

EXHIBIT C

RIGHT OF ENTRY AGREEMENT

(ATTACHED)

RIGHT OF ENTRY AGREEMENT

(this agreement provides Licensee and its contractors access to City-owned real estate)

This **RIGHT OF ENTRY AGREEMENT** (the "**Agreement**") is made as of _____, 2023 (the "**Effective Date**"), by and between the **CITY OF CHICAGO**, an Illinois municipal corporation, and **LICENSEE** (as defined below).

Certain Definitions. The following terms as used throughout this Agreement shall be interpreted as follows:

- (a) "**Licensee**" West Pullman Development Partners, LLC
- (b) "**Property**" 1325 W. 119th Street, Chicago, IL 60643 (PINs 25-29-101-025-0000; 25-29-101-027-0000)
- (c) "**Activity**" Environmental- Consulting, including Phase I and Phase II assessments, to provide support for redevelopment of the site.
Geotechnical investigation to provide information on the soil and groundwater conditions at the site in support of foundation design and construction.

RECITALS

WHEREAS, the City is the owner of the Property, which has been determined to be excess real estate that is available for sale; and

WHEREAS, Licensee is conducting a site investigation as due diligence work on its own behalf or on behalf of the prospective purchaser in connection with acquisition of the Property from the City; and

WHEREAS, Licensee seeks access to the Property to conduct the Activity, which may include a Phase I Environmental Site Assessment, land survey, or other related work that is needed to assess the condition of the Property; and

WHEREAS, Licensee may request approval to conduct additional due diligence work including but not limited to a Phase II Environmental Site Assessment ("**Phase II ESA**"), Geotechnical Investigation, Hazardous Building Materials Survey, enrollment in the Illinois EPA's Site Remediation Program, or other related due diligence work, by submitting a detailed scope of work ("**SOW**") to the Department of Assets, Information & Services, Bureau of Environmental Health & Safety ("**EHS**"); and

WHEREAS, if the SOW includes soil/groundwater sampling, the SOW shall include a site plan indicating the location of proposed soil borings, the depth at which soil or groundwater samples will be taken, and the compounds that the samples will be tested for; and

WHEREAS, if sampling is being conducted as part of a Hazardous Building Materials Survey, the SOW shall include locations within the building where samples will be taken and the materials that the samples will be tested for; and

WHEREAS, only after approval of the SOW by EHS may the Licensee proceed with the additional work and the approved SOW shall be attached as an exhibit to this Agreement and included as part of the Activity; and

WHEREAS, the location and scope of the Activity shall be limited to the locations upon and within the Property as they are described herein and no other access or activity shall be permitted without written City consent; and

WHEREAS, the City has agreed to grant such access upon the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Incorporation of Recitals.** The foregoing recitals constitute an integral part of this Agreement and are incorporated herein by this reference with the same force and effect as if set forth herein as agreements of the parties.

2. **Grant.** Subject to the terms and conditions set forth herein, the City hereby grants to Licensee a right of entry to the Property for the sole purpose of allowing Licensee to perform the Activity. The right of entry granted hereunder extends to, and Licensee shall be responsible for, its agents, employees, contractors, subcontractors, consultants, invitees, guests, vendors, patrons and any other parties who enter the Property at Licensee's direction or with Licensee's consent (collectively, "**Agents**"). Licensee shall be responsible for ensuring that all Agents comply with Licensee's obligations under this Agreement, and non-compliance by any Agent shall be deemed to be non-compliance by Licensee. This right of entry is subject to all easements, encroachments, covenants, restrictions of record and not shown of record, and any other title encumbrances or defects affecting the Property. Licensee acknowledges that the City has not performed any title or survey work in connection with the negotiation and execution of this Agreement and agrees that it is Licensee's sole responsibility and obligation to confirm that the Activity occurs solely within the portions of the Property permitted by this Agreement.

3. **Term.** The term of this Agreement (the "**Term**") shall begin on the Effective Date and shall terminate upon the earlier of: (a) twenty-nine (29) days after the Effective Date for a period not to exceed thirty (30) days; or (b) the completion of the Activity and restoration of the Property in accordance with **Section 10** hereof, whichever is earlier. The Term may be extended for additional thirty (30) day periods upon notification to and approval by the City's Department of Assets, Information & Services. Prior to entering the Property, Licensee shall provide proof of insurance for itself and its Agents, as required by **Section 8** of this Agreement, and copies of any necessary permits and approvals, if any, as required under **Section 6** of this Agreement. Licensee agrees to notify the City at least two (2) days prior to commencing the Activity unless the City provides otherwise. Licensee further agrees to notify the City promptly upon early expiration of the Term under (b) above.

