

CONTRACT NO. 12090

**JOB ORDER CONTRACTING
MASTER AGREEMENT**

BETWEEN

THE CHICAGO HOUSING AUTHORITY

AND

WTL FOUNDATION 1, INC.

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This **JOB ORDER CONTRACTING MASTER AGREEMENT** (“Master Agreement” or “Agreement”) is made as of this 1st day of August 2017 (the "Effective Date") between the **CHICAGO HOUSING AUTHORITY**, a municipal corporation of the City of Chicago, State of Illinois (hereinafter, the "**CHA**"), with its offices located at 60 E. Van Buren St., Chicago, Illinois 60605 and **WTL FOUNDATION 1, INC.** (hereinafter, the “**Contractor**” or "**Contractor**") an Illinois corporation with offices located at 2150 S. Canal Port Avenue, Suite 3A, Chicago, Illinois 60608.

RECITALS

WHEREAS, the CHA is engaged in the development and operation of safe, decent and sanitary housing throughout the City of Chicago for low-income families in accordance with the United States Housing Act of 1937, 42 U.S.C. §1437 et seq.; regulations promulgated by the United States Department of Housing and Urban Development ("HUD"), and the Illinois Housing Authorities Act, 310 ILCS 10/1 et seq., as amended, and other applicable laws, regulations and ordinances; and

WHEREAS, the CHA desires the services of Contractor to provide indefinite quantity, indefinite delivery construction services under this Master Agreement; and

WHEREAS, the CHA issued Request for Proposal Event No. 2055 (the “RFP”) on or about February 21, 2017 to solicit multiple general contractors to provide general construction services through the use of this Master Agreement; and

WHEREAS, the Contractor, in response to the RFP, submitted its proposal on or about April 12, 2017 representing and warranting that it is highly qualified and competent to provide the construction services for CHA Projects assigned to it by Job Order in accordance with this Master Agreement;

WHEREAS, the Contractor agrees to the terms and conditions of this Master Agreement which will govern future Projects and Job Orders that may be assigned to the Contractor under this Master Agreement; and

WHEREAS, the CHA has created six tiers of contractors. **Tier 1** will be for contractors who have the ability to bid on, perform the work and wish to do work of projects valued up to \$2,500. **Tier 2** will be for contractors who have the ability to bid on, perform the work and wish to do work of projects valued over \$2,500 to \$10,000. **Tier 3** will be for contractors who have the ability to bid on, perform the work and wish to do work of projects valued over \$10,000 to \$25,000. **Tier 4** will be for contractors who have the ability to bid on, perform the work and wish to do work of projects valued over \$25,000 to \$50,000. **Tier 5** will be for contractors who have the ability to bid on, perform the work and wish to do work of projects valued over \$50,000 to \$100,000. **Tier 6** will be for contractors who have the ability to bid on, perform the work and wish to do work of projects valued over \$100,000 to \$250,000. The Contractors are assigned to

Tier(s) for which they apply and the CHA determines they qualify. The Contractor is assigned to Tier(s) 3 for General Construction Contractors.

WHEREAS, the CHA will, from time to time, formally request that the Contractor respond to Request(s) for Job Order Proposals for Job Order awards for Projects and submit Job Order Proposals in response to such Request for Job Order Proposal and in accordance with the JOC Supplemental Conditions; and

WHEREAS, the Contractor is ready, willing and able to provide the construction services required hereunder and respond to CHA's RFP as further set forth herein.

NOW THEREFORE, in consideration of the mutual promises and the terms and conditions set forth herein, the CHA and the Contractor agree as follows:

ARTICLE I INCORPORATION OF RECITALS

1.1 Incorporation of Recitals. The recitals set forth above, are incorporated by reference as if fully set forth herein.

1.2 Definitions. The following words and phrases have the following meanings for purposes of this Agreement:

“Architectural Engineer” or “AE” – The person, firm, or entity selected by the CHA to perform architectural and engineering services and to act on the CHA's behalf with respect to all aspects of the performance of the design, engineering and construction administration of Projects. Any reference in this RFP to specific architectural, engineering, or related disciplines shall be construed as services directed and provided by the A/E, whether they are performed by the A/E or by professionals or sub-consultants retained by the A/E.

“Business Day” means Monday through Friday but does not include Federal and state holidays.

“Calendar Day” means Monday through Sunday.

