providing the DBA with all contractor insurance, bonds, waivers, sworn statements, warranties, operating and start-up manuals, and contractor furnished as-built drawings and cut sheets.

The CM will report to and receive direction from the DBA Owner's Representative or other person designated by the DBA.

A summary of the anticipated scope of CM Services includes, without being limited to:

Ribbon Cutting Ceremony - CM to Coordinate with the DBA, DRD, and the City's Communication Director for the Project's Ribbon Cutting Ceremony and carry an allowance of \$30,000 for the event within construction budget. Monies in surplus will be returned to DBA. Cost above the CM allowance will be satisfied with an Owner Change Order.

Construction Phase Services and Post-Construction Phase Services:

The Construction Manager (CM) shall provide the following Services for the Project:

- i) Prepare and execute construction contracts upon receipt of the DBA's written approval.
- ii) Coordinate the Work with the DBA.
- iii) Coordinate access, unloading, storage, temporary facilities/equipment and trash removal for the Project related Work under direct contract of the CM.
- iv) Review of payment requests, including coordinating with the DBA's AE Consultant, acceptance of materials, review of completed work, organization of any required testing, coordination with authorities having jurisdiction, and receipt of final record documentation.
- v) Permits - Coordinate with the DBA's AE Consultant and those entities having jurisdiction over the Project to ensure that all necessary permits are obtained in a timely fashion, in support of the schedule.
- vi) Coordinate with the DBA and its Owner's Representative the site management, including the allocation of storage areas, jobsite trailers, site access, site maintenance, jobsite safety and security, waste removal, etc.
- vii) Monthly Reporting - The CM will provide the DBA with monthly progress reports during construction, including, when requested, presentations to the DBA Board (See Exhibit A – Format for the Monthly Progress Report).
- viii) Start up and Commissioning of System – The CM shall be responsible for coordinating between the Trade Contractors and the Third-Party Commissioning agent for the commissioning and start of the building systems.
- ix) Post Construction -
 - (1) Supervise completion of all punch lists:
 - (2) Coordinate the completeness and delivery of marked up "as-built" plans to the DBA's AE Consultant for incorporation into record drawings that meet the DBA's requirements;
 - (3) Obtain, review for completeness and deliver operations and maintenance manuals and warranties to the Project Manager
 - (4) Arrange and coordinate the training of the Facility operations personnel as required by the specifications;

- (5) Receive and review warranties of the systems;
 - (6) Ensure closure of all permits;
 - (7) Address post construction insurance requirements;
 - (8) Resolve all claims;
 - (9) All other requirements of the General Terms and Conditions.
- x) Security – CM to include an allowance for job site security from construction until acceptance of Certificate of Occupancy from the DBA. Included in the construction budget is \$580,000 which covered one guard and a vehicle for an 8-hour shift per 24 hour period of 30 months. Monies in surplus will be returned to DBA. Cost above the CM allowance will be satisfied with an Owner Change Order.

Schedule B
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 for subcontractors work 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 Contract, (c) any determination or order of the DBA violates the terms and provisions of this Contract, 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 Contract, 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 Contract.
 10. If the Project Architect/Engineer determines that the Work in question is Work required under this Contract and not extra Work, or that the determination or order complained of does not require performance by the Contractor beyond that required by this Contract or that the Work in question does not violate the terms and provisions of the Contract, 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 Contract. 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 Contract, except for the sums certified by the DBA to be due under the provisions of this Contract. 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 Contract, 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 C
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 Contract, 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 a 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.

**EXHIBIT A
FORMAT FOR THE
MONTHLY PROGRESS REPORT
DETROIT BUILDING AUTHORITY CAPITAL PROJECTS**

I. Executive Summary:

- A. A brief description of the Project.
- B. A written summary of the Progress to Date, including a listing of any known problems that may cause delay or additional cost to the Project and Project completion percentage.
- C. A written summary of the Project Budget indicating the authorized project funds, amounts encumbered,
- D. An updated Cash Flow projection.
- E. A written summary of the project schedule.

II. Project Status Report

Attachments:

- A. Review of current status.
 - 1. Construction, including average daily on site construction personnel and status of work in progress broken, down by trades and project safety report.
 - 2. Identify issues, which may have an impact on the project schedule.
 - 3. Project meeting minutes.
- B. A Project Data Sheet with budget breakdown for the following categories (see Budget Sheet):
 - 1. The structure (general, mechanical, electrical) with a separate line item for telecommunications.
 - 2. Services from five feet outside of structures (sewers, water supply, gas, electrical service, etc.).
 - 3. Site improvements (roads, walks, grading, etc.).
 - 4. Furnishings (furniture, movable equipment, etc. not considered part of the structure nor requiring fixed mechanical and/or electrical services).
 - 5. Professional fees, surveys, site investigations, fees for project management consultants, etc.
 - 6. Project contingencies.
 - 7. Total project cost (cannot exceed authorized amount).
- C. Each of the above categories is to be broken down further to reflect the following:

Approved Budget (dated)

Current Contract Amount

Bids
Initial Contract Amount
Change Orders

Payments to Date
Balance to be paid

Each of the trades, material suppliers, subcontractors, code review fees, telecommunications, etc. amounts are to be listed as line items and broken down.

D. A Change Order Report listing the following:

1. The Change Order Number
2. Change Order Title
3. Explanation
4. Amount

E. A Request for Information (RFI) Log.

An original approved, (submitted at the start of construction) and an updated Project Schedule indicating all activities for the project.