

GMHC REMODELING CONTRACT FOR CONSTRUCTION (NSP-2)

This Contract is made this _____ Day of _____, 2013, by and between the Greater Metropolitan Housing Corporation (GMHC), the "Owner," and _____, the "Contractor," for construction rehabilitation and remodeling Work at: 4330 Logan Ave N, Minneapolis, MN.

WHEREAS, The Owner desires to have performed and constructed the services and facilities described in the Construction Documents including the Scope of Work;

WHEREAS, The Contractor represents that it has the necessary personnel, experience, competence, and legal right to perform the Work;

WHEREAS, the Owner has authorized its staff to enter into a contract for the completion of the Work specified herein.

NOW, THEREFORE, in consideration of the premises and the mutual obligations of the parties hereto, each of them does hereby covenant and agree with the other as follows:

1. **WORK**: The Work shall be performed in strict accordance with the Construction Documents. The Contractor shall carefully review all of the Construction Documents and carefully inspect the project premises and conditions before performing the Work. The Contractor shall promptly, on discovery, call to the attention of the Owner any discrepancy or inconsistency which may exist between any two or more documents or between any parts of the same document. The Owner shall have discretion as to how to address any such discrepancy or inconsistency and shall modify, interpret, or adjust the Construction Documents accordingly as the case may be.

2. **CONSTRUCTION DOCUMENTS**: The Construction Documents shall consist of the; Scope of Work, NSP-2 Project General Conditions, GMHC Remodeling Contract for NSP-2 Projects, Sworn Construction Statement, Invitation to Bid with Instructions, and Notes, and any Change Orders. The Construction Documents shall, insofar as is possible, be interpreted to be consistent with one another. Any inconsistencies shall be addressed in accordance with paragraph 1 of this Contract.

3. **PERMITS AND REGULATIONS**: Prior to commencing the Work, the Contractor shall secure all necessary building permits and licenses as may be required, and before and during the progress of the Work, give all notices and comply with all the laws, ordinances, rules, and regulations of every kind and nature now or hereafter in effect that are promulgated by any federal, state, county, city or other governmental authority, relating to the performance of the Work. If the Contractor's performance is contrary to any such law, ordinance, rule, or regulation, the Contractor shall bear all costs arising therefrom. Contractor also specifically agrees to abide by and observe all standards and regulations of the; Minneapolis Inspections Division, the Minneapolis Housing Maintenance Code, the Minnesota State Building Code, and the Occupational Safety and Health Administration, which are applicable to the Work.

4. **PROSECUTION OF THE WORK** : The Contractor shall at all times prosecute the Work diligently so as to insure its completion in full accordance with the Construction Documents and shall at all times furnish sufficient numbers and amounts of properly skilled Workers, acceptable materials and equipment, adequate services and proper construction tools. The Work shall be performed in a good and Workmanlike manner. Contractor shall keep the Work site clean and orderly during the course of the Work and remove all debris at the completion of the Work. The Contractor shall adequately protect the Work from damage, will protect the property from injury or loss, and shall take all necessary precautions during the progress of the Work to protect all persons and the property of others from injury or damage. The Contractor will assume full responsibility for all its tools and equipment and all materials to be used in connection with the Work.

5. **COMMENCEMENT AND COMPLETION OF WORK**; The Work shall commence within seven days of the date of the Notice to Proceed and be totally completed within **90 consecutive calendar days** of the date of the Notice to Proceed. In the event the Work is not commenced within seven days of the date specified, the Owner may dismiss the Contractor without any compensation whatsoever and appoint a substitute Contractor. The Completion Date shall be considered as the date the Owner signs the Contractor's final pay request.

6. **LIQUIDATED DAMAGES**: In the event the Work is not completed by the specified date, the Contractor shall be assessed liquidated damages of \$ 15.00 per calendar day beyond the substantial completion date. This sum shall be deducted from the Contract Price at the time of final payment. This provision for liquidated damages represents the best estimate by the Owner and the Contractor of loss suffered by the Owner due to the Contractors failure to complete the Work on time, and shall not be, or is not deemed to be, a penalty or forfeiture. This provision for liquidated damages is in addition to any and all other rights and remedies to which the Owner may be entitled at law or in equity in connection with this Contract.