“CHA's Representative” means the construction management (“CM”) firm, person, or entity engaged by the CHA, under a separate contract with the CHA, to plan, coordinate, and oversee design and construction management activities

“Capital Maintenance Program” – “Program” to provide additional needed improvements to existing CHA housing and to update acquired housing. This program supplements improvements performed by Private Property Managers.

“CHA Policy Provisions” – Provisions to be included in the Contract to assure compliance by the Contractor with the CHA's MBE/WBE/DBE Policy, the CHA's Section 3 Policy and the CHA's Ethics Policy, all of which are described below.

“Construction Activities” – means all construction trades activities (both preparatory such as demolition of existing structures or interior demolition, remediation and actual construction) required to rehabilitate or build new residential, non-residential housing and recreational space.

“Construction Documents” - All of the Plans and Specifications, addenda, Supplemental Job Orders, modifications, and all other prints, models, designs, computations, sketches, test data, photographs, renderings, plans, shop, proposal drawings, and other materials relating to, or contemplated by the Detailed Scope of Work, prepared by the CHA, the architect or by any engineer, professional or professional consultant engaged by the CHA or the architect in connection with a Project.

“Contract” means the Job Order Contracting Master Agreement entered into between the CHA and a “Selected Respondent” resulting from the RFP.

"Contract Documents" - The Contract Documents, which form the Contract between parties, include all written modifications, amendments and change orders to the Contract, the Master Agreement, when accepted by the CHA, “Amendment(s) to Special Conditions”, if any, the “Special Conditions of the Contract for Construction”, “Amendment(s) to General Conditions”, if any, “HUD General Conditions for Construction (Form 5370)”, JOC Supplemental Conditions, Job Orders issued under the Contract and all related documentation including Supplemental Job Orders, & the “Work Schedule” for each Job Orders Order as defined in paragraph 6 of “HUD General Conditions for Construction”, was amended from time to time pursuant to paragraph 6, the “Instructions to Bidders (form HUD-5369)”, applicable wage rate determinations from either the U.S. Department of Labor or HUD, the Performance and Payment Bond or Bonds or other assurances of completion, the Construction Task Catalog®, the Technical Specifications, and drawings for each Job Order, if any, Contractor’s Affidavit or any other affidavits, certifications or representations the Contractor is required to execute under the Contract MBE/WBE/DBE and Section 3 Utilization Plans and, the CHA’s Section 3 Policy (collectively referred to as the “Contract Documents”). The Contract Documents enumerated herein contain the entire Contract between the parties, and no other representations, warranties, agreements, or promises (whether oral, written, expressed, or implied) by the CHA or the Respondent are a part of the Contract unless expressly stated therein.

“Contract Year” means the 12 month period following the effective date of the Agreement and each subsequent 12 month term of the Agreement.

“Contracting Officer” – CHA Deputy Chief Procurement Officer or such other party as the CHA may designate.

"Construction Manager" or "CM" – The person, firm, or entity retained and authorized by the CHA to plan, coordinate, and oversee construction management activities for a Property on behalf of the CHA.

“Development” – Building or group of buildings identified under a single Name and Asset Management Property Number.

“Development Activities” – Are new construction or repurposing activities not considered rehabilitation, modernization or maintenance.

“Development Program” - The program which provides Federal grants to the CHA to develop housing for low-income families that cannot afford housing in the private market.

“Field Manager” or “FM” - The designated individual within the CHA who works under a Project Manager to provide oversight at the location of a project.

“Contractor” – The person or entity designated as the prime construction contractor in the Contract and Job Order(s).

“Key Personnel” – Positions of contractor staff which include at a minimum program executive, project manager, superintendent(s), invoice processor, safety personnel, and scheduler (or companies performing such services on behalf of the Contractor).

“LEED® NC” – Leadership in Energy and Environmental Design for New Construction, Version 3, as published by the United States Green Building Council (USGBC) in 2009.

“LEED® AP” - LEED® Accredited Professional designation.

“New Construction” - Site preparation for (including but not limited to the demolition of existing structures) and construction of entirely new structures and/or significant extensions to existing structures, whether or not the site was previously occupied, performed pursuant to the Development Program.

“Notice to Proceed”- Written notice from CHA’s Contracting Officer authorizing the Contractor to start work on a Project under a Job Order.

"Plans and Specifications" – The final drawings and specifications for a Job Order, as amended from time to time in accordance with the Contract.

“Private Property Managers” or “PPMs” – Firms which provide property management services at CHA developments.

"Project" – The collective improvements to be constructed by the Contractor pursuant to a Job Order, or a series of related Job Orders.

