

CR-Social Development Commission LHRA Program

CONTRACT TO PERFORM LEAD PAINT HAZARD REDUCTION WORK

_____-LHRA

THIS AGREEMENT is entered into effective as of this ____ day of _____, 201__, by and among: (A) City of Milwaukee, (“Owner”), acting by and through its Department of City Development, (B) _____, (“Contractor”), and (C) Community Relations – Social Development Commission (“Agency”).

Recitals:

- i. Owner is the owner of the residential land and improvements located at: _____, Milwaukee, WI _____, (the “Property”).
- ii. Contractor is engaged in the lead pain hazard reduction business at: _____.
- iii. Agency is an authorized community based agency for the Lead Paint Hazard Reduction Program administered by the Federal Department of Housing and Urban Development, (“HUD”), and maintains a business office at 4041 North Richards Street, Milwaukee, WI 53212.
- iv. Owner has applied for and is eligible to receive lead paint hazard reduction related repairs at the Property, funded by HUD.
- v. Contractor has submitted to Agency a written bid, _____, to perform lead paint hazard reduction work in accordance with the terms of the work scope and task specification documents.

Covenants:

- 1. The Work: Subject to all of the terms of this Agreement, Contractor shall perform and supply to Owner at the Property all the labor and materials necessary to complete the lead paint hazard reduction work as described in Exhibit A, attached hereto, (the “Work”).
- 2. Contract Price: Contractor shall perform and complete the Work for a fixed price of \$ _____, (the “Contract Price”).

3. Owner's Share of Contract Price: In accordance with the LHRA program requirements established by HUD, it is understood by the parties that Owner will perform, or cause to be performed, other work on the Property, and will not be responsible for any payments to Contractor. Upon verification by the Agency that Owner's contribution to the work to be completed at the Property is sufficient, and after the signing of this Agreement by all parties, the Agency shall issue to Contractor its written notice to proceed with the Work, (the "Notice to Proceed").

4. Time for Performing and Completing Work: Contractor shall not commence performance of the Work prior to Agency's issuance of the Notice to Proceed. Upon issuance of the Notice to Proceed, Contractor shall promptly commence the Work and shall complete the Work not later than the 25th business day after the date of issuance of the Notice to Proceed, (the "Agreed Completion Date"). In this Agreement, the term "business day" means any day except a Saturday, Sunday, or public holiday observed as such by HUD. Time is of the essence as to Contractor's completion of the Work. The parties agree that For each business day after the Agreed Completion Date that the Work remains uncompleted, the Contract Price shall be reduced by the sum of \$50.00.

5. Reassignment of Work: Contractor agrees to notify Agency in the event of Work reassignment, or use of a Consultant or Subcontractor. Any Consultant or Subcontractor has no agreement with the Agency, and has no authority to bind or commit the Agency to any agreements or other obligations. Any Consultant or Subcontractor is an independent contractor and is solely responsible for maintenance and payment of any and all taxes, insurances, and certifications that may be required by federal, state, or local law with respect to any sums paid hereunder to Contractor. Furthermore, any Consultant or Subcontractor must submit to the Agency all documents, applications, and certifications required of Contractor prior to the Work. Contractor, Consultants, and Subcontractors must meet Excluded Parties List System, ("EPLS"), and System of Award Management, ("SAM"), federal government requirements. Owner reserves the right to terminate this contract, without liability, if Agency proposes to use any Contractor or Consultant/Subcontractor that is federally debarred or otherwise excluded from federal contracts.

6. Permits, Licenses, and Inspections: Contractor shall obtain and pay for all compulsory permits and licenses required for the lawful completion of the Work, and shall arrange for all inspections necessary to satisfy and close the permit requirements, prior to the start of the Work.

7. Owner Cooperation: Owner shall cooperate with Contractor in scheduling the Work and providing reasonable access to the Property for the purpose of completing the Work. In the event of a tenant move or eviction, Agency reserves the right to stop work to insure that all living spaces are accessible for clearance.

8. Owner Self-Performance: Owner shall not self-perform or have services performed on their behalf any work on the Property without the written expressed consent of the Agency that may alter, change, or hamper the performance of the abatement processes as they relate to air borne particulate matter, surface clearance testing, and final close-out until such time as the Owner is notified that the Work has passed final clearance.