4. **Cost.** Licensee shall be responsible for all costs and expenses associated with the Activity without City reimbursement.

5. **Compliance with All Laws.** Licensee and its Agents shall comply at all times with any

and all applicable municipal, county, state, federal or other statutes, laws (including common law), ordinances, codes, rules and regulations (collectively, "**Laws**"). Contract provisions that are required to be included in this Agreement by any such Laws shall be deemed included. Furthermore, Licensee shall comply with all **Environmental Laws**, meaning any Federal, state, or local law, statute, ordinance, code, rule, permit, plan, regulation, license, authorization, order, or injunction which pertains to health, safety, any Hazardous Substance or Other Regulated Material, or the environment (including, but not limited to, ground, air, water or noise pollution or contamination, and underground or above-ground tanks) and shall include, without limitation, the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11001 et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; the Hazardous Material Transportation Act, 49 U.S.C. § 1801 et seq.; the Resource Conservation and Recovery Act ("**RCRA**"), 42 U.S.C. § 6901 et seq., as amended by the Hazardous and Solid Waste Amendments of 1984; the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601 et seq. ("**CERCLA**"), as amended by the Superfund Amendments and Reauthorization Act of 1986 ("**SARA**"); the Occupational Safety and Health Act, 29 U.S.C. § 651 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq.; the Clean Air Act, 42 U.S.C. § 7401 et seq.; the Illinois Environmental Protection Act, 415 ILCS 5/1 et seq.; the Gasoline Storage Act, 430 ILCS 15/0.01 et seq.; the Sewage and Waste Control Ordinance of the Metropolitan Water Reclamation District of Greater Chicago ("**MWRD**"); the Municipal Code of the City of Chicago; and any other local, state, or federal environmental statutes, and all rules, regulations, orders, and decrees now or hereafter promulgated under any of the foregoing, as any of the foregoing now exist or may be changed or amended or come into effect in the future.

6. **Permits.** Prior to entering the Property, Licensee must secure, or cause its Agents to secure, at its sole cost and expense, all necessary permits and governmental approvals required to perform the Activity. Licensee understands that this Agreement shall not act as a substitute for any such permits or approvals that may be required. Licensee shall provide copies of all required permits and approvals to the City prior to entering the Property.

7. **Indemnification.** Licensee shall indemnify, defend (through an attorney reasonably acceptable to the City) and hold the City, its officers, officials, employees, agents and representatives (collectively, the "**City Parties**"), harmless from and against any and all actions, claims, suits, complaints, demands, legal or administrative proceedings, losses, damages, debts, liens, obligations, liabilities, judgments, amounts paid in settlement, arbitration or mediation awards, interest, fines, penalties, costs and expenses (including, without limitation, attorneys' fees, consultants' fees and court costs) (collectively, "**Claims**"), of whatsoever kind and nature, including without limitation, any and all environmental Claims, made or asserted by any third parties for injury, including personal injury or death of any person or persons, and for loss or damage to any property, occurring in connection with, or in any way arising out of or incident to (a) any and all acts, alleged acts or omissions of Licensee, its Agents or any other person entering the Property during the Term and (b) any entry upon or use of the Property or performance of the Activity by or on behalf of Licensee, its Agents or any other person entering the Property during the Term and (c) the failure of Licensee or its Agents to pay contractors, subcontractors or material suppliers in connection with this Agreement. The indemnification provided herein will be effective to the maximum extent permitted by Law and is not limited by any amount of insurance required under this Agreement.

Licensee shall be solely responsible for the defense of any and all Claims against the City Parties, including without limitation, claims by any Agents of Licensee, even though the claimants may allege negligence or intentional and willful misconduct on the part of the City Parties. The City shall have the

right, at its sole option, to participate in the defense of any such Claims, without relieving Licensee of its obligations hereunder.

Licensee shall promptly provide, or cause to be provided, to the City of Chicago, Department of Law, at 121 N. LaSalle St., Room 600, Chicago, IL 60602, copies of such notices as Licensee may receive of any Claims for which the City Parties are entitled to indemnification hereunder and to give the City Parties authority, information, and assistance for the defense of any such Claims.

This Section 7 shall survive the expiration or termination of this Agreement (regardless of the reason for such termination).