“Project Manager” or “PM” – The designated individual within CHA or CM staff to administer a specific Job Order.

“Property”- CHA property where a Project is to be performed under a Job Order.

"Services" means, collectively, the construction services, duties and responsibilities described in the Contract Documents and any and all work necessary to complete them or carry them out fully as required and in accordance with a Job Order under the Contract.

“Job Order Contracting (“JOC”)- means the delivery of construction services through a competitive indefinite delivery, indefinite quantity Job Order Contracting program in which contractors are assigned an indefinite quantity of Job Orders but are only guaranteed a minimum amount of work.

“Value Engineering” means a technique by which contractors may voluntarily suggest methods for performing more economically. Value Engineering is identified after the submission of the bids.

“Work” means all labor, materials, and services required to be performed by the Contractor for the general construction required by a Project in accordance with a Job Order under the Contract.

ARTICLE II CONTRACTOR’S DUTIES AND RESPONSIBILITIES

2.1 Scope of Services. The Scope of Services that the Contractor may be requested to provide under this Agreement are contractor construction services.

2.2 Statement of Work. The work of this Contract will be set forth in the Detailed Scopes of Work referenced in the individual Job Orders. The Contractor is required to complete each Detailed Scope of Work for the Job Order Price within the Job Order Completion Time. The Services that the Contractor shall provide under this Agreement pursuant to Job Orders are described generally in Exhibit I, which is attached hereto and incorporated by reference herein.

2.3 Contract Administration. The Contractor, if selected to perform Services pursuant to a Job Order resulting from a Request for Job Order Proposal, shall act as the prime contractor for the Detailed Scope of Work for the Project described in the Job Order. The Contractor will be required to work with the CHA's Capital Construction Department staff to satisfy the contracting objectives of awarded Job Orders.

a. Any Services to be furnished under the Master Agreement shall be requested by issuance of Job Orders by the CHA’s Property Office through the Department of Procurement and Contracts. All Job Orders will be subject to the terms and conditions of the Contract. If mailed, a Job Order will be considered "issued" when the CHA deposits the Job Order in the mail. Job Orders may only be issued by CHA's Contracting Officer and may not be issued orally, but may be issued by facsimile, or by electronic commerce methods, and will be considered issued at the time of transmittal.

2.4 Section 3 and MBE/WBE/DBE Participation and Requirements

A. Section 3 – Compliance: The CHA has determined that Job Orders awarded under this Agreement are subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u, (Section 3), and Title 24 of

Subchapter B, Part 135 – Economic Opportunities for Low- and Very Low-Income Persons, 24 CFR 135.3. Section 3 Compliance requires that any contract or subcontract entered into for the benefit of public housing residents shall require that, to the greatest extent feasible, economic opportunity in the form of training, employment, contracting, and other economic opportunities arising from the expenditure of public housing assistance for housing rehabilitation and housing construction be directed to low- and very low-income persons.

1. Section 3 - Clause

- i. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- ii. The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.
- iii. The Contractor agrees to send to each labor organization or representative of workers with which the Contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- iv. The Contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The Contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.
- v. The Contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the Contractor is selected but before

the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135.

- vi. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

2. Section 3 Compliance Goals

- 1. Contractors and their subcontractors may demonstrate compliance by committing to employ section 3 residents and by subcontracting with section 3 business concerns in accordance with the requirements of 24 CFR Part 135.

A Section 3 Business concern is a business concern under HUD Regulations:

- (a) 51 percent or more owned by section 3 residents; or
 - (b) Whose permanent, full-time employees include persons, at least 30 percent of whom are currently section 3 residents, or within three years of the date of first employment with the business concern were section 3 residents; or
 - (c) That provides evidence of a commitment to subcontract in excess of 25 percent of the dollar award of all subcontracts to be awarded to business concerns that meet the qualifications set forth in paragraphs (1) or (2) in this definition of "section 3 business concern."
- ii. Contractor and sub-contractors may demonstrate compliance with the requirements for contracting with Section 3 Business Concerns by committing to award to Section 3 Business Concerns at least 10 percent of the total dollar amount of the contract awarded to the contractor for building trades work for maintenance, repair modernization or development of public housing, or for building trades work arising in connection with housing rehabilitation, housing construction and other public construction and at least 3 percent of the total dollar amount of all other Section 3 covered contracts.
 - iii. In evaluating compliance with 24 CFR Part 135, contractors and their subcontractors have the burden of demonstrating to the greatest extent feasible their ability or inability to meet the goals set forth in 24 CFR Part 135 for providing training, employment and contracting opportunities to section 3 residents and section 3 business concerns.
 - iv. Contractors and their subcontractors are also encouraged to provide other economic opportunities to train and employ section 3 residents including, but

not limited to, use of “upward mobility”, “bridge” and trainee positions to fill vacancies, and hiring section 3 residents in part-time positions (24 CFR 135.40).

v. **Section 3 Hiring**

The Section 3 Regulations provide that contractors and their subcontractors demonstrate compliance by employing Section 3 Residents as 30 percent of the aggregate number of New Hires. A contractor or subcontractor is required to hire only when a New Hire is needed to perform the work.

