

CITY OF DETROIT BUILDING AUTHORITY

PROJECT

CONSTRUCTION MANAGEMENT SERVICES AGREEMENT

WITH

JENKINS CONSTRUCTION

THIS CONSTRUCTION MANAGEMENT SERVICES AGREEMENT (the "Agreement"), is dated and made effective as of the May 19, 2016 (the "Effective Date"), by and between the DETROIT BUILDING AUTHORITY, a public authority and body corporate, organized and existing under the authority of Act 31, Public Acts of Michigan, 2008, as amended, with offices at 1301 Third Street, Suite 328, Detroit, Michigan 48226 (herein called the "DBA"), and JENKINS CONSTRUCTION, a Michigan corporation, with offices at 985 East Jefferson Avenue, Suite 300, Detroit, Michigan 48226 (hereinafter called the "Contractor").

WITNESSETH:

WHEREAS, the DBA desires to engage the Contractor to perform for and on behalf of the DBA certain Construction Management Services as described herein and as more specifically described in Schedule A – Scope of Services attached hereto (the "Services"), in furtherance of the DBA's renovation, revitalization, expansion and improvement plans for the new Eighth Police Precinct located at 21555 and 21110 West McNichols, Detroit, Michigan 48219, as more particularly described in Schedule B (the "Facility Improvements"); and

WHEREAS, the Contractor desires to perform the Construction Management Services (CM Services) for the DBA and submitted a Proposal to the DBA on April 22, 2016 certifying that it possesses the requisite skills necessary to assist the DBA in completing the Facility Improvements and representing that it is fully qualified and capable of performing the Services as required by the DBA in accordance with the terms and conditions hereinafter set forth, which include any and all Exhibits and Schedules referenced herein; and

WHEREAS, the engagement of the Contractor for the CM Services has been approved by the DBA Board of Directors in and by its resolution, dated May 19, 2016.

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

the DBA, any conflict of interest with the DBA's completion of the Facility Improvements.

1.07 Definitions

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

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

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

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

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

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

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

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

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

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

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

"Cost of the Work" shall mean costs that have been approved in writing by the DBA and incurred by the Contractor in connection with the performance of the Work and paid by Contractor for items, including, but not limited to, the

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

ARTICLE II

Level of Performance, Documents and Dispute Resolution

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

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

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

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

ARTICLE III

Compensation

The DBA shall pay the costs of construction in accordance with the terms and conditions of this Agreement as follows:

a. Cost of the Project shall not exceed Four Million Five Hundred Thousand and 00/100 (\$4,500,000.00) Dollars, which shall include the Professional Fee and the Cost of General Conditions:

Contractor shall not be permitted to remove such Key Personnel without the prior written consent of the DBA, which will not be unreasonably withheld. As of the Effective Date, the Key Personnel identified in the Contractor's Proposal are acceptable to the DBA.

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

5.04 In accordance with the United States Constitution and all federal legislation and regulations governing fair employment practices and equal employment opportunity, including, but not limited to, Title VI of the Civil Rights Acts of 1964 (42 USC SS2000(e) et seq), and in accordance with the Michigan Constitution, including but not limited to, the Michigan Civil Rights Act (P.A. 1976 No. 453) and the Michigan Handicappers Civil Rights Act (P.A. 1976 No. 220), the Contractor agrees that it will not discriminate against an employee, or applicant for employment with respect to hire, tenure, terms, conditions or privileges of employment because of religion, race, color, national origin, age, sex, height, weight, marital status, or handicap that is unrelated to the individual's ability to perform the duties of a particular assignment or position. The Contractor recognizes the right of the United States and the State of Michigan to seek judicial enforcement of the foregoing covenants against discrimination against itself or its Subcontractors connected directly or indirectly with the performance of this Agreement.