8. **Insurance.** Licensee must provide and maintain, and cause its Agents to procure and maintain, at Licensee's own expense (or the expense of its Agents as applicable) during the Term, the insurance coverages and requirements specified below, insuring all operations related to the Activity.

A. INSURANCE TO BE PROVIDED

a) Workers Compensation and Employers Liability

Workers Compensation Insurance, as prescribed by applicable law covering all employees who are to provide work in connection with the Activity, and Employers Liability coverage with limits of not less than \$500,000 each accident, illness, or disease.

b) Commercial General Liability (Primary and Umbrella)

Commercial General Liability Insurance, or equivalent, with limits of not less than \$2,000,000 per occurrence for bodily injury, personal injury, and property damage liability. Coverages must include the following: All premises and operations, products/completed operations, independent contractors, separation of insureds, defense, and contractual liability (not to include Endorsement CG 21 39 or equivalent).

The City of Chicago is to be named as an additional insured under the Licensee's and any subcontractor's policy. Such additional insured coverage shall be provided on ISO endorsement form CG 2010 for ongoing operations or on a similar additional insured form acceptable to the City. The additional insured coverage must not have any limiting endorsements or language under the policy such as but not limited to, Licensee's sole negligence or the additional insured's vicarious liability. Licensee's liability insurance shall be primary without right of contribution by any other insurance or self-insurance maintained by or available to the City. Licensee must ensure that the City is an additional insured on insurance required from subcontractors.

c) Automobile Liability (Primary and Umbrella)

When any motor vehicles (owned, non-owned and hired) are used in connection with the Activity, the Licensee must provide Automobile Liability Insurance with limits of not less than \$2,000,000 per occurrence for bodily injury and property damage. The City of Chicago is to be named as an additional insured on a primary, non-contributory basis.

When applicable, coverage extension must include a) an MC-90 endorsement where required by the Motor Carrier Act of 1980 and b) pollution coverage for loading, unloading and transportation of hazardous, materials.

d) Professional Liability

When any architects, engineers, construction managers or other professional consultants perform work or services in connection with the Activity, Professional Liability Insurance covering acts, errors, or omissions must be maintained with limits of not less than \$1,000,000. When policies are renewed or replaced, the policy retroactive date must coincide with, or precede start of work on the Agreement. A claims-made policy which is not renewed or replaced must have an extended reporting period of two (2) years.

e) Contractors Pollution Liability

When any work is performed which may cause a pollution exposure, such as excavation or test pits, Contractors Pollution Liability must be provided covering bodily injury, property damage and other losses caused by pollution conditions that arise from the Activity with limits of not less than \$1,000,000 per occurrence. Coverage must include completed operations, contractual liability, defense, excavation, environmental cleanup, remediation and disposal. When policies are renewed or replaced, the policy retroactive date must coincide with or precede start of work on this Agreement. A claims-made policy which is not renewed or replaced must have an extended reporting period of two (2) years. The City of Chicago is to be named as an additional insured.

f) Property

The Licensee is responsible for all loss or damage to City property at full replacement cost that results from the Activity.

The Licensee is responsible for all loss or damage to personal property (including materials, equipment, tools, vehicles and supplies) owned, rented or used by Licensee ("**Personal Property**").

B. ADDITIONAL REQUIREMENTS

The Licensee must furnish, or cause its contractors or subcontractors to furnish, to the City of Chicago, Department of Assets, Information & Services, 30 N. LaSalle, Room 300, Chicago, IL 60602 original Certificates of Insurance, or such similar evidence, to be in force on the date of this Agreement, and Renewal Certificates of Insurance, or such similar evidence, if the coverages have an expiration or renewal date occurring during the term of this Agreement. The Licensee must submit evidence of insurance on an Insurance Certificate Form prior to execution of this Agreement. The receipt of any certificate does not constitute agreement by the City that the insurance requirements in this Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all requirements in this Agreement. The failure of the City to obtain certificates or other insurance evidence from Licensee (or its contractors or subcontractors as applicable) is not a waiver by the City of any requirements for the Licensee to obtain and maintain the specified coverages. The Licensee shall advise all insurers of the

Agreement provisions regarding insurance and the nature of its use of the Property. Non-conforming insurance does not relieve Licensee of the obligation to provide insurance as specified herein. Nonfulfillment of the insurance conditions may constitute a violation of the Agreement, and the City retains the right to order Licensee to cease all activities on the Property until proper evidence of insurance is provided, or the Agreement may be terminated.