(a) **CHA Preferences**

The hiring efforts of the CHA’s contractors and subcontractors, shall be directed to provide training and employment opportunities to Section 3 Residents in the following order of priority:

1. Residents of the housing development or developments for which the Section 3 Covered Assistance is expended;
2. Residents of other housing developments managed by the CHA;
3. CHA Housing Choice Voucher Participants;
4. Participants in HUD Youthbuild Programs being carried out in the Chicago Metropolitan Area;
5. Other Section 3 Residents.

3. Documenting and Reporting

i. Contractor agrees to comply with the above Section 3 requirements in accordance with the Contractor’s Section 3 Utilization Plan, which shall be prepared by the Contractor for each response to a Request for Job Order Proposal for Service and agreed to by CHA. CHA shall not be required to agree to the Contractor’s Utilization Plan until the Contractor meets its burden to establish that it will comply with 24 CFR Part 135 and otherwise comply with CHA’s Section 3 Policy (see http://www.thecha.org/pages/section_3/65.php or the copy included in the solicitation) as may be required.

ii. The Contractor and its subcontractors shall provide all required compliance data with respect to Contractor’s Section 3 requirements to the CHA via CHA’s electronic system available at <https://cha.diversitycompliance.com/>. The Contractor and its subcontractors shall be responsible for responding to any requests for data or information by the noted response due dates, and shall check the electronic system on a regular basis to manage contact information and contract records. The Contractor shall also be responsible for ensuring that all subcontractors have completed all requested items with complete and accurate information and that their contact information is current.

4. This Section 3 Contract Provision shall flow down to each subcontract at every tier.

- B. MBE/WBE/DBE Compliance.** Contractor agrees to comply with the CHA's Minority and Women Disadvantaged Business Enterprise ("MBE/WBE/DBE") requirements in accordance with the CHA's MBE/WBE/DBE Policy (see http://www.thecha.org/pages/mbe_wbe_dbe/36.php or the copy included in the RFP),.
- C. Documenting and Reporting.** The Contractor and its subcontractors shall provide all required compliance data with respect to Contractor's MBE/WBE/DBE to the CHA via CHA's electronic system available at <https://cha.diversitycompliance.com/>. The Contractor and its subcontractors shall be responsible for responding to any requests for data or information by the noted response due dates, and shall check the electronic system on a regular basis to manage contact information and contract records. The Contractor shall also be responsible for ensuring that all subcontractors have completed all requested items with complete and accurate information and that their contact information is current.
- D. Requests for Services MBE/WBE Participation and Section 3 Requirements.** Prior to issuance of the Notice to Proceed for a Job Order, the Contractor shall provide a MBE/WBE/DBE Utilization Plan and a Section 3 Utilization Plan, acceptable to the CHA, stating the degree of MBE/WBE/DBE participation and level of commitment to CHA's Section 3 Policy that meets the CHA's policies, and thereafter, throughout the term of this Agreement and any Job Order issued pursuant thereto, fulfill the stated levels of participation and commitment. The Section 3 Utilization Plan and the MBE/WBE/DBE Utilization Plan accepted by the CHA will be incorporated by reference as if specifically set forth into each assigned Job Order and the Contractor shall comply with its agreed commitments as set forth therein.

2.5 General Conditions For Construction Contracts. HUD's General Conditions for Construction Contracts (HUD form 5370 (2007)) ("General Conditions"), are attached hereto as Exhibit II and incorporated by reference as if fully set forth herein. The Contractor agrees to fully comply with the General Conditions. In the event of a conflict between the terms and conditions of the General Conditions and the terms and conditions of the Agreement, the terms and conditions of the Agreement shall control.