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

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

- a. The Contractor hereby agrees neither employees nor Subcontractor employees are to be at any time considered employees of the DBA. The Contractor shall be, at all times during the Contract Term, fully responsible for the actions, activities, safety and conduct of its employees, agents, contracted personnel and the employees of its Subcontractor.
- b. The Contractor shall not employ on any basis whatever, regular or part-time DBA employees or relatives of DBA

indemnify and hold harmless the DBA from any and all claims initiated against the DBA pursuant to any provision within this Agreement.

ARTICLE VII
Events of Default and Remedies

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

- (a) Failure to comply with any of the material terms and conditions of this Agreement following written notice from the Owner and failure to cure; and/or
- (b) Failure to begin the Services in accordance with the terms of this Agreement; and/or
- (c) If the Contractor, in the judgment of the DBA, is unnecessarily or unreasonably or willfully delaying the performance and completion of the Services; and/or
- (d) The Contractor abandons the Services to be undertaken; and/or
- (e) The DBA is of the opinion that the Services cannot be completed within the time required, where in the DBA's judgment, the delay is attributable to conditions within the Contractor's control; and/or
- (f) The Contractor, without just cause, reduces its Work force to a number which in the judgment of the DBA, is insufficient to complete the Services within a reasonable time and fails to sufficiently increase such Work force when directed to do so by the DBA; and/or
- (g) The Contractor assigns, transfers, conveys or otherwise disposes of this Agreement, in whole, or in part, without prior approval of the DBA; and/or
- (h) Any DBA officer or employee acquires an interest in this Agreement so as to create a conflict of interest; and/or
- (i) The Contractor violates any law, charter provision, ordinance, rule, regulation, governmental order or directive; and/or
- (j) Failure to provide adequate inventory, vehicles, equipment and/or personnel; and/or
- (k) The filing of a voluntary or involuntary petition in bankruptcy or for reorganization or an arrangement, or an assignment

ARTICLE VIII
Termination

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

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

8.03 The DBA may terminate this Agreement without cause, in whole or in part, for its convenience, at any time, without incurring any further liability whatsoever, other than as stated in this Article VIII, by issuing a Notice of Termination to the Contractor of such termination, specifying the effective date thereof, at least fifteen (15) business days prior to the effective date of such termination. If this Agreement is so terminated, the DBA will pay the Contractor only for the Services rendered prior to such termination, including any retainage for the Services previously performed. The amount of the payment shall be computed by the DBA on the basis of the Services rendered and accepted by the DBA; any expenses incurred prior to termination; any bona fide termination settlement costs reasonably incurred by the Contractor, as determined by the DBA, relating to the documented firm commitments by the Contractor which were reasonably committed by the Contractor prior to the Notice of Termination, but only to the extent that the Contractor cannot mitigate same; and such other costs, which in the judgment of the DBA, represent a fair value of the Services provided, less the amount of any previous payments made. Should the DBA or the DBA's designee undertake any part of the Services which are to be performed by the Contractor, to the extent such Services are being performed by the DBA or its designee, the Contractor shall not be entitled to any compensation for the Services so performed. The Contractor expressly acknowledges and agrees that in no case shall the DBA's obligation for total aggregate payment under this Section 8.03 exceed the compensation provided for in Article III hereof.

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

become the DBA's sole and exclusive property, whether or not in the Contractor's possession, free from any claims or retention of rights thereto on the part of the Contractor. The Contractor shall promptly deliver to the DBA upon the DBA's request, all Work Product. The Contractor acknowledges that any intentional failure or delay on its part to deliver the Work Product to the DBA will cause irreparable injury to the DBA not adequately compensable in damages and for which the DBA has no adequate remedy at law, and the Contractor accordingly agrees that the DBA may, in such event, seek and obtain injunctive relief in a court of competent jurisdiction to compel delivery of the Work Product. The DBA shall have full and unrestricted use of the Work Product for the purpose of completing the Services. The Contractor may retain copies of the Work Product, duplicated at its own expense, provided Contractor shall have obtained prior written approval from the DBA, which consent shall not be unreasonably withheld.