The Licensee must provide prior written notice to be given to the City in the event coverage is substantially changed, canceled, or non-renewed.

Any deductibles or self-insured retentions on referenced insurance coverages must be borne by Licensee.

Licensee hereby waives and agrees to require their insurers to waive their rights of subrogation against the City of Chicago, its employees, elected officials, agents, or representatives.

The coverages and limits furnished by Licensee in no way limit the Licensee's liabilities and responsibilities specified within the Agreement or by law.

Any insurance or self-insurance programs maintained by the City of Chicago do not contribute with insurance provided by the Licensee under the Agreement.

The required insurance to be carried is not limited by any limitations expressed in the indemnification language in this Agreement or any limitation placed on the indemnity in this Agreement given as a matter of law.

If the Licensee maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Licensee. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

If Licensee is a joint venture or limited liability company, the insurance policies must name the joint venture or limited liability company as a named insured.

The Licensee must require all subcontractors to provide the insurance required herein, or Licensee may provide the coverages for subcontractors. All subcontractors are subject to the same insurance requirements of Licensee unless otherwise specified in this Agreement. Licensee must ensure that the City is an additional insured on Endorsement CG 2010 of the insurance required from subcontractors.

If Licensee or subcontractor desires additional coverages, the party desiring the additional coverages is responsible for the acquisition and cost.

Notwithstanding any provision in the Agreement to the contrary, the City of Chicago Risk Management Department maintains the right to modify, delete, alter or change these requirements.

The City of Chicago is not responsible to provide insurance or security for the Property, or any vehicles, materials, equipment other personal property of Licensee or any of its contractors, subcontractors or other agents related to or in connection with the activity of Agreement.

9. **Reports.** Licensee agrees to promptly deliver to the City copies of all reports, surveys, field data, correspondence and analytical results prepared by or for Licensee regarding the condition of the Property if such documentation is prepared as part of the Activity. The City shall have the right to review in advance and approve all documents that will be submitted to the Illinois Environmental Protection Agency ("IEPA") under the Site Remediation Program ("SRP"), as amended or supplemented from time to time, including, without limitation, the Comprehensive Site Investigation and Remediation Objectives Report, the Remedial Action Plan, and the Remedial Action Completion Report (collectively, the "**SRP Documents**") and any changes thereto, and the Licensee's estimate of the cost to perform remediation work. Upon completion, reports should be sent ONLY ELECTRONICALLY to EHS at AIS_EHS_Notifications@cityofchicago.org. Licensee agrees to provide a reliance letter naming the City of Chicago as an authorized user any reports generated by Licensee in connection with the Activity.

10. **Phase I ESA Requirements.** Phase I ESAs must be in conformance with the current standard adopted by the United States Environmental Protection Agency's All Appropriate Inquiry ("AAI"), currently ASTM E- 1527-13. Depending on when the actual acquisition will occur, a Phase I ESA update may be required to meet the standard's continued viability requirements and AAI requirements. Licensee must provide EHS with an owner questionnaire and EHS will provide Licensee with the completed questionnaire. Applicable environmental records maintained by EHS will be provided to the Licensee with the completed owner questionnaire.

11. **Requirements for Phase II ESAs and Geotechnical Investigations.** The following provisions apply when the approved SOW includes a Phase II ESA or Geotechnical Investigation:

- a. **Sampling Plan Approval.** Prior to conducting any sampling, the Licensee must submit a sampling plan as part of the SOW to EHS for review and approval. At a minimum, the sampling plan must identify the location, depth, number, and types of sampling and/or test pits to be conducted. Any subsequent investigations, including but not limited to soil or groundwater sampling that is included in a supplemental scope of work, shall not commence until the SOW is approved by EHS. EHS reserves the right to reject any sampling results obtained from work that was not included in the approved SOW and require resampling. Any required resampling will be at the sole cost and expense of the Licensee.
- b. **Proper Abandonment.** Unless otherwise approved by the City, all soil boring and/or monitoring wells installed must be properly abandoned within the Term of the Agreement and pursuant to the requirements provided in Section 920.120 of the Illinois Water Well Construction Code (77 Ill. Adm. Code 920).
- c. **Waste Disposal.** Investigation-derived waste ("**Waste**") generated from sampling conducted as part of the Activity that cannot be returned to the borehole, such as Waste exhibiting visual or olfactory signs of contamination, shall be disposed of no later than forty-five (45) days of generation in full accordance with all applicable laws and regulations. Licensee and its Agents are responsible for selecting and utilizing only properly permitted and legally authorized disposal facilities ("**Disposal Facilities**"). City shall have the right to review the testing results and approve of the Disposal Facilities to be utilized by Licensee and any of its Agents, but Licensee shall not be entitled to rely upon the City's approval of any of the Disposal Facilities. Licensee shall provide to City, upon written request, all documentation associated with the disposal of the Waste (such as but not limited to generator profile, manifests, etc.). Furthermore, for all Disposal Facilities utilized by Licensee for the disposal of said Waste, Licensee shall provide City with copies of any records possessed by Licensee pertaining to a change of status or notice of violation(s) for such Disposal Facilities.
- d. **Underground Storage Tank Impacts.** If Licensee or its Agent, while conducting the Activity, penetrates an underground storage tank ("**UST**") that results in a release, then Licensee must stop work immediately and contact EHS Deputy Commissioner at 312-744-9139 and kimberly.worthington@cityofchicago.org. Licensee shall be responsible for removal of the UST, reporting the incident to the Illinois Emergency Management Agency ("**IEMA**"), associated Illinois Environmental Protection Agency ("**IEPA**") reporting, and remediation of the site in accordance with IEPA Leaking Underground Storage Tank

("LUST") regulations.

- e. Test Pits. Test Pits are prohibited unless specifically approved by AIS as part of the approved SOW. If test pits are approved and Licensee or its Agent damages a UST or discovers a LUST during test pit excavation, then Licensee must stop work immediately and contact EHS Deputy Commissioner at 312-744-9139 and kimberly.worthington@cityofchicago.org. Licensee shall be responsible for addressing the damaged UST or LUST to comply with LUST regulations which may require removal of the UST, remediation of the site, reporting the incident to IEMA, associated IEPA reporting, and laboratory analysis.
- f. Boreholes Exceeding 30 Feet. If any bore holes exceed 30 feet in depth, gas levels must be measured at the surface of the borehole using a 4-gas meter. If gas levels exceed the warning level of 10-20% of Lower Explosive Limit ("LEL"), all drilling and construction activities in the immediate vicinity of the borehole must be stopped. Once the gas meter levels indicate that the methane in the borehole has dissipated or is below the warning level (10-20% of LEL), the construction activities may continue. Any bore holes created as a part of the Activity must be monitored from time to time until it is backfilled.
- g. OUC Approval. The Chicago Department of Transportation, Office of Underground Coordination (OUC), reviews and approves construction work in or adjacent to the public right-of-way, including large projects with deep excavations and penetrations, to protect subsurface infrastructure from damage. For soil borings or other penetrations greater than 12 feet below existing grade, Licensee is required to obtain OUC approval before commencing work.

12. Properties Improved with Buildings. When the Property is improved with a building, Licensee agrees to comply with the following requirements:

- a. Disturbance of Known or Potential ACM Prohibited. Asbestos-containing materials ("ACM") and lead-based paint ("LBP") are assumed to be present in the building and must not be disturbed. The Activity must be performed in accordance with Illinois Department of Public Health, Chicago Department of Public Health and Occupational Safety and Health Administration ("OSHA") requirements, along with all other applicable regulations. In the event of an unplanned disturbance to suspected or known ACM and/or LBP, the Licensee must stop work and immediately notify EHS Deputy Commissioner at 312-744-9139 and kimberly.worthington@cityofchicago.org.
- b. ACM/LBP Survey. ACM and LBP are assumed to be present in the building and must not be disturbed unless such disturbance is included in the SOW approved by EHS. When such disturbance is approved, it shall be limited to conducting a survey to inspect, analyze and determine the condition of suspected ACM and LBP (collectively, "Survey"). The Survey must be conducted by a licensed and trained asbestos and lead inspector and the results submitted ONLY ELECTRONICALLY to the Chicago Department of Assets, Information and Services (AIS), Bureau of Environment, Health and Safety (EHS) at AIS_EHS_Notifications@cityofchicago.org after completion.