2.6 Drug-Free Workplace. Contractor shall establish procedures and policies to promote a "Drug-Free Workplace." Contractor shall notify all employees of its policy for maintaining a "Drug-Free Workplace" and the penalties that may be imposed for drug abuse violations occurring in the workplace. Further, Contractor shall notify the CHA if any of its employees are convicted of a criminal drug offense in the workplace no later than ten (10) days after such conviction.

2.7 Non-Discrimination. Contractor shall comply with all federal, state and local non-discrimination laws, rules, regulations and ordinances including, but not limited to, The Civil Rights Act of 1964, 42 U.S.C. sec. 2000 et seq. (1989), as amended, and all regulations promulgated thereto. Contractor shall particularly remain in compliance at all times with: Exec. Order No. 11,246, 30 Fed. Reg. 12,319 (1965), reprinted in 42 U.S.C. 2000

(e) note, as amended by Exec. Order No. 11,375, 32 Fed. Reg. 14,303 (1967) and by Exec. Order No. 12,086, 43 Fed. Reg. 46,501 (1978); Age Discrimination Act, 42 U.S.C. sec. 6101-6106 (1989); Rehabilitation Act of 1973, 29 U.S.C. sec. 793-794 (1988); Fair Housing Amendments Act, 42 U.S.C. Sec. 3601 et seq., (1988); Americans with Disabilities Act of 1990, 42 U.S.C. 12101 and 41 C.F.R. Part 60 et seq., (1990). Illinois Human Rights Act, 775 ILCS 5/1-101 et seq., as amended, and regulations promulgated in accordance therewith, including but not limited to the Equal Employment Opportunity Clause, I11. Admin. Code Tit. 44 section 750 Appendix A, which is attached hereto as Exhibit III and incorporated by reference herein; Public Works Employment Discrimination Act, 775 ILCS 10/0.01 et seq., as amended. Chicago Human Rights ordinance, s2-160-010 et seq., of the Municipal Code of Chicago, as amended; and the Chicago Fair Housing Regulations, s5-8-010 et seq., of the Municipal Code of Chicago, as amended. In addition, Contractor must furnish such reports and information as requested by the Chicago Commission on Human Relations.

2.8 Force Majeure. Notwithstanding any other provision in this Agreement, the Contractor shall not be liable or held responsible for any failure to perform or for delays in performing its obligation under the Agreement, including but not limited to, the Scope of Work set forth in a Job Order that result from circumstance or causes beyond Contractor's reasonable control, including without limitation, fire or casualty, acts of God, strikes or labor disputes, war or violence, or any law, order or requirement of any government agency or authority.

ARTICLE III TERM OF AGREEMENT

3.1 Term of Agreement. This Agreement shall commence on the Effective Date (August 21, 2017) and shall continue and remain in effect through September 28, 2018 or until the Agreement is terminated in accordance with its terms, whichever occurs first. At the Agreement's expiration date, the Agreement's terms and conditions shall continue to remain in effect with respect to any Job Order assigned to the Contractor prior to the termination date until the entire Detailed Scope of Work required under an assigned Job Order has been completed in accordance with its respective terms and all Work has been accepted by the CHA.

3.2 Contract Extension Options. The CHA, at its sole discretion, may extend this Agreement for one (1) additional one (1) year option period, subject to approval of the CHA's Board of Commissioners, if required. Any extension shall be under the same terms and conditions as this original Agreement. The Agreement shall be modified to reflect the time extension in accordance with the provisions of Section 6.3 of this Agreement.

3.3 Time is of the Essence. The Contractor will complete the Detailed Scope of Work pursuant to a Job Order within the Job Order Completion Time provided in the Job Order. The Contractor acknowledges that sometimes deadlines for the Detailed Scope of Work are dictated by the requirements of agencies or events outside the control of the CHA, that failure by the Contractor to meet these deadlines may result in economic or other losses to the CHA, and that in those circumstances, TIME IS OF THE ESSENCE.

ARTICLE IV COMPENSATION

4.1 Amount of Compensation. This is an indefinite delivery, indefinite quantity contract as defined in the HUD Procurement Handbook (7460.8 Rev.-2) and as such, the Contractor shall be guaranteed to earn a minimum amount of \$10,000 under this Agreement. The initial maximum not-to-exceed amount of compensation payable to the Contractor under the Agreement is \$300,000.00. The Contractor acknowledges that the CHA is not obligated to issue a Job Order to the Contractor for more than the minimum amount set forth above, and that in order to receive more than the minimum amount, the Contractor must be awarded Job Orders on a rotational basis as set forth in Article II above. Upon the award of a Job Order and issuance of a Notice-to-Proceed to the Contractor, the CHA shall pay the Contractor the Job Order Price to provide the Detailed Scope of Work as set forth in the Job Order in accordance with the payment provisions set forth in the HUD General Conditions and CHA's Special Conditions. **The Contractor agrees to and waives any and all claims for payment of Work that would result in billings beyond the Job Order Price established in a Job Order without a prior written amendment to the Job Order authorizing said additional work and additional costs.** The Contractor acknowledges an affirmative duty to monitor its performance and billings to ensure that the scope of work is completed within the agreed upon Lump Sum Base Bid Total as set forth in the Job Order.

4.2 **The Contractor shall perform all work required, necessary, proper for or incidental to completing the Detailed Scope of Work called for in each individual Job Order issued pursuant to this Contract for the Unit Prices set forth in the Construction Task Catalog® and the following Adjustment Factors:**

- a. **Normal Working Hours Adjustment Factor** 8:00 am to 5:00 pm Central Standard Time (CST) Monday to Friday, except for Owner Holidays:

Described in Attachment L.

- b. **Other Than Normal Working Hours Adjustment Factor** 5:01 pm to 7:59 am Central Standard Time (CST) Monday to Friday, and all day Saturday, Sunday and Owner Holidays:

Described in Attachment L.

ARTICLE V EVENTS OF DEFAULT, REMEDIES, TERMINATION, RIGHT TO OFFSET, SUSPENSION

5.1 **Events of Default Defined.** Each of the following shall constitute an event of default:

- A. Any material misrepresentation, whether negligent or willful and whether in the inducement or in the performance, made by Contractor to the CHA.

- B. The Contractor's failure to perform any of its obligations under this Agreement or an assigned Job Order including, but not limited to, the following:
1. Failure to perform the Services required with sufficient personnel or with sufficient material to ensure the performance of the Services or due to a reason or circumstance within the Contractor's control;
 2. Failure to meet any of the performance standards set forth in this Agreement or a Job Order;
 3. Failure to perform the Services in a manner reasonably satisfactory to the CHA, or inability to perform the Services satisfactorily as a result of insolvency, filing for bankruptcy or assignment for the benefit of creditors;
 4. Failure to promptly re-perform within a reasonable time the Services or Deliverables that were rejected as erroneous or unsatisfactory;
 5. Discontinuance of the Services for reasons or circumstances not beyond the Contractor's control;
 6. Failure to comply with a material term of this Agreement or a Job Order, including, but not limited to, the provisions concerning compliance with HUD regulations, insurance and nondiscrimination; and
 7. Any other acts specifically and expressly stated in this Agreement as constituting an event of default.
- C. Any change in majority ownership or majority control of the Contractor without the prior written approval of the CHA, which written approval shall not be unreasonably withheld.
- D. The Contractor's default under any other agreement it may presently have or may enter into with the CHA during this Agreement. The Contractor acknowledges and agrees that in the event of a default under this Agreement the CHA may also declare a default under any such other agreements.

5.2 Remedies. Upon the occurrence of any event of default in the performance of a Job Order which the Contractor fails to cure within thirty (30) calendar days after receipt of written notice given in accordance with the terms of this Agreement and specifying the event of default or, if such event of default cannot be reasonably cured within thirty (30) calendar days after notice, or if the Contractor has failed to commence and continue diligent efforts to cure such default within thirty (30) days, the CHA may, at its sole option, declare the Contractor in default. Whether to declare the Contractor in default is within the sole discretion of the CHA and neither that decision nor the factual basis for it is subject to review or challenge under the disputes provision of this Agreement. Written notification of the default, and any intention of the CHA to terminate the Agreement, shall be provided to the Contractor and such decision shall be

final and effective upon the Contractor's receipt of such notice. Upon the giving of such notice, the CHA may invoke any or all of the following remedies:

- A. The right to terminate this Agreement as to any or all of the Scope of Work yet to be performed effective at a time specified by the CHA.
- B. The right to pursue any and all remedies, legal and/or equitable, available to the CHA.
- C. The right to withhold all or any part of Contractor's compensation hereunder with respect to Detailed Scope of Work not completed in accordance with the terms hereof prior to the termination of this Agreement.
- D. The right to deem Contractor non-responsible in future contracts to be awarded by the CHA.
- E. The right to take over and complete the Detailed Scope of Work or any part thereof as agent for and at the cost of contractor, either directly or through others.