7. **EXCUSABLE DELAYS:** The following circumstances, and only these circumstances, will, at the Owners discretion, be considered legitimate cause for a change in the commencement and/or completion dates per paragraph 5 of this Contract:

- a. **Weather:** Adverse weather conditions that directly affect the scheduling of exterior work over a significant portion of the term of this Contract.
- b. **Changes Order:** Significant changes in the original scope of work, which can be reasonably shown to require an extension of the time allowed for completion.
- c. **Emergencies:** Accidents, death or illness in the immediate family of the Contractor, which necessitates a significant leave of absence from the job.

8. **CHANGE ORDER:** The Owner shall have the right, within the general scope of the Work and without notice to any surety or sureties of the Contractor, to make changes in the Work, either by altering the nature of the same or by adding to or deducting from it. All changes shall, except in the case of emergencies endangering the safety of persons or property, be made by written Change Order. The Contractor shall promptly comply with any and all written Change Orders. No such Change Order shall be deemed to invalidate the remaining terms and conditions contained in the Construction Documents.

9. **GENERAL GUARANTY & WARRANTIES:** The Contractor hereby guarantees to the Owner that all of the Work shall be done in a competent, workman-like manner and that such Work shall be and remain free of defects in workmanship and materials for a period of one (1) year from the Completion Date, with plumbing, heating, air conditioning and venting work guaranteed for two years and structural work guaranteed for ten years. The Contractor warrants that all materials and equipment furnished in connection with the Work will be new, unless otherwise specified, and be of good quality and free from faults and defects. The Contractor shall assign to the Owner (if assignable) or enforce for the benefit of the Owner (if not assignable) any guarantees provided by manufacturers or sellers of materials or equipment that are to be incorporated into the Work. Further any manufacturer's warranties for equipment and materials that extend beyond the above stated time limits shall continue to apply. The Owner's acceptance of the Work shall not be deemed to be a waiver of any of the Owner rights under this paragraph. In addition the Contractor agrees that all Warranty provisions of Minnesota Statute Chapter 321A apply.

10. **WAIVER OF LIABILITY:** It is agreed that the Work is undertaken at the sole risk of the Contractor. The Contractor does expressly forever release the Owner from any claims, demands, injuries, damage actions, or causes of action whatsoever, arising out of or connected with the Work.

11. **INDEMNIFICATION:** Any and all claims that arise or may arise as a consequence of any act or omission on the part of the Contractor, its agents, servants, or employees while engaged in the performance of the Work shall in no way be the obligation or responsibility of the Owner. The Contractor shall indemnify, hold harmless, and defend the Owner, its board, officers, employees, successors, and assigns against any and all liability, loss, cost, damages, expenses, claims, or actions, including attorney's fees which the Owner may hereinafter incur or be required to pay on account of injury to or death of any person or persons or damage to any property arising out of or by reason of any act or omission of the Contractor, its agents, servants, or employees in the execution, performance, or failure to adequately perform its obligations under this Contract, whatever the cause of such injuries or damage.

12. **INSURANCE :** The Contractor agrees that in order to protect itself and the Owner under the indemnity provisions set forth in paragraph 11 of this Contract, it shall at all times during the term of this Contract, maintain at a minimum the following insurance policies from insurance companies rated by A.M. Best at least A-:VII;

- a. Commercial General Liability Insurance. The Contractor shall maintain Commercial General Liability Insurance ("CGL"), providing coverage on an "occurrence", rather than on a "claims made" basis, which policy shall include coverage for Completed Operations Hazard, and shall include a Broad Form General Liability Endorsement, ISO # GL0404, or equivalent form affording coverage which in all respects is at least as broad. The Contractor agrees to maintain total liability policy limits of at least; \$2,000,000 each Occurrence; \$5,000 Medical expenses any one person; \$1,000,000 Personal & Advertising Liability; \$2,000,000 General Aggregate limit per project; and \$2,000,000 Products and Completed Operations Aggregate.
- b. Automobile Liability Insurance. The Contractor shall maintain automobile liability insurance covering liability for Bodily Injury and Property Damage arising out of the ownership, use, maintenance, or operation of all owned, scheduled, hired and non-owned automobiles and other motor vehicles. Such policy shall provide at least total liability limits for combined Bodily Injury and/or Property Damage in the amount of \$500,000 each accident.
- c. Workers Compensation Insurance. The Contractor shall maintain worker's compensation insurance in compliance with all applicable statutes including Chapter 176 of the Minnesota Statutes. Such policy shall include Employer's Liability Coverage of at least \$100,000 each accident for Bodily Injury by Accident, and \$100,000 each employee with

\$500,000 policy limit for Bodily Injury by Disease, and at least such amount(s) as are customarily provided in worker's compensation policies issued in Minnesota. Contractor further agrees to require all subcontractors and independent contractors to maintain worker's compensation insurance in compliance with all applicable statutes and to monitor the compliance of such subcontractors and independent contractors with the applicable statutes.

- d. Umbrella Liability Insurance. The Contractor shall maintain excess Umbrella Liability Insurance on an occurrence basis of at least \$1,000,000 each occurrence and \$1,000,00 aggregate.
- e. Builders Risk. The contractor shall provide a Builders Risk Policy equal to the construction contract price.

Both The Greater Metropolitan Housing Corporation and The City of Minneapolis shall be named as "additional insured" parties with respect to the insurance policies above. The Contractor shall not commence work until a Certificate of Insurance evidencing all of the insurance policies required above is approved by the Owner and a written Notice To Proceed is issued by the Owner. It is expressly understood that the Owner does not in any way represent that the minimum insurance coverage set forth in this paragraph is sufficient or adequate to protect the interest or liabilities of the Contractor.

13. **LIEN WAIVER:** Neither the Contractor nor any subcontractor or other person or entity furnishing labor, equipment, or materials in connection with the Work shall file any mechanic's lien against the Owner buildings, structures or land or any part thereof. The Contractor shall protect, defend, indemnify, and hold harmless the Owner from any and all claims, demands, or actions of whatever nature arising out of work, labor, equipment, or materials furnished by the Contractor or its subcontractors in connection with the Work. Payment of the Contract Price shall not be due until the Contractor has delivered to the Owner lien waivers acceptable to the Owner, which release the Owner from all liens that may arise in connection with the Work. The Contractor shall submit on the Sworn Construction Statement the names of all suppliers and subcontractors that will provide materials, services, or labor in connection with the Work.

14. **CONTRACT PRICE:** The Contractor agrees to furnish all work, labor, materials, permits and equipment necessary to complete the Work as set forth in the Construction Documents for the sum of \$ _____ (the Contract Price), to be paid by the Owner in accordance with the terms and conditions of this Contract. The Contract Price shall constitute the sole compensation payable to the Contractor for its performance of the Work or anything done in connection therewith including expenditures by the Contractor for all taxes, permits, licenses, and bonds required to perform the Work. The Contractor shall indemnify and save the Owner harmless from and against any liability for any such taxes, fees, premiums, contributions, etc. that the Contractor incurs in connection with the Work.

15. **PAYMENT OF CONTRACT PRICE:** The Contractor agrees to provide the Owner with the following documentation as a condition to receiving interim and final payments of the Contract Price: (a) Payment Request for Work completed; (c) Sworn Construction Statement; and (d) Lien waivers as required by paragraph 14 of this Contract. The Owner shall submit the request for payment only after receipt, site verification and approval of the above documents. The Owner may withhold payment of the Contract Price to the Contractor to such extent as may be necessary to protect the Owner from loss on account of: (a) Defective work not remedied; (b) Claims or actions filed or evidence reasonably indicating the probable filing of the same against the Owner with respect to the Work performed; (c) Failure of the Contractor to make payments properly to subcontractors and/or suppliers for equipment, material, or labor, or to provide evidence that such payments have been made; (d) Costs for which the Contractor is liable under the Construction Documents; or (e) Breach by Contractor of any term, condition, or provision contained in the Construction Documents.

16. **EQUAL EMPLOYMENT OPPORTUNITY:** The Contractor shall not discriminate against any employee or applicant for employment on the basis of age, race, color, religion, sex, or national origin. The Contractor shall comply with all applicable laws, Executive Orders, and regulations concerning non-discrimination in employment, including the Equal Opportunity Clause of Section 202, Executive Order 11246, as amended, which is hereby incorporated by reference.

17. **Small & Underutilized Business Requirements.** The contractor shall comply with the Small & Underutilized Business Enterprise Program (SUBP) requirements, as outlined in Minneapolis City Ordinance Chapter 423 (the "SUBP Ordinance"). For purposes of the SUBP only, the term "Project" means the collective undertakings of Developer pursuant to this Agreement rather than each individual Site and Improvements.

The contractor shall, consistent with the provisions of the SUBP Ordinance, devote a reasonable percentage of their subcontracting and material purchases to certified women-owned and minority-owned small businesses. The Manager of the SUBP has established the following participation goals for women-owned and minority-owned small

businesses: 8% MBE; 8% WBE. Upon execution of this Agreement, Developer shall submit a plan for achievement of the goals to the Manager of the SUBP for approval. SUBP compliance will be determined based on Developer's good faith efforts to implement the approved plan.

Prior to construction the contractor shall complete the Minneapolis Department of Civil Rights Pre-Construction Booklet and schedule a pre-construction meeting with Marvin Taylor (612) 673-2086, the Compliance Officer, who will review the Pre-Construction Booklet and approve it. The contractor shall also follow the LCP Tracking system as required by the City monthly reporting requirements.

Any inquiries should be directed to the Small & Underutilized Business Enterprise Program, City of Minneapolis Civil Rights Department, 239 City Hall, 350 South 5th Street, Minneapolis, Minnesota 55415, Attention: Manager Small & Underutilized Business Enterprise Program (612-673-2112). Information about certified businesses can be found at www.govcontracts.org.

18. SECTION 3 CLAUSE

A. 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. 1701 u (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.

B. 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.

C. The contractor agrees to send to each labor organization or representative or 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; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

D. 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.

E. 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.

F. 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.

G. With respect to work performed in connection with Section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b) 24

19. INDEPENDENT CONTRACTOR STATUS: Contractor is and shall remain an independent contractor in the performance of the Work, maintaining complete control of its workers and operations. Neither Contractor nor anyone employed or engaged by Contractor shall become an agent, representative, servant, or employee of the Owner in the performance of the Work or any part thereof.

20. Job Reporting Form: The Contractor shall track and report to GMHC all worker information of on the site workers. Tracking and reporting shall be done by completing the NSP-2 Job Tracking Form provided by GMHC. The Reporting Form shall be filled out completely and turned in with all draw requests.

21. **CONTRACT REPRESENTATIVES; ADDRESSES:** The Owner's and Contractor's representatives with respect to this Contract shall be as named below. All notices, requests, and instructions, or other communications given or received by either party under the terms of this Contract shall, unless otherwise specifically provided herein, be made in writing, signed by the designated representative of the party making such communication and be delivered or addressed to the designated representative of the other party at the following address:

Owner: Greater Metropolitan Housing Corporation (GMHC)
Attention: Bill Buelow Office Phone: 612-339-0601 Ext 16
15 South Fifth Street, Suite 710 Fax: 612-339-0608
Minneapolis, MN 55402 Email: bbuelow@gmhchousing.org

Contractor:

22. **SUBCONTRACTORS:** Contractor agrees to bind every subcontractor by the terms, conditions, and provisions set forth in the Construction Documents that are applicable to the subcontractor's work, unless specifically agreed otherwise in writing by the Owner.

23. **ASSIGNMENT:** This Contract shall be binding upon and in order to the benefit of the Contractor, its legal representatives, heirs, successors, and assigns. No assignment or attempted assignment of this Contract or any rights hereunder shall be effective unless the written consent of the Owner is first obtained. No such assignment, even if consented to by the Owner, shall relieve the Contractor from liability under this Contract for the performance and completion of the Work in accordance with the Construction Documents.

24. **ENTIRE CONTRACT:** The Construction Documents contain all the terms, conditions, and provisions pertaining to the Work to be completed by the Contractor, there being no other understandings, contracts, or warranties, express or implied. All prior negotiations and dealings regarding the subject matter of the Construction Documents are superseded by and merged into the Construction Documents.

25. **APPLICABLE LAW:** This Contract shall be construed in accordance with and governed by the laws of the State of Minnesota.

26. **AMENDMENT:** This Contract may be modified or amended only with the written approval of the Owner and the Contractor.

27. **CONSTRUCTION:** In the event that any one or more of the provisions of this Contract, or any application thereof, shall be found to be invalid, illegal, or otherwise unenforceable, the validity, legality, and enforceability of the remaining provisions or any application thereof shall not in any way be affected or impaired thereby.

28. **AUTHORITY:** Each of the undersigned parties warrants that it has the full authority to execute this Contract, and each individual signing this Contract on behalf of a corporation hereby warrants that he or she has full authority to sign on behalf of that corporation, and that he or she represents and binds such corporation thereby.

29. **WAIVER:** No failure by the Owner to insist upon the strict performance of any covenant, duty, Contract, or condition contained in this Contract or to exercise any right or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or any other covenant, Contract, term, or condition, nor does it imply that such covenant, Contract, term, or condition may be waived again.

IN WITNESS WHEREOF, the parties have set their hands.

OWNER:
Greater Metropolitan Housing Corp

;
Its Construction Manager

Date: _____

CONTRACTOR:

Its _____

Date: _____