- c. ACM Management/Abatement Plan. A plan for management and/or abatement of any ACM and/or LBP that will be handled or disturbed must be prepared as a separate SOW and submitted ONLY ELECTRONICALLY to EHS at AIS_EHS_Notifications@cityofchicago.org for review and approval prior to the SOW being included as part of the Activity. All work must be performed in accordance with Illinois Department of Public Health, Chicago Department of Public Health and OSHA requirements, along with all other applicable regulations. In the event of an unplanned disturbance to suspected or known ACM and/or LBP, the Licensee must stop work and immediately notify EHS.
- d. ACM Permits and Approvals. When the approved SOW includes abatement of ACM or LBP, Licensee shall provide copies of all required permits and approvals to EHS prior to conducting abatement activities. Licensee shall provide the following submittals ONLY ELECTRONICALLY to EHS at AIS_EHS_Notifications@cityofchicago.org (5) days prior to the start of the Activity:
 - i. Required IEPA and/or IDPH Notifications
 - ii. Product/materials data sheets (SDS)
 - iii. Copy of asbestos contractor's license and insurance
 - iv. Copy of asbestos supervisor's license and accreditations certifications
 - v. Copy of each asbestos worker's license and accreditation certifications
 - vi. Copy of State and/or local license for waste hauler(s)
 - vii. Name and address of landfill where asbestos-containing waste materials are to be disposed. Include contact person and telephone number.
- e. ACM Reports. Licensee shall provide a formal Asbestos Removal Completion Report ONLY ELECTRONICALLY to EHS at AIS_EHS_Notifications@cityofchicago.org within 30 days of completion of the Activity. The Report shall describe the Activity completed and regulatory requirements followed. The Report must also include at a minimum:
 - i. Asbestos Supervisor's handwritten daily job progress reports
 - ii. Generator's copy of signed disposal receipts/manifests
 - iii. Results of air clearance testing

13. **Inspection and Work**. Licensee agrees to carefully inspect, or cause its Agents to carefully inspect, the Property prior to commencing any activities on the Property to ensure that such activities will not damage the Property or any surrounding property, structures, utility lines or subsurface lines or cables. Licensee and its Agents shall take all reasonable safety precautions to ensure that the Activity will not pose a danger to the public or have a negative impact on the neighboring community, including, without limitation, adequately securing the Property throughout the Term. Licensee and its Agents shall perform the Activity in a good and workmanlike manner with due care and diligence, and in accordance with all applicable Laws. Licensee and its Agents shall keep the Property and any adjoining sidewalks and streets free of debris and materials and generally in a clean and safe condition throughout the Term. Licensee and its Agents shall limit their activities to those reasonably necessary to perform the Activity. The City reserves the right to inspect the Activity throughout the Term.

14. **Health and Safety Procedures for Potentially Contaminated Properties**. Soil and/or groundwater may present at the Property in concentrations that exceed one or more of the Illinois Environmental Protection Agency's Construction Worker, Residential/Commercial/Industrial Tiered

Approach to Corrective Action Objectives (TACO) Tier 1 objectives. Licensee must implement appropriate health and safety procedures.

15. **No Soil or Ground Disturbance.** Soil and/or groundwater may be present at the site in concentrations that exceed one or more of the Illinois Environmental Protection Agency's Residential and/or Commercial/Industrial Tiered Approach to Corrective Action Objectives (TACO) Tier 1 objectives. Urban fill is typically present throughout the entire City of Chicago and therefore may be present at the site. Typical urban fill materials contain elevated concentrations of polynuclear aromatic hydrocarbons and metals and may include building demolition debris contaminated with lead and/or asbestos. Disturbance of the ground surface or soil is not permitted unless included in the SOW that is approved by EHS. If such ground or soil disturbance is included in the approved SOW, the Activity involves subsurface work and/or will result in contact with soil and/or groundwater, appropriate health and safety procedures must be implemented. Neither Licensee nor its Agents shall conduct any activity on the Property that may in any manner injure the health, safety and welfare of the public, diminish the value of the Property, interfere with City operations, or violate any Laws, including, without limitation, any Environmental Laws (as hereinafter defined).

16. **Spills.** If Licensee causes a spill or release of a Hazardous Substance or Other Regulated Material during the Activity, then Licensee must stop work immediately and contact AIS Environmental Health and Safety Bureau's Deputy Commissioner at 312-744-9139 and kimberly.worthington@cityofchicago.org. Licensee shall be responsible for cleaning up the spill including waste disposal as well as all notifications and reporting to any applicable agencies.

17. **Hazardous Substances and Other Regulated Material.** Licensee shall not use or store any Hazardous Substances (defined below) on the Property unless otherwise approved by AIS. Licensee shall promptly notify the City if Licensee discovers any Hazardous Substances or Other Regulated Material on the Property. As used in this Agreement, the term "Hazardous Substances" has the meaning set forth in 415 ILCS 5/3.215, as amended from time to time. "Other Regulated Material" means any Waste, Contaminant, material meeting 35 IAC Part 742.305, or any other material, not otherwise specifically listed or designated as a Hazardous Substance, that (a) is or contains: petroleum, including crude oil or any fraction thereof, motor fuel, jet fuel, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel or mixtures of natural gas and such synthetic gas, asbestos, radon, any polychlorinated biphenyl, urea, formaldehyde foam insulation, explosive or radioactive material, materials known to contain per- and polyfluoroalkyl substances, i.e. PFAS, or (b) is a hazard to the environment or to the health or safety of persons.

18. **Obligation to Restore the Property.** Upon completion of the Activity, Licensee shall promptly restore the Property to the condition or better existing as of the Effective Date, and shall remove all Personal Property, trash, wastes and debris placed on the Property by Licensee or its Agents. Licensee shall dispose of all trash, wastes and debris in accordance with all applicable Laws, including without limitation, all applicable Environmental Laws (as hereinafter defined). Any Personal Property, trash or debris left by Licensee on or about the Property shall be considered abandoned and may be disposed of in the City's sole discretion. Licensee agrees to pay for any removal or disposal costs the City may incur. The City shall be reimbursed for all sums it pays in connection with this Agreement. Such reimbursement shall occur within fifteen (15) days of such City payment, with interest accruing from the date of such City payment at the rate of 12% per annum. Licensee shall be responsible for any damage to the Property or any surrounding property, structures, utility lines or subsurface lines or cables caused by the acts or

omissions of Licensee or its Agents, including but not limited to, vandalism or misuse of the Property, and shall undertake any repairs necessitated by such acts or omissions.

19. **No Liens.** Licensee shall not cause or permit any lien or encumbrance, whether created by act of Licensee or its Agents, operation of law or otherwise, to attach to or be placed upon the City's title or interest in the Property. In case of any such lien attaching, Licensee shall immediately pay and remove such lien. If Licensee fails to pay and remove any lien, the City, at the City's election, may, but is not obligated to, pay and satisfy same, and all sums so paid by the City shall be reimbursed by Licensee within fifteen (15) days of such payment with interest from the date of payment at the rate of 12% per annum.

20. **No Representations or Warranties; Release of City Parties.** The City makes no warranties or representations, express or implied, of any kind, as to the structural, physical or environmental condition of the Property or the suitability of the Property for any purpose whatsoever. Licensee, on behalf of itself and its Agents, agrees to enter upon the Property in the Property's "as is," "where is" and "with all faults" condition and at the Licensee's own risk. Licensee, on behalf of itself and its Agents, acknowledges that it is relying solely upon its own inspection and other due diligence activities and not upon any information (including, without limitation, environmental studies or reports of any kind) provided by or on behalf of the City or any of the City Parties with respect thereto. Licensee, on behalf of itself and its Agents, hereby releases, relinquishes and forever discharges the City and all City Parties from and against any and all Claims that Licensee or any of its Agents now have or hereafter may have, whether grounded in tort or contract or otherwise, in any and all courts or other forums, of whatever kind or nature, whether known or unknown, foreseen or unforeseen, based upon, arising out of or in any way connected with, directly or indirectly, (a) the structural, physical or environmental condition of the Property, including, without limitation, the presence or suspected presence of Hazardous Substances (as hereafter defined) in, on, under or about the Property, (b) the condition of title to the Property, including, without limitation, any easements, encroachments, covenants, restrictions of record and not shown of record, and any other title defects; and (c) any entry upon or use of the Property by or on behalf of Licensee or its Agents.

21. **Right to Terminate.** Notwithstanding anything to the contrary contained herein, either party may terminate this Agreement for any reason upon prior written notice of at least five (5) days to the other party. In addition, in the event of any breach of this Agreement by Licensee the City shall have the right to order Licensee to immediately cease all activities on the Property and to immediately vacate the Property until such breach is cured or the City may immediately terminate this Agreement and pursue any and all remedies available at law or in equity. The City also reserves the right to terminate this Agreement at any time if Licensee's use of the Property interferes with the City's use of the Property or with any other municipal purpose or interest, as determined by the City in its sole discretion.

22. **Amendment.** This Agreement may not be amended, extended or modified without the written consent of the parties hereto.

23. **Captions.** The section headings in this Agreement are inserted for convenience of reference only and shall not in any way affect the meaning or construction of the Agreement.