If the CHA considers it to be in its best interests, it may elect not to declare default or to terminate the Agreement hereunder. The parties acknowledge that this provision is solely for the benefit of the CHA and that if the CHA permits Contractor to continue to provide the Detailed Scope of Work despite one or more events of default, the Contractor shall in no way be relieved of any of its responsibilities, duties or obligations under this Agreement nor shall the CHA waive or relinquish any of its rights.

The remedies under the terms of this Agreement or under any Job Order issued hereunder are not intended to be exclusive of any other remedies provided, but each and every such remedy shall be cumulative and shall be in addition to any other remedies, existing now or hereafter, at law, in equity or by statute. No delay or failure to exercise any right or power accruing upon any event of default or acquiescence therein shall impair any such right or power or be construed to be a waiver of any event of default by the CHA, and every such right and power may be exercised from time to time and as often as may be deemed expedient.

5.3 Termination for Convenience. Notwithstanding the foregoing, the CHA may terminate the Agreement, the Services or any portion of a Job Order awarded pursuant to a Request for Job Order Proposal to be performed under this Agreement for convenience at any time by giving notice, in writing, to the Contractor when the CHA may deem the Agreement to be no longer in the best interests of the CHA. Contractor shall continue to render the Services until the effective date of termination. No costs incurred by Contractor after the effective date of the termination shall be allowed. The CHA shall reimburse Contractor for all of the direct and reasonable costs, as determined by the CHA, which were properly incurred through the date of termination. The Contractor shall be required to certify that the work completed to the time of termination has been performed in a professional manner and, if applicable, in accordance with the Job Order, and that the work completed may be relied upon by the CHA, its designees and any subsequent contractor retained to complete a Job Order.

5.4 No Damages for Delay. Contractor agrees that it shall make no claims against the CHA for damages, charges, interest, additional costs or fees incurred by reason of suspension of work or delays caused by the CHA. Contractor's sole and exclusive remedy for suspension of work or delays caused by the CHA is an extension of time equal to the duration of the suspension or delay to allow Contractor to perform.

5.5 Right to Offset. To the extent permitted by applicable law:

- A. In connection with performance under the Agreement and any assigned Job Order, the CHA may offset any incremental costs and other damages the CHA incurs in any and all of the following circumstances:
- i. If the CHA terminates the Agreement for default or any other reason resulting from the Contractor's performance or non-performance;
 - ii. If the CHA exercises any of its remedies under Section 5.2 of the Agreement;
 - iii. If the CHA has any credits due or has made any overpayments under the Agreement.

The CHA may offset these incremental costs and any other damages by use of any payment due for the Scope of Work completed before the CHA terminated the Agreement or before the CHA exercised any remedies. If the amount offset is insufficient to cover those incremental costs and other damages, the Contractor shall be liable for and must promptly remit to the CHA the balance upon written demand for it. The right to offset is in addition to and not a limitation of any other remedies available to the CHA.

- B. Without breaching this Agreement, the CHA may set off a portion of the compensation due under an assigned Job Order in an amount equal to the amount of any liquidated or un-liquidated damages or claims that the CHA has against the Contractor arising out of any other agreements between the CHA and the Contractor or otherwise unrelated to this Agreement. If and when the CHA's claims against the Contractor are finally adjudicated in a court of competent jurisdiction or otherwise resolved, the CHA will reimburse the Contractor to the extent of the amount the CHA has offset against this Agreement inconsistently with the determination or resolution.

ARTICLE VI GENERAL CONDITIONS

6.1 Entire Agreement. This Agreement, comprised of this Agreement and the Exhibit(s) attached hereto and incorporated herein, shall constitute the entire agreement between the parties with respect to the subject matter hereof and no other warranties, inducements, considerations, promises, or interpretations shall be implied or impressed upon this Agreement that are not expressly addressed herein.

6.2 Counterparts. This Agreement may be executed by several identical counterparts, each of which shall be deemed an original and constitute one agreement binding on the parties hereto.

6.3 Amendments. No changes, amendments, modification or discharge of this Agreement, or any part thereof, shall be valid unless in writing and signed by the authorized agent of Contractor and by the Chief Executive Officer of the CHA or his designated representative. **The CHA shall incur no liability for additional Services without a written and signed amendment to this Agreement pursuant to this Section.** Whenever in this Agreement Contractor is required to obtain prior written approval, the effect of any approval which may be granted pursuant to Contractor's request shall be prospective only from the later of the date approval was requested or the date on which the action for which the approval was sought is to begin. In no event may approval apply retroactively to a date before the approval was granted.

6.4 Deemed Inclusion. Provisions required by law, ordinances, rules, regulations or executive orders to be included in this Agreement are deemed inserted in this Agreement whether or not they appear in the Agreement or, upon application of either party, the Agreement shall be amended to make this insertion; however, in no event shall the failure to insert the required provisions before or after the Agreement is signed prevent its enforcement.

6.5 Governing Law. This Agreement shall be governed as to performance and interpretation in accordance with Federal Laws and the laws of the State of Illinois. Contractor hereby irrevocably submits itself to the original jurisdiction of those courts located within the County of Cook, State of Illinois, with regard to any controversy arising out of, relating to, or in any way concerning the execution or performance of this Agreement. Contractor agrees that service of process on Contractor may be made, at the option of the CHA, either by registered or certified mail addressed to the applicable office as provided for in this Agreement, by registered or certified mail addressed to the office actually maintained by Contractor or by personal delivery on any officer, manager or director of Contractor. If Contractor brings any action against the CHA concerning this Agreement, the action shall only be brought in those courts located within the County of Cook, State of Illinois.

6.6 Severability. If any provisions of this Agreement shall be held or deemed to be or shall in fact be inoperative or unenforceable as applied in any particular case in any jurisdiction or in all cases because it conflicts with any other provision or provisions hereof or of any constitution, statute, ordinance, rule of law or public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstances, or of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatever. The invalidity of any one or more phrases, sentences, clauses or sections contained in this Agreement shall not affect the remaining portions of this Agreement or any part thereof.

6.7 Interpretation. The headings of this Agreement are for convenience of reference only and do not define or limit the provisions thereof. Words of any gender shall be deemed and construed to include correlative words of the other genders. Words importing the singular

number shall include the plural number and vice versa, unless the context shall otherwise indicate. All references to any exhibit or document shall be deemed to include all supplements and/or amendments to any such Exhibits or documents entered into in accordance with the terms and conditions hereof. All references to any person or entity shall be deemed to include any person or entity succeeding to the rights, duties, and obligations of such persons or entities in accordance with the terms and conditions of this Agreement.

6.8 Assigns. All of the terms and conditions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their permitted successors.

6.9 Waiver. Whenever under this Agreement the CHA by a proper authority expressly waives in writing Contractor's performance in any respect or expressly waives a requirement or condition to either the CHA or Contractor's performance, the waiver in writing so granted shall only apply to the particular instance and shall not be deemed a waiver forever or for subsequent instances of the performance, requirement or condition. No such waiver shall be construed as a modification of the Agreement regardless of the number of times the CHA may have waived the performance of a requirement or condition under this Agreement.

6.10 CHA Inspector General. It is the duty of the Contractor and its subcontractors to cooperate with the CHA Inspector General in any investigation or hearing undertaken. All of the Contractor's subcontracts must include this provision and require agreement and compliance with the same.

ARTICLE VII AUTHORITY

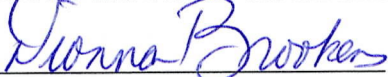
7.1 CHA's Authority. Execution of this Agreement by the CHA is pursuant to the United States Housing Act of 1937, 42 U.S.C. §1437 et seq., regulations promulgated by HUD, and the Illinois Housing Authorities Act. 310 ILCS 10/1 et seq., as amended, and other applicable laws, regulations and ordinances.

7.2 Contractor's Authority. Execution of this Agreement by Contractor is authorized by a resolution of its Board of Directors and the signature(s) of each person signing on behalf of Contractor, has been made with complete and full authority to commit Contractor to all terms and conditions of this Agreement.

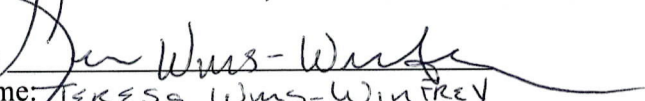
SIGNATURE PAGE TO FOLLOW

IN WITNESS WHEREOF, the CHA and Contractor have executed this Agreement as of the date first written above.

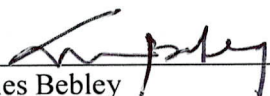
CHICAGO HOUSING AUTHORITY

By: 
Dionna Brookens
Chief Procurement Officer

WTL FOUNDATION 1, INC.

By: 
Name: TERESA WMS-WINFREY
Title: PRESIDENT / OWNER

Approved as to Form and Legality
Chicago Housing Authority
Office of the General Counsel

By: 
James Bebley
Chief Legal Officer