9. Payment: Agency shall pay Contractor the unpaid balance of the Contract Price within 21 days after Agency's receipt of: (a) Contractor's signed and dated invoice, certifying that the Work was installed by the Completion Date, or, if not, stating the date when the Work was installed; (b) Contractor's signed and dated waiver of all construction liens against the Property, Agency, and Owner arising as a result of the Work; (c) confirmation in written form by Owner, in a form reasonably satisfactory to Agency, that the Work has been installed; and (d) confirmation, in a form reasonably satisfactory to Agency, that the Work has been inspected and approved in accordance with all applicable permit and Lead (Pb) clearance requirements. Agency shall pay Contractor progress payments: (i) 1st payment after Agency's receipt of proof of ordered materials; (ii) 2nd payment in the amount of agreed percentage of Work installed minus 10% retainage, but no less than \$500.00, after Agency's receipt of Work installed; (iii) 3rd payment of retainage and remainder of agreed percentage of Work installed, in addition to any Change Orders approved by Agency, after Agency's receipt of approved Lead (Pb) clearance testing and approved Contractor lien waiver stating completion of Work. Lien waivers are required of all tier subcontractors.

10. Warranty: Contractor represents that Contractor is competent, skilled, trained, experienced, and qualified to undertake and perform the Work as an independent contractor. Contractor shall perform the Work in a professional and workmanlike manner. Contractor warrants that the Work, and all labor and materials furnished in connection therewith, shall be free of all materials defects. Contractor shall, at Contractor's expense, correct and repair all such defects in the Work that are discovered within 12 months after the Agreed Completion Date, or if later, the actual date of completion of the Work.

11. Indemnification: Contractor agrees to indemnify and hold harmless Owner, Agency, any tenant at the Property, the United States Government, and their respective agents and employees, from and against actual or purported liabilities, damages, costs, or claims, arising out of, or incident to, the Work, which is caused, or claimed to have been caused, by any wrongful or negligent act or omission of the Contractor, its agents, or employees.

12. Notices and Deliveries: Unless otherwise noted on Exhibit A attached hereto, all notices or deliveries of documents or payments called for under this Agreement by one party to another party, shall be made: (a) if to Owner, at Commissioner, Department

of City Development, 809 North Broadway, 2nd Floor, Milwaukee, WI 53202-3617; (b) if to Contractor, at the Contractor's address listed on this Agreement; and (c) if to Agency, at the Agency's address listed on this Agreement.

13. Lead (Pb) Clearance Policy: Contractor agrees to adhere to the U.S. Environmental Protection Agency ("EPA"), regulations and standards 40 C.F.R. 745.227(e) that apply to clearance whenever abatement of lead-based paint hazards is conducted. The Agency will provide the 1st clearance test to adhere to HUD Lead Safe Housing Rule 24 C.F.R. 35.1340(b). If any applicable EPA, HUD, State of Wisconsin Department of Health Services, ("DHS"), 163, or other state or local clearance standards for lead in dust are not met, EPA, HUD, and DHS 163 require that cleaning be repeated and additional visual assessments and dust testing be performed until the area meets clearance standards. If dust levels determined by a clearance examination remain above the clearance standards, the Work is not complete; levels of lead in dust must be within clearance standards for the Work to be complete. Contractor agrees to provide additional cleaning and costs of additional clearance testing and cleaning until clearance standards are met, to be deducted from retainage or billed as necessary.

14. Termination: In the event that any party commits a material breach of this Agreement and fails to remedy or cure such breach within 10 days after receipt of written notice thereof from a non-breaching party, the non-breaching party may, at its option, and in addition to any other remedies that it may have at law or in equity, terminate this Agreement by sending written notice of termination to the breaching party. Such termination shall be effective as of the date of its receipt.

15. Successors: All rights and duties of the parties hereunder shall inure to the benefit of and be binding upon their respective successors and assigns.

16. Governing Law: This Agreement, and the rights of the parties hereunder, shall be governed by and interpreted in accordance with the laws of the State of Wisconsin.

17. Entire Agreement: This Agreement is the entire agreement between the parties hereto with respect to the subject matter of this Agreement, and supersedes any prior understandings or agreements among them with respect to the subject matter hereof.

18. Amendment: No alteration or modification of this Agreement shall be binding unless in writing and signed by all of the parties.

19. Severability: The invalidity or unenforceability of any provision of this Agreement shall not affect the other provisions, and this Agreement shall be construed in all respects as if any invalid or unenforceable provisions were omitted.

20. Public Records: The parties understand that Owner is bound by the Wisconsin Public Records Law, and as such, all of the terms of this Agreement are subject to and conditioned on the provisions of Wis. Stat. § 19.21, *et seq.* Agency and Contractor acknowledge that they are obliged to assist Owner in retaining and producing records that are subject to the Wisconsin Public Records Law, and that the failure to do so shall constitute a material breach of this Agreement, and that the Owner and Agency must defend and hold the Owner harmless from any liability under that law due to their respective acts or omissions. Except as otherwise authorized, those records shall be maintained for a period of 7 years after receipt of final payment under this Agreement.

21. Conflict of Interest: No officer, employee, or agent of the Owner who exercises any functions or responsibilities in connection with the carrying out of any services or requirements to which this Agreement pertains, shall have any personal interest, direct or indirect, in this Agreement. No member of the Owner's governing body or other public official who exercises any functions or responsibilities in the review or approval or the carrying out of this Agreement shall have any personal interest, direct or indirect, in this Agreement. Agency and Contractor covenant that no officer, employee, agent, member of the governing body, or other public official of the Owner who presently exercises any functions or responsibilities in connection with this Agreement has any personal interest, direct or indirect, in this Agreement. Agency and Contractor further covenant that they presently have no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance under this Agreement. Agency and Contractor further covenant that in the performance of this Agreement, no person having any conflicting interest shall be employed. An interest on the part of the Agency or Contractor or its employees must be disclosed to Owner. Provided, however, that this paragraph shall be interpreted in such a manner so as not to unreasonably impede the statutory requirement that maximum opportunity be provided for employment of and participation by residents of the area.

22. Discrimination Prohibited: The parties shall not discriminate against any qualified employee or qualified applicant for employment because of sex, race, religion, color, national origin or ancestry, age, disability, lawful source of income, marital status, sexual orientation, gender identity or expression, past or present membership in the military service, familial status, or based upon affiliation with, or perceived affiliation with any of these protected categories. This requirement shall apply to but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, lay-off or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. There shall be posted in conspicuous places available to employees and applicants for employment, notices required or to be provided by federal or state agencies involved setting forth the provisions of the clause. No person in the United States shall, on the ground of sex, race, religion, color, national origin or ancestry, age, disability, lawful source of income, marital status or sexual orientation or familial status, be excluded from participation in,

be denied the benefits of, or be subject to discrimination under any program or activity made possible by or resulting from this Agreement. The parties will comply with all requirements imposed by or pursuant to the regulations of the appropriate federal agency effectuating Title VI of the Civil Rights Act of 1964. The parties agree that they will comply with all applicable requirements of the Americans with Disabilities Act of 1990, 42 U.S.C. 12101, et. Seq. Contractor will cause the foregoing provisions to be inserted in all subcontracts, if any, for any work covered by this Agreement so that such provisions will be binding upon each Consultant or Subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

23. Insurance: Agency shall have and maintain, or shall cause Contractor to have and maintain, liability insurance covering the Contractor, and any Consultant/s Subcontractor/s, naming the Owner as an additional insured with respect to the Work contemplated under this Agreement. This insurance shall include: Worker's Compensation (statutory limits); general liability coverage (bodily injury -- \$500,000 per occurrence, \$1,000,000 aggregate; property damage -- \$500,000 per occurrence, \$1,000,000 aggregate); and automobile liability (bodily injury -- \$500,000 per occurrence, \$1,000,000 aggregate; property damage -- \$500,000 per occurrence).

The parties have signed this Agreement to be effective as of the date first set forth above.

DRAFT

Owner:
City of Milwaukee

For City of Milwaukee

Date

Contractor:

For Contractor

Date

Agency:
Community Relations – Social Development Commission

For Agency, Executive Department

Date

KZB:kzb
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