24. **Entire Agreement.** This Agreement embodies the entire agreement and understanding between the parties and supersedes any prior oral or written agreements with respect to the matters stated herein.

25. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original instrument and all of which together shall constitute one and the same instrument. A facsimile, electronic, or photocopy signature shall have the same legal effect as an original signature.

26. **No Other Rights.** This Agreement does not give Licensee any other right with respect to the Property, including, but not limited to, closure of streets, sidewalks or other public thoroughfares. Any rights not specifically granted to Licensee by and through this Agreement are reserved exclusively to the City.

27. **No Further City Obligations.** The execution of this Agreement does not obligate the City or the City Parties to provide Licensee or Licensee's Agents with any other assistance. Without limiting the generality of the foregoing, the City shall not provide any security, maintenance, or custodial services to the Property.

28. **Security; Full Liability.** Licensee assumes all legal and financial responsibility and liability for any and all uses of the Property by Licensee, its Agents, and any other person or persons entering the Property during the Term or upon the expiration of the Term where Licensee continues to access the Property. Licensee shall be responsible for properly securing and safeguarding the Property and all Personal Property during the Term, and shall be liable for failing to so secure and safeguard the Property and Personal Property. Licensee acknowledges that the City has no security responsibilities with respect to the Property or Personal Property under this Agreement. This Section 22 shall survive the expiration or earlier termination of this Agreement.

29. **No Principal/Agent or Partnership Relationship.** Nothing contained in this Agreement shall be deemed or construed by the parties hereto or by any third party as creating the relationship of principal and agent or of partnership or of joint venture between the parties hereto.

30. **No Alcohol or Drugs.** Licensee agrees that no alcoholic beverages or illegal drugs of any kind or nature shall be sold, given away, or consumed on the Property by Licensee or its Agents.

31. **Coordination and Oversight.** Licensee acknowledges that the City may require coordination with the Department of Assets, Information & Services, which coordination may be necessary due to existing facilities, operations or other particular circumstances. Licensee acknowledges that any assistance or oversight provided by the City with respect to the Activity shall be provided at the City's sole and exclusive discretion and convenience.

32. **City Use Paramount.** Licensee shall refrain from undertaking any activities that interfere with the City's use of the Property as determined by the City in its sole discretion. The City reserves the right to terminate Licensee's use of the Property at any time in the event such use interferes with the City's use of the Property or with any other municipal purpose or interest in the City's sole discretion.

33. **Time is of the Essence.** Time is of the essence for all obligations and deadlines contained in this Agreement.

34. **Assignment.** This Agreement may not be assigned by Licensee.

35. **Exhibits.** All exhibits referred to herein and attached hereto shall be deemed part of the Agreement.

36. **Non-Discrimination.** Licensee shall not discriminate against any person in connection with its use of the Property based upon race, religion, color, sex, national origin or ancestry, age, handicap or disability, sexual orientation, military discharge status, marital status, parental status or source of income as defined in the City of Chicago Human Rights Ordinance, Chapter 2-160, Section 2-160-010 et seq., Municipal Code.

37. **Severability.** If any provision of this Agreement is deemed to be unenforceable by any court of competent jurisdiction, it shall not affect the enforceability of any other provision.

38. **Governing Law; Consent to Jurisdiction.** This Agreement shall be governed and construed in accordance with the laws of the State of Illinois without reference to its conflicts of laws principles. Licensee waives any objection to the venue of any action filed in any court situated in the jurisdiction in which the Property is located.

39. **Licensee's Authority.** Licensee represents, warrants and covenants that it is duly organized, validly existing and qualified to do business in Illinois; that it has the right, power and authority to execute and deliver this Agreement and to perform its obligations hereunder; that the person signing this Agreement on behalf of Licensee has the authority to do so; and that this Agreement shall be binding upon and enforceable against Licensee in accordance with its terms.

39. **Scope of Work.** In the event of a conflict between the terms of this Agreement and Licensee's scope of work, if applicable, the terms of this Agreement shall control.

(Signature Page Follows)

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

CITY:

CITY OF CHICAGO,
an Illinois municipal corporation and home rule unit of government

By: 
Commissioner
Department of Assets, Information & Services

LICENSEE:

By signing below, Licensee acknowledges that the City will reject any sampling results obtained from work that was not included in an approved SOW and resampling will be required. Any required resampling will be at the sole cost and expense of the Licensee.

West Pullman Development Partners, LLC

By: 
Print Name: Leon Walker
Title: Managing Principal