

CONTRACT NO. 11304

**PROFESSIONAL
SERVICES AGREEMENT**

BETWEEN

GILBANE BUILDING COMPANY

AND

THE CHICAGO HOUSING AUTHORITY

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AGREEMENT

THIS PROGRAM/CONSTRUCTION MANAGEMENT SERVICES AGREEMENT (hereinafter, "Agreement") is entered into as of this 1 day of July 2013 by and between the **CHICAGO HOUSING AUTHORITY** (the "CHA"), a municipal corporation organized under the Illinois Housing Authority Act 310 ILCS 10/1 et seq., with offices at 60 E. Van Buren St., Chicago, Illinois and **GILBANE BUILDING COMPANY**. (the "P/CM"), a Rhode Island corporation, with offices at 8550 West Bryn Mawr Avenue, Suite 500, Chicago, Illinois 60631.

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 released Request for Proposals No. 12-01000 ("RFP") on or about December, 2012 to solicit program/construction management services firms to serve as the Program/Construction Manager ("P/CM") to the CHA as it undertakes acquisition of CHA units, capital construction, rehabilitation, modernization, environmental and demolition activities in conjunction with its Plan for Transformation, now Plan Forward, to provide all necessary program and construction management services related to newly acquired CHA units, capital construction, rehabilitation, modernization, environmental and demolition activities.; and

WHEREAS, the P/CM submitted its Proposal on or about February, 4, 2013, to the CHA indicating it is ready, willing and able to provide the services as set forth in the RFP and this Agreement; and

WHEREAS, the CHA and the P/CM desire to enter into the Agreement for the provision of program/construction management services as set forth herein.

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

ARTICLE 1. INCORPORATION OF RECITALS

Section 1.01 Incorporation of Recitals

The recitals set forth above are incorporated by reference as if fully set forth herein.

Section 1.02 Definitions

- A. "Contract" means the contract entered into between the CHA and the P/CM. It includes the Agreement, the General Conditions for Non-Construction Contracts (HUD Form 5370-C), the Certifications and Representations of Offerors - Non-Construction Contracts (HUD Form 5369-C), the P/CM's Affidavit and any other exhibits which have been specifically incorporated by reference in this Agreement.

A. **OTHER DEFINITIONS**

1. "**ADA**" means the Americans with Disabilities Act of 1990.
2. "**Architect**" means the design professional, licensed pursuant to the laws of the State of Illinois, who is in charge of an Assigned Project for the Architect/Engineer ("A/E") as the Architect of Record; and is the A/E's liaison with the CHA and the City of Chicago Department of Buildings, Services will be provided by the A/E as required by code, regulation or law, and agreement with the CHA, whether self-performed or provided by a A/E sub-consultant.
3. "**Architects/Engineers**" ("A/E") means the person or entity engaged to act under a separate contract with the CHA for professional services, with regards to all aspects of the performance of the design, engineering and construction administration of Assigned Projects, including as the architect of record, where required (hereinafter referred to as "A/E "). Any reference to specific architectural, engineering or related disciplines herein shall be construed as services directed and provided by the A/E whether they are self-performed or performed by the A/E's sub-consultants. A/E is also referred to as a Prime Design Consultant or PDC.
4. "**Assigned Project**" or "**Project**" means the project or projects assigned to a A/E, General Contractor or ID/IQ Contractor for renovation under the CHA's Capital Improvement Program or modernization under the Capital Maintenance Program.
5. "**Bid Documents**" means those documents included in the Project Manual which provide necessary bidding information, and include but are not limited to the instructions to bidders, bid form, drawings and specifications, general conditions, specials conditions and drawings form of agreement.
6. "**Bid Package**" means all the documents distributed to potential bidders. The Bid Package includes the Project Manual and the Project Specifications and Drawings.
7. "**Capital Improvement Program**" ("**CIP**") means the CHA's overall program to provide the complete renovation or rehabilitation of its assets during the Plan for Transformation, including Plