

CONTRACT NO. 11568

**TASK ORDER COMPETITIVE CONTRACTING
MASTER AGREEMENT**

BETWEEN

THE CHICAGO HOUSING AUTHORITY

AND

OAKLEY CONSTRUCTION COMPANY, INC.

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This **TASK ORDER COMPETITIVE CONTRACTING MASTER AGREEMENT** ("Master Agreement" or "Agreement") is made as of this 1st day of July, 2015 (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 **OAKLEY CONSTRUCTION COMPANY, INC.** (hereinafter, the "**Contractor**" or "**GC**") an Illinois corporation, with offices located at 7815 S. Claremont Ave, Chicago, IL 60620.

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 general contractors to provide indefinite quantity, indefinite delivery construction services under this Master Agreement; and

WHEREAS, the CHA issued Request for Proposal No. 14-01328 (the "RFP") on or about July 22, 2014, as amended by Addendum No. 1, issued August 14, 2014, Addendum No. 2, issued August 29, 2014, Addendum No. 3, issued September 22, 2014, and Addendum No. 4, issued September 23, 2014, 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 September 25, 2014, representing and warranting that it is highly qualified and competent to provide the general construction services for CHA Projects awarded to the Contractor by Task Orders in accordance with this Master Agreement;

WHEREAS, the CHA has created three groups of contractors (the "Groups"), and the Contractors have been assigned to one or more Groups to which they applied and for which the CHA has determined they qualify. Group A is for contractors who have the ability to bid on, perform the work, and secure bonding for projects valued from \$100,000 up to \$500,000. Group B is for contractors who have the ability to bid on, perform the work, and secure bonding for projects valued over \$500,000 up to \$1,500,000. Group C is for contractors who have the ability to bid on, perform the work, and secure bonding for projects valued over \$1,500,000 up to \$3,000,000.

WHEREAS, the Contractor is assigned to **Groups A, B, and C.**

WHEREAS, the CHA may, from time to time, formally request that the Contractor

respond to Request(s) for Services ("RFS") for Task Order awards for Projects and submit Lump Sum Base Bids in response to such Requests for Services; and

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

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:

"Architect Engineer" or "AE" – The person, firm, or entity selected by the CHA to perform architectural and engineering services with respect to all aspects of the performance of the design, engineering and construction administration of Projects. Any reference in this Agreement to specific architectural, engineering, or related disciplines shall be construed as services directed and provided by the AE, whether they are performed by the AE or by professionals or sub-consultants retained by the AE.

"Business Day" means Monday through Friday but does not include federal and state holidays.

"Calendar Day" means Monday through Sunday. However, if the due date for any action falls on a Saturday, Sunday or CHA holiday, said action shall be due on the immediately following Business Day.

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

"Capital Maintenance Program" – Program to provide needed improvements to existing CHA housing and to rehabilitate acquired housing. This program supplements improvements performed by Private Property Managers.

"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 residential or non-residential structures, recreational space, and site improvements.

"Construction Documents" - All of the Plans and Specifications, addenda, change orders, modifications, and all other prints, models, designs, computations, sketches, test data, photographs, renderings, plans, shop drawings, proposal drawings, and other materials relating to, or contemplated by the Work, prepared by the CHA, the AE or by any engineer, professional or professional consultant engaged by the CHA or the AE in connection with a Project.

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

"Contract" or "Agreement" means this Task Order Competitive Contracting Master Agreement entered into between the CHA and the Contractor.

"Contract Documents" - The Contract Documents, which form the contract between the CHA and a GC for a Project under a Task Order under this Agreement, include all written amendments to this Contract, this Contract, "Amendment(s) to Special Conditions", if any, the "Special Conditions of the Contract for Construction" (the "Special Conditions"), "Amendment(s) to General Conditions", if any, "HUD General Conditions for Construction (HUD form 5370)" (the "HUD General Conditions"), approved modifications, amendments and change orders to Task Orders issued under this Contract, Task Orders issued under the Contract, and the "Work Schedule" for each Task Order as defined in paragraph 6 of the HUD General Conditions, as amended from time to time pursuant to such 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 "Technical Specifications" for the Task Order, and drawings for the Task Order, if any, the Contractor's Affidavit, the Compliance Affidavit, or any other affidavits, certifications or representations the Contractor is required to execute under the Contract, and the MBE/WBE/DBE and Section 3 Utilization Plans. The Contract Documents enumerated herein contain the entire contract between the parties for a Task Order, and no other representations, warranties, agreements, or promises (whether oral, written, expressed, or implied) by the CHA or the Contractor are a part of the Task Order 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" - The manager of the CHA Department of Procurement and Contracts or such other party as the CHA may designate in writing.

"Cost" - The actual expenses incurred in the delivery of a product, service, or construction; includes overhead and both direct and indirect costs, but does not include fee or profit for the vendor.

"Development" - Building or group of buildings identified under a single name and Asset Management Property Number.

"Development Activities" – New construction or repurposing activities not considered rehabilitation, modernization or maintenance.

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

"Hourly Rates" shall mean that hourly rate by particular type of worker, which does not include expenses, overhead, profit and fees of the Contractor.

"Contractor" or "GC" – The person or entity designated as the prime general construction contractor in the Contract and Task Order(s).

"Key Personnel" – Positions of general contractor staff which include, at a minimum, the 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.

"Lump Sum Base Bid Total" – The total amount, in money, to be paid or charged for commodities and the construction services for a Project; includes all costs (direct and indirect labor, overhead, materials and general conditions) and profit or fee that the Contractor submits in response to a RFS.

"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.

"Notice to Proceed"- Written notice from CHA's Contracting Officer authorizing the General Contractor to start work on a Project under a Task Order.

"Plans and Specifications" – The final drawings and specifications for a Task Order, as such may be amended from time to time.

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

"Procurement Specialist"- the CHA employee identified in the Request for Services as the sole point of contact regarding the solicitation from the date of issuance until selection of the successful bidder.

"Project" – means Services described herein, and further described and defined in a Task Order related to the Work the Contractor will perform at the site pursuant to the Task Order issued under the Contract.

"Project Manager" or "PM" – The designated individual within CHA or CM staff to manage a specific Task Order.

"Property"- CHA property where a Project is to be performed under a Task Order.

"Request for Services" or "RFS" means a written request from the CHA to a designated Group of contractors participating in the TOCC program to prepare and submit a work plan and a Lump Sum Base Bid for the Services related to a specific Project as set forth in the RFS and to be performed pursuant to a Task Order.

"Services" means, collectively, the general 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 by and in accordance with a Task Order under the Contract.

"Task Order" means the order issued by the CHA that sets forth the description of a Project, scope of work, time frame for performance and fixed fee for the GC's Services to be performed in accordance with the terms and conditions of the Contract.

"Task Order Competitive Contracting ("TOCC")"- (formerly known as "IDIQ") means the delivery of general construction services through a competitive indefinite delivery, indefinite quantity task order program in which contractors are afforded opportunities to compete for Task Orders but are only guaranteed a minimum value 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 Task Order issued under the Contract.

ARTICLE II CONTRACTOR'S DUTIES AND RESPONSIBILITIES

2.1 Scope of Work. The Scope of Work that the Contractor may be requested to provide under this Agreement are general contractor construction services, and are described generally in paragraph A of **Exhibit I**, Scope of Work/Statement of Work, which is attached hereto and incorporated by reference herein.

2.2 Statement of Work. The Services that the Contractor shall provide under this Agreement pursuant to Task Orders are described generally in paragraph B of **Exhibit I**, Scope of Work/Statement of Work, which is attached hereto and incorporated by reference herein.

2.3 Contract Administration. The Contractor, if selected to perform Services pursuant to a Task Order resulting from a RFS, shall act as the prime general contractor for the scope of work for the Project described in the Task Order. The Contractor will be required to work

with the CHA's Capital Construction Department staff to satisfy the contracting objectives of awarded Task Orders.

Any Services to be furnished under the Master Agreement shall be requested by the issuance of Requests for Services by the CHA's Capital Construction Department through the Department of Procurement and Contracts. All Task Orders issued pursuant to a RFS will be subject to the terms and conditions of the Contract. If mailed, a Task Order will be considered "issued" when the CHA deposits the Task Order in the mail. Task 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.

A. Task Ordering Procedures

1. Requests for Services. From time to time, the CHA may issue a RFS to the appropriate Group (Group A, B or C) that will describe the scope of work and Services to be performed pursuant to a Task Order. The Task Order will be governed by the Contract. The RFS will set forth:
 - Scope of work;
 - Technical Specifications;
 - Drawings;
 - Parameters for the Schedule of Work;
 - Required completion date or duration of the work;
2. When appropriate, the Department of Procurement and Contracts will conduct a site visit at the location(s) where the work is anticipated in order to review the projected work with the contractors, the AE, the CM and an authorized representative from the CHA department overseeing the proposed work.
3. GCs within the Group are to respond to the RFS by sealed bid. The bid will be in the form of a Lump Sum Base Bid. The Contractor's Lump Sum Base Bid will constitute an irrevocable offer for a period of 180 calendar days after the date of the bid opening. After receiving all bids in response to a RFS, the CHA, in its sole discretion, may choose not to award a Task Order. Any costs associated with the preparation of a Lump Sum Base Bid will not be reimbursable under this Contract or a resulting Task Order.
4. The GC must provide and pay for an acceptable performance and payment bond and certificate of insurance within seven (7) calendar days of receiving a Task Order award letter or the Task Order may be rescinded and awarded to the next lowest responsible and responsive bidder. IMPORTANT: The surety must be a guaranty or Surety Company which appears in the U. S. Treasury Circular No. 570 published annually in the Federal Register, and must, at a minimum, have an "A" rating according to the A.M. Best Rating Guide. Failure to provide the required bonds shall constitute an event of default under the Contract.

5. A RFS will be considered "issued" when the CHA deposits the RFS in the mail, or when they are sent by facsimile or by electronic commerce methods (e.g. e-mail). A RFS may not be issued orally.

- I. Claims for additional costs. In the event that additional Services not described in the Task Order are discovered to be necessary or are requested by the CHA, the GC must submit a Task Order Modification on a form approved by the CHA for those additional Services within seven (7) calendar days of said discovery or request. Upon receipt of written approval of the Contracting Officer, the GC shall proceed to complete the additional Services. **Without said written approval, the GC shall not be allowed any additional costs. In any event, the GC may not make any claims against the CHA for equitable adjustments, additional costs, direct or indirect, or fees after completion of a Task Order assignment.**

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

- A. **Section 3 – Compliance:** The CHA has determined that Task 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

- i. 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."

(see <http://www.thecha.org/documents/?CategoryId=23> 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/assets/1/22/Amendment to Special Conditions - M-WBE.pdf](http://www.thecha.org/assets/1/22/Amendment%20to%20Special%20Conditions%20-%20M-WBE.pdf) 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 compliance 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.** Contractor's Compliance Affidavit is attached hereto and incorporated herein as **Exhibit V**. Prior to issuance of the Notice to Proceed for a Task Order, the Contractor shall provide a MBE/WBE/DBE Utilization Plan and a Section 3 Utilization Plan that meets the CHA's policies, acceptable to the CHA, stating the degree of MBE/WBE/DBE participation and level of commitment to CHA's Section 3 Policy, and thereafter, throughout the term of this Agreement and any Task 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 Task Order and the Contractor shall comply with its agreed commitments as set forth therein.

2.5 General and Special Conditions For Construction Contracts. The HUD General Conditions are attached hereto as **Exhibit II** and are incorporated by reference as if fully set forth herein. The Contractor agrees to fully comply with the HUD General Conditions for each

Task Order. In the event of a conflict between the terms and conditions of the HUD General Conditions and the terms and conditions of the Agreement, the terms and conditions of the Agreement shall control. CHA's Special Conditions of the Contract for Construction (the "Special Conditions"), are attached hereto as **Exhibit III** and are incorporated by reference as if fully set forth herein. In the event of a conflict between the terms and conditions of this Agreement and the Special Conditions, the Special Conditions shall control. In the event of a conflict between the terms and conditions of the HUD General Conditions and the Special Conditions, the terms and conditions of the HUD General Conditions shall control. Contractor shall include in any subcontracts those provisions from the HUD General and Special Conditions designated therein as provisions required to flow down to subcontractors.

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. 11246, 30 Fed. Reg. 12,319 (1965), reprinted in 42 U.S.C. 2000 (e) note, as amended by Exec. Order No. 11375, 32 Fed. Reg. 14303 (1967) and by Exec. Order No. 12,086, 43 Fed. Reg. 46,501 (1978) and the Equal Opportunity Clause set forth in 41 CFR Part 60-1.4, which is incorporated by reference herein; 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 Illinois Equal Employment Opportunity Clause, Ill. Admin. Code Tit. 44 section 750 Appendix A, which is attached hereto as **Exhibit IV** 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 Health and Safety. Contractor shall have sole responsibility for compliance with all requirements of the Occupational Health and Safety Act (OSHA) regulations for construction with respect to Contractor's employees, including such requirements pertaining to hazard notification, training, and required equipment and work protocols.

2.9 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 obligations under the Agreement, including but not limited to, the scope of work

set forth in a Task Order, that results from circumstances 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 (July 1, 2015) and shall continue and remain in effect for a period of two (2) years through June 30, 2017 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 Task Order for which a notice of award has been issued to the Contractor prior to the expiration of the contract term. The Contractor acknowledges and agrees that Task Orders may be awarded through the last day of the term of the Agreement, and that Task Order work not completed within the term of the Agreement shall continue until the entire scope of work required under an assigned Task 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 7.3 of this Agreement.

3.3 Time is of the Essence. The Contractor will complete the scope of work pursuant to a Task Order within the time limits provided in the Task Order. The Contractor acknowledges that sometimes deadlines for the 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 entitled to a minimum value of work of **Fifty Thousand and 00/100 Dollars (\$50,000.00)** under this Agreement. The initial maximum not-to-exceed amount of compensation payable to the Contractor under the Agreement is **Five Million and 00/100 Dollars (\$5,000,000.00)**. The Contractor acknowledges that the CHA is not obligated to issue a Task Order to the Contractor for more than the minimum value of work set forth above, and that in order to receive more than the minimum value of work, the Contractor must be awarded Task Orders on a competitive basis as set forth in Article II. Upon the award of a Task Order and issuance of a Notice-to-Proceed to the Contractor, the CHA shall pay the Contractor the agreed Lump Sum Base Bid Total to provide the scope of work as set forth in the Task 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 for Work that would result in billings beyond the agreed upon Lump Sum Base Bid Total established in a Task Order without a prior written amendment to the Task 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 Task Order.

4.2 Availability of Funds/Non-Appropriation. The funding for the Services described in this Agreement is subject to: (a) availability of federal funds from HUD; (b) the approval of funding by the Owner's Board of Commissioners; and (c) the Contractor's satisfactory performance of the Services. Furthermore, in the event that no funds or insufficient funds are appropriated and budgeted in any fiscal period of the CHA for payments to be made under this Agreement or any Task Order issued pursuant hereto, the Owner will notify the Contractor of such occurrence and this Agreement shall terminate on the earlier of the last day of the fiscal period for which sufficient appropriation was made or whenever the funds appropriated for payment under this Agreement are exhausted.

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 Task Order including, but not limited to, the following:
 - 1. Failure to perform the Services or Work 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 Task Order;
 - 3. Failure to perform the Services or Work in a manner reasonably satisfactory to the CHA, or inability to perform the Services or Work 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 Services or Deliverables that are rejected as erroneous or unsatisfactory;
 - 5. Discontinuance of the Services or Work for reasons or circumstances not beyond the Contractor's control;

6. Failure to comply with a material term of this Agreement or a Task 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 the term of 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 Task Order or this Agreement 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, if the Contractor has failed to commence and continue diligent efforts to cure such default within thirty (30) days, the CHA may 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 provisions of the HUD General and Special Conditions. 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 or a Task Order 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 any 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 scope of work for a Task Order 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 this Agreement or a Task Order issued 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 Services hereunder 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 any Task 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 Task Order 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 in accordance with the Task Order and this Agreement, and that the work completed may be relied upon by the CHA, its designees and any subsequent contractor retained to complete a Task 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 with respect to any Task Order, Work or Services performed under this Agreement. 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 this Agreement and any assigned Task 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 this Agreement or any assigned Task Order 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 this Agreement;
 - iii. If the CHA has any credits due or has made any overpayments under this Agreement or any assigned Task Order.

The CHA may offset these incremental costs and any other damages by use of any payment

B. Without breaching this Agreement, the CHA may set off a portion of the compensation due under an assigned Task Order in an amount equal to the amount of any liquidated or unliquidated 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 that is inconsistent with the determination or resolution.

6.1 Warranties, Representations and Covenants

- A. That it is financially solvent; and that it and each of its employees or agents of any tier are competent to perform the Services required under this Agreement; and that Contractor is legally authorized to execute and perform or cause to be performed this Agreement under the terms and conditions stated herein.
- B. That no officer, agent or employee of the CHA is employed by the Contractor or has a financial interest directly or indirectly in this Agreement or the compensation to be paid hereunder, except as may be permitted in writing by the CHA and HUD, and that no payment, gratuity or offer of employment shall be made in connection with this Agreement by or on behalf of the Contractor to any employee of the CHA; and the Contractor further acknowledges that any agreement entered into, negotiated or performed in violation of any of the provisions set forth herein shall be voidable as to the CHA.
- C. That Contractor and its subcontractors, if any, are not in default at the time of the execution of this Agreement, or deemed by the CHA's Director of Procurement and Contracts to have, within the last five (5) years, been found to be in default on any contract awarded by the CHA.
- D. That, except only for those representations, statements, or promises expressly contained in this Agreement, and any exhibits attached hereto and incorporated by reference herein, no representation, statement or promise, oral or in writing, or of any kind whatsoever, by the CHA, its officials, officers, agents, or employees, has induced the Contractor to enter into

this Agreement or has been relied upon by the Contractor.

- E. That the Contractor has carefully examined and analyzed the provisions and requirements of this Agreement and that it understands the nature of the Services required;
- F. That the Contractor acknowledges that the CHA, in its selection of the Contractor to perform the Services hereunder, materially relied upon the Contractor's Proposal, that the Proposal was accurate at the time it was made and that no material changes in it have been nor will be made without the express consent of the CHA;
- G. That except only for those representations, statements, or promises expressly contained in this Agreement, and any exhibits attached hereto and incorporated by reference herein, no representation, statement or promise, oral or in writing, or of any kind whatsoever, by the CHA, its officials, officers, agents, or employees, has induced Contractor to enter into this Agreement or has been relied upon by Contractor.
- H. That the Contractor and, to the best of its knowledge, its subcontractors are not in violation of the provisions of 18 U.S.C. § 666 (a)(2) and other Federal criminal laws applicable to public contracts funded with federal government funds, the Illinois Criminal Code, 720 ILCS 5/33E 1 et seq. (1989), as amended; and the CHA's Ethics Policy, as amended, and during the term of the Agreement will not violate the provisions of such laws and policies.
- I. That the Contractor has disclosed any and all relevant information to the CHA and the Contractor understands and agrees that any certification, affidavit or acknowledgment made under oath or failure to disclose in connection with this Agreement is made under penalty of perjury and, if false, is also cause for termination of this Agreement.

6.2 Joint and Several Liability. In the event that the Contractor, or its successors or assigns, if any, is comprised of more than one individual or other legal entity (or a combination thereof), then and in that event, each and every obligation or undertaking herein stated to be fulfilled or performed by the Contractor shall be the joint and several obligation or undertaking of each individual or other legal entity.

6.3 Business Documents and Contractor's Affidavit. The Contractor shall provide to the CHA evidence of its authority to conduct business in the State of Illinois, including without limitation, registrations of assumed names or limited partnerships and certifications of good standing with the Office of the Secretary of the State of Illinois. The Contractor's Affidavit is attached hereto as **Exhibit VI** and incorporated by reference as if fully set forth herein. The Contractor shall at all times comply with, and be in compliance with the Contractor's Affidavit, Contractor's Certifications and Representations of Offerors and the Equal Opportunity Clause.

6.4 Conflict of Interest

- A. The Contractor covenants that it and its employees, or sub-contractors, presently have no interest and shall acquire no interest, direct or indirect, in this Agreement which would conflict in any manner or degree with the performance of the Services hereunder. The

Contractor further covenants that during the performance of this Agreement, no person having any such interest shall be employed. Contractor agrees that if the CHA determines that any of Contractor's services for others conflict with the Services that the Contractor is to render for the CHA under this Agreement; Contractor shall terminate such other services immediately upon request of the CHA.

- B. Additionally, pursuant to the conflict of interest requirements in OMB Circular A-102 and 2 C.F.R. §200.318(c)(1), no person who is an employee, agent, consultant, officer, or appointed official of the CHA and who exercises or has exercised any functions or responsibilities with respect to HUD assisted activities, or who is in a position to participate in a decision making process or gain inside information with regard to HUD activities, may obtain a financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds hereunder, either for himself or herself or for those whom he or she has family or business ties, during his or her tenure or for one year thereafter.

6.5 Non-Liability of Public Officials. No official, employee or agent of the CHA shall be personally liable to the Contractor or the Contractor's successor in interest for: (i) any default or breach by the CHA under this Agreement, (ii) any fee due to the Contractor or the Contractor's successor in interest or (iii) any other obligation arising under this Agreement.

ARTICLE VII GENERAL CONDITIONS

7.1 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.

7.2 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.

7.3 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 Contracting Officer or the Contracting Officer's 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 requested.

7.4 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 their enforcement.

7.5 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.

7.6 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 circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatsoever. 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.

7.7 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.

7.8 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.

7.9 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.

7.10 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 VIII COMMUNICATION AND NOTICES

8.01 Communication Between the Parties

All verbal and written communications relating to the Work, including required reports, project schedules, specifications, and related submissions, between the Contractor and the CHA shall be through the **Chicago Housing Authority, Capital Construction Division, 60 East Van Buren St., 13th Fl., Chicago, Illinois 60605**, when required, unless otherwise specified in writing. All verbal and written communications relating to this Agreement or the TOCC Program between the Contractor and the CHA shall be through the **Chicago Housing Authority, Department of Procurement and Contracts, 60 E. Van Buren St., 13th Floor, Chicago, IL, 60605**, unless otherwise specified in writing. No verbal communication between the parties shall change any of the terms and conditions of this Agreement. Nothing stated herein shall be construed as a waiver or modification of the requirements for notice or service of process of litigation, as set forth in the Illinois Code of Civil Procedure, the Federal Rules of Civil Procedure, the local rules of the Circuit Court of Cook County, and the local rules governing the U.S. District Court for the Northern District of Illinois.

8.02 Notices

Any notices sent to the Contractor shall be mailed by certified mail, return receipt requested, postage prepaid to:

Oakley Construction Company, Inc.
7815 S. Claremont Ave.
Chicago, IL 60620
Attention: Anthony Kwateng, Vice-President

Notices sent to the CHA shall be mailed by certified mail, return receipt requested, postage prepaid to:

Chicago Housing Authority
60 E. Van Buren St., 12th Floor
Chicago, Illinois 60605
Attention: Chief Executive Officer

With a copy to:

Chicago Housing Authority

60 E. Van Buren St., 12th Floor
Chicago, IL 60605
Attention: Chief Legal Officer

ARTICLE IX AUTHORITY

9.1 **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.

9.2 **Contractor's Authority.** Contractor has the power and authority to enter into and perform all of its obligations under this Agreement, and this Agreement, when executed, will constitute the duly authorized, valid and legally binding obligation of the Contractor. 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.

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

CHICAGO HOUSING AUTHORITY

OAKLEY CONSTRUCTION
COMPANY, INC.

By: Dionna Brookens
Dionna Brookens
Deputy Chief of Procurement Officer
Department of Procurement and Contracts

By: Augustine Aferiyie
Print Name: AUGUSTINE AFERIYIE
Title: President

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

By: Scott Ammarelli
Scott Ammarelli
Chief Legal Officer