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

ARTICLE IX Amendments

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

ARTICLE X

used by the Contractor solely for the purposes for which the DBA has authorized. Upon the expiration or termination of this Agreement, the Contractor shall return all Confidential Information to the DBA without retaining a copy.

ARTICLE XII Indemnity and Insurance

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

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

- a. any and all claims for injury to the person or damage to the property of, or any loss or expense incurred by, the DBA, its officers, directors, employees, agents, representatives and/or independent Contractors (collectively, the "DBA Indemnified Persons") which arise out of the negligent and/or tortious performance of the Services by the Contractor and/or its Employees and/or its affiliates and/or subsidiaries ("Contractor Indemnifying Persons"); and
- b. any failure by the Contractor Indemnifying Persons to perform its obligations, whether express or implied, under this Agreement; and
- c. any act, failure to act, misrepresentation, whether intentional or unintentional, by Contractor Indemnifying Persons.

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

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

for each approved Subcontractor, so that each Subcontractor shall have in force, insurance policies with at least the Minimum Insurance Requirements set forth above.

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

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

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

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

ARTICLE XIII

Equal Employment Opportunity and Anti-Discrimination Practices

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

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

13.03 The Contractor voluntarily agrees that it shall use its best efforts in the performance of the Work, and shall require all Subcontractors hired to

If to DBA: DETROIT BUILDING AUTHORITY

1301 Third Street, Suite 328
Detroit, Michigan 48226
Attention: Tyrone Clifton, Director
Fax: (313) 224-4998
Email: tclifton@detroitmi.gov

LEWIS & MUNDAY, P.C.
535 Griswold Street
Suite 2300
Detroit, Michigan 48226
Attention: Reuben A. Munday, Esquire
Fax: (313) 961-1270
Email: rmunday@lewismunday.com

If to Contractor: Jenkins Construction
985 East Jefferson Avenue
Suite 300
Detroit, Michigan 48226

14.02 Notices shall be deemed received three (3) days after the day of mailing via U.S. Mail and may also be transmitted via overnight courier service, hand delivery, facsimile or email to the numbers and addresses listed hereinabove. If transmitted via hand delivery, facsimile or email, receipt of the transmittal is deemed to be the date of delivery, if via overnight courier service, delivery shall be deemed to be the actual date of delivery as evidenced by a receipt confirmation from the overnight delivery service. In the event a Notice is sent by email or facsimile it shall be the sending party's responsibility to obtain a confirmation of receipt before the Notice will be acknowledged. Either party to this Agreement may change its address for the receipt of Notices at any time by giving Notice thereof to the other as herein provided. Any Notice given by a party hereunder must be signed by an authorized representative of such party.

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

ARTICLE XV Representations and Warranties

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

- (g) To the best of Contractor's knowledge, it has not received any written notice from any governmental authority that the Contractor is now in violation of any governmental orders, regulations, statutes or ordinances dealing with the Contractor's operations. In the event any such notice from any governmental authority is received by Contractor between the Proposal Date and throughout the Term, which Contractor does not reasonably contest, Contractor shall correct the same, at Contractor's expense, as promptly as possible.
- (h) Contractor has not entered into any contracts or made any commitments which would bind the DBA as a successor in interest.
- (i) Contractor has not entered into any other existing agreements which will or would conflict with its obligations hereunder.
- (j) To the best of Contractor's knowledge, all documents heretofore and hereafter provided to the DBA are, and shall be complete, true, and accurate in all material respects.
- (k) Contractor has not contracted for the furnishing of labor or materials which will not be paid in full by Contractor in the ordinary course. Contractor shall indemnify the DBA from all loss, claims, and costs which the DBA may incur from the imposition of construction and/or storage/bailment liens, if any, arising from the acts and/or omissions of Contractor.
- (l) Contractor has no notice of, and there is no pending or threatened litigation, administrative action or examination, claim or demand whatsoever relating to the Contractor and/or its operations and/or assets, or the Services contemplated herein, before any court or any federal, state or municipal government department, commission, board, bureau, agency or instrumentality thereof, the outcome of which may materially adversely affect Contractor and/or Contractor's ability to perform the Services in accordance with this Agreement.
- (m) That no federal, state or local taxing authority has asserted any tax deficiency, lien, or assessment against the Contractor which has not been paid or the payment for which adequate provision has not been made, to DBA's satisfaction.
- (n) That Contractor has performed, in all material respects, all obligations required to be performed by Contractor, and Contractor is not in default under any agreement, lease, mortgage or any other document to which Contractor is or has been a party.

any applicable special warranty required by the Contract Documents, any of the Work is found to be defective or not in accordance with the Contract Documents, the Contractor shall correct it promptly after receipt of a written notice from the DBA to do so. This obligation shall survive termination of the Agreement. The DBA shall give such notice promptly after discovery of the condition.

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

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

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

ARTICLE XVIII

Contractor's Accounting Records

materially from those ordinarily encountered and generally recognized as inherent in Work of the character provided for in this Agreement, be encountered, the project budget and the substantial completion date may be equitably adjusted by change order approved in writing by the DBA upon written claim by the Contractor within thirty (30) days after the first observance of the conditions.

20.02 Claims For Additional Cost or Time

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

20.03. Minor Changes in the Work

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

20.03.2 Emergencies

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

ARTICLE XXI
General Provisions

21.01 The parties hereto agree that at any time or from time to time after the execution of this Agreement, they shall, upon request of the other, execute

completed as needed. Any documents, exhibit, and/or schedule referenced herein is a part of this Agreement and shall be deemed to have been incorporated herein.

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

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

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

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

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

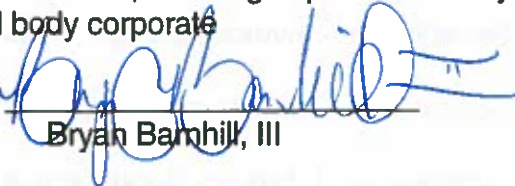
21.14 Any rights and remedies specifically referenced herein are not exclusive and shall be in addition to any of the rights and remedies provided at law or in equity.

21.15 Force majeure events shall include, but not be limited to, acts of God, tornadoes, floods, hurricanes, earthquakes, tidal waves, blizzards or other natural disasters, strikes, labor disputes, fires, unusually severe or abnormal weather conditions, epidemics, quarantine restrictions, acts of the state or federal government in their sovereign capacity, wars, terrorism, incidence of disease or other illness that reaches outbreak and epidemics, which affect the area in which the Project is located and/or the Contractor's labor and/or supply chain, .

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

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

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

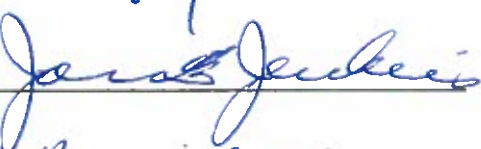
By: 
Bryan Barnhill, III

Its: Chairman

By: 
Christopher T. Jackson

Its: Treasurer

JENKINS CONSTRUCTION, a Michigan
corporation *1024*

By: 
James Jenkins

Its: President

APPROVED AS TO FORM:

General Counsel, City of Detroit
Building Authority

Schedule A
Scope of Services

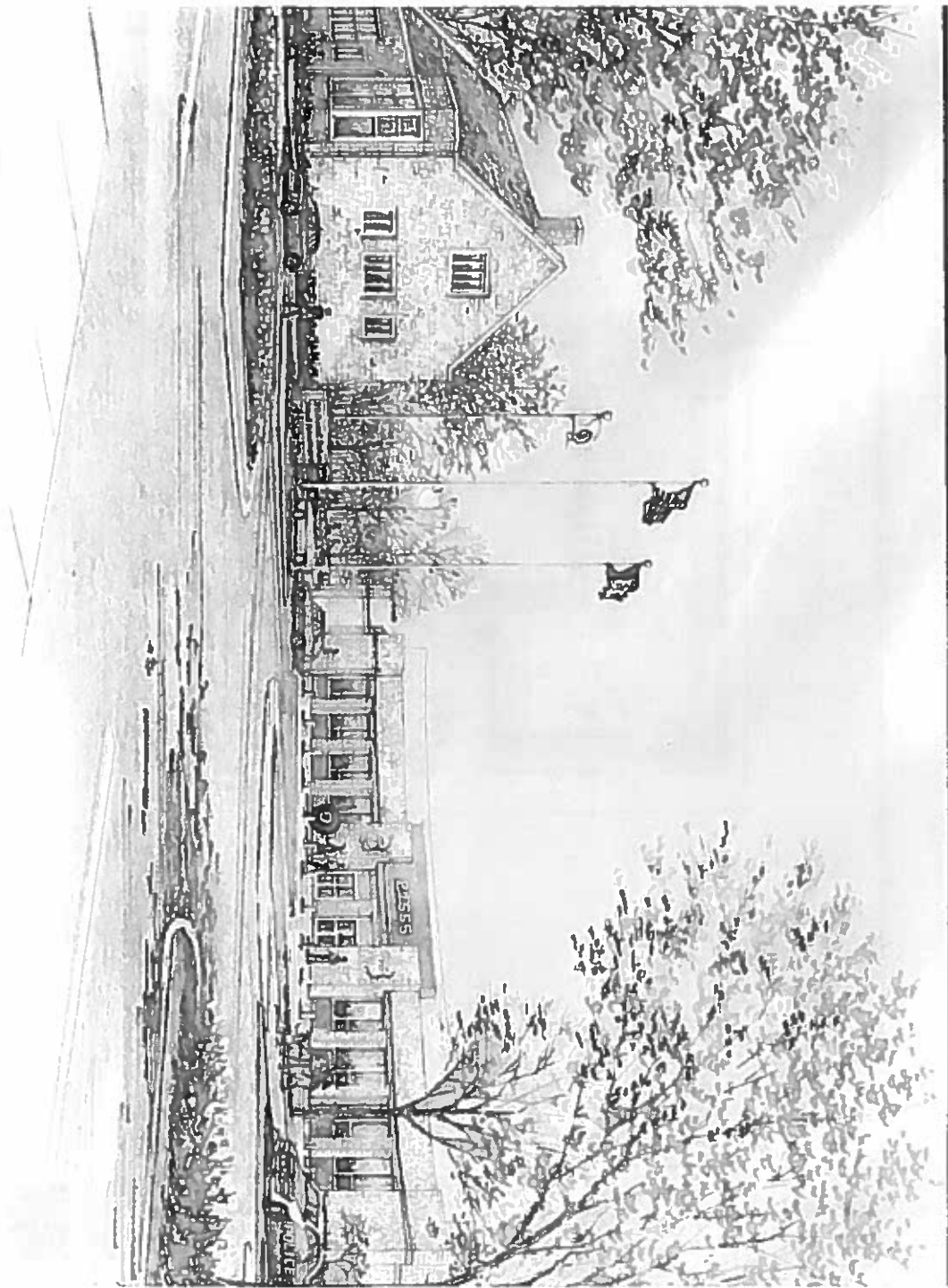
Services shall be performed in accordance with the Construction Manager's proposal, including Construction Manager's fees and expenses, attached hereto and made a part of this Schedule A.

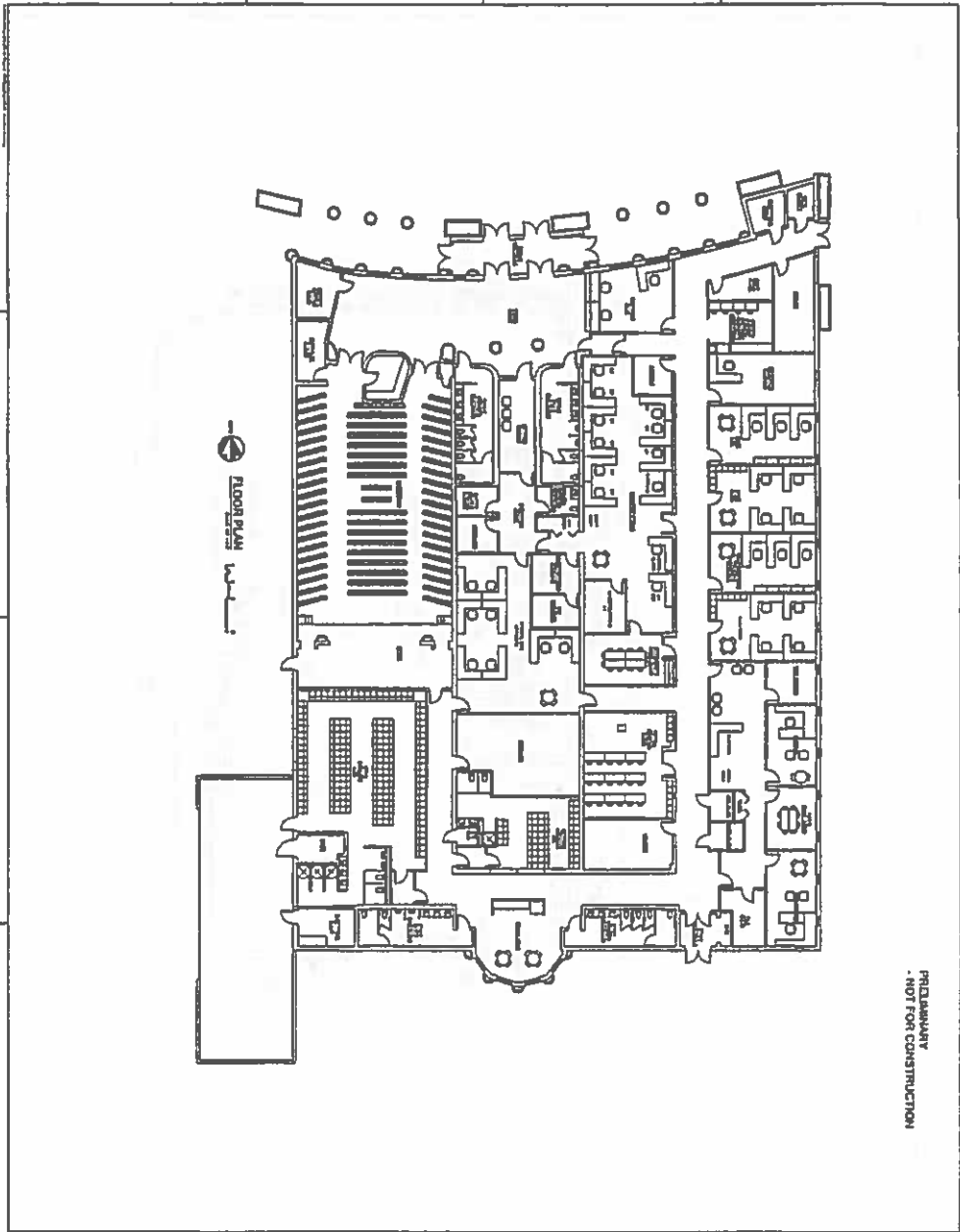
1. Work cooperatively with the Project Architect/Engineer.
2. Consult with, advise, assist and make recommendations to the DBA on all aspects of planning for the Project.
3. Review and assist in the preparation of necessary documentation required by any grant regulation applicable to Project funding,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

19. Maintain a competent full-time staff at the Project site to coordinate, monitor and provide direction of the Work and progress of its Subcontractors on the Project.
20. Establish on-site organization and lines of authority in order to expeditiously complete the Project.
21. Establish and implement procedures for coordination among the DBA Projects, Project Architect/Engineer, its Contractors and Contractor with respect to all aspects of the Project.
22. Schedule, conduct and document in writing all progress meetings deemed necessary by the DBA at which the Contractor's Subcontractors Contractors, the DBA, the Project Architect/Engineer and the Contractor may discuss such matters as procedures, progress, problems and scheduling.
23. Provide regular monitoring of the schedule as construction progresses. Identify potential variances between scheduled and probable completion dates. Review the schedule for Work not started or incomplete and recommend to the DBA and Contractor's Subcontractors adjustments in the schedule to meet the probable completion date. Provide summary reports of each monitoring and document all changes in the schedule.
24. Determine the adequacy and ability of its Subcontractors' personnel and equipment and the availability of materials and supplies to meet the schedule. Recommend courses of action to the DBA when requirements of a contract are not being met.
25. Provide all supervision, labor, materials, construction equipment, tools and trade contract items necessary for the completion of the Project provided by either its Subcontractors or the DBA. Contractor shall not, however, perform any of the Work with his own forces.
26. Observe the Work of its Subcontractors to assure Work is being performed in accordance with the requirements of the Construction Documents. Inspect the Work of Subcontractors for defects and deficiencies in the Work. Protect the DBA against defects and deficiencies in the Work. The Contractor shall have the right to stop the Work or reject Work of any Subcontractor, or any portion thereof that does not conform to the Contract Documents, and require special inspection or testing of any Work, whether or not such Work is then fabricated, installed or completed.
27. Develop and monitor an effective system of Project cost control. Revise and refine the line item estimates in the cost of the Project as it is

35. Allow access to the Project, upon reasonable notice, at all times by the DBA, its agents and representatives.
36. Establish and implement procedures for expediting the processing and review of shop drawings and samples submitted to the Project Architect/Engineer for its approval. The Contractor shall furnish copies of all drawings and specifications necessary for the execution of the Work.
37. Record the progress of the Project. Submit written monthly progress reports to the DBA including information on Subcontractors' Work, the percentage of completion, and the number and amount of change orders. The Contractor shall keep a daily log at the job site available to the DBA.
38. Maintain at the Project site on a current basis: records of all necessary contracts, drawings, samples, purchases, materials, equipment, maintenance and operating manuals and instructions, and other construction related documents, including all revisions. Obtain data from Subcontractors and maintain a current set of record Drawings, Specifications and operating manuals.
39. Propose a date for Substantial Completion of the Work or designated portions thereof for concurrence by the Project Architect/Engineer and DBA, and prepare for the DBA a punchlist and a schedule for completion of each item. After the Project Architect/Engineer certifies the Substantial Completion Date, the Contractor shall supervise the correction and completion of the Work.
40. With the DBA's maintenance personnel, direct the checkout of utilities operational systems and equipment for readiness and assist in initial startup and testing.
41. Recommend a date for Final Completion, for concurrence by the Project Architect/Engineer and the DBA.
42. Warrant that all materials and equipment included in Work performed by Subcontractors under contract with the Contractor are new unless otherwise specified, and that such Work is of good quality, free from improper Workmanship and defective materials and in conformance with Plans and Specifications. All Work not conforming to these requirements, including substitutions, not properly approved and authorized may be considered defective. With respect to the same Work, the Contractor further agrees to correct all Work defective in materials and Workmanship for a period of one (1) year from the Substantial Completion Date or for such longer periods of time as may be set forth with respect to specific warranties contained in the trade

49. All contracts with Subcontractors shall be directly between the Contractor and the Subcontractors. The form of all such contracts, including the general and supplementary general conditions thereto, shall be determined by the Contractor but shall not be inconsistent with the Contract Documents, provided that all such contracts shall contain or incorporate all requirements of the Occupational Safety and Health Act of 1970 (P.L. 91-596, 84 Stat. 1590; 20 U.S.C.A. 651 et. seq.), as amended, all necessary affirmative action, fair employment and labor reporting standards provisions mandated by this Agreement or by the legitimate requirements of any governmental body or agency providing financing for the Project.
50. Nothing contained in the Contract Documents shall be deemed to create any contractual relationship between the DBA and/or the City and any of the Subcontractors (any contractual relationship between the Contractor and any Subcontractor shall arise solely from and by virtue of an express contract between such parties), nor shall anything in the Contract Documents be deemed to give any third party any claim or right of action against the DBA and/or the City under the Contract Documents.





PRELIMINARY
 - NOT FOR CONSTRUCTION

DBA
 DESIGN-BUILD-ACQUIRE
 CONTRACTOR
 10000 W. 10TH AVENUE
 DENVER, CO 80202

SDG
 SUSTAINABLE DESIGN GROUP
 10000 W. 10TH AVENUE
 DENVER, CO 80202

ALUMINUM
 ALUMINUM, INC.

PRELIMINARY - NOT FOR CONSTRUCTION
 FOR REFERENCE ONLY

FLOOR PLAN

NO. 1	DATE	DESCRIPTION
1	10/10/00	18101.00
2	10/10/00	A01.00

Schedule C
Invoice Format – Rates - Method of Payment

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

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

2. In taking action on the applications for payment, the Project Architect/Engineer shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor and shall not be deemed to have approved the Work on behalf of the DBA or represent to have made audits of the supporting data, exhaustive or continuous on-site inspections or examination to ascertain how or for what purposes the Contractor has expended funds previously paid pursuant to the Contract Documents.

delay. The DBA shall reimburse the Contractor for increases in the cost of the Work directly attributable to the delay, and an appropriate adjustment may be made to the fixed professional fee to reflect the increased costs resulting from such delays; provided, however, that any such delay materially affects the substantial completion or final completion dates, the cost of the Work, and/or the fixed professional fee, as the case may be. Upon direction by the DBA, the Contractor shall reduce the size of its Project staff after a thirty (30) day delay, or sooner if requested by the DBA, for the remainder of the delay period.

8. If the Contractor concludes that: (a) any Work ordered to be completed as Work by the Project Architect/Engineer, is extra Work and not Work required under this Agreement, (c) any determination or order of the DBA violates the terms and provisions of this Agreement, the Contractor shall promptly notify the DBA in writing of its contentions with respect thereto and request a final determination thereof.
9. Such determination of the Project Architect/Engineer shall be given in writing to the Contractor. If the Project Architect/Engineer determines that the Work in question is extra Work and not Work, or the determination or order complained of requires performance by the Contractor beyond that required by the Construction Documents or violates the terms and provisions of the Agreement, thereupon the Project Architect/Engineer shall cause either (a) the issuance of a written order by the DBA covering the extra Work, or (b) the determination or order complained of to be rescinded or so modified so as to not require performance beyond that required by or so as not to be in violation of the terms and provisions of the Agreement.
10. If the Project Architect/Engineer determines that the Work in question is Work required under this Agreement and not extra Work, or that the determination or order complained of does not require performance by the Contractor beyond that required by this Agreement or that the Work in question does not violate the terms and provisions of the Agreement, the Project Architect/Engineer will direct the Contractor to proceed and the Contractor must promptly comply. However, in order to preserve its right to claim compensation for such Work or damages resulting from such compliance, the Contractor must, within ten (10) days after receiving the Project Architect/Engineer's determination and direction, notify the Project Architect/Engineer in writing that the Work is being performed, or that the determination and direction is being complied with under protest.
11. If the Contractor fails to so appeal to the Project Architect/Engineer for a determination or, having so appealed, should the Contractor thus fail to notify the Project Architect/Engineer in writing of its protest, the Contractor shall be deemed to have waived any claim for extra compensation or damages therefor. No oral appeals or oral protests, no matter to whom

Schedule D

Minimum Insurance Requirements

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

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

Schedule E

Payment Bond, Guaranty and Warranty Requirements

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

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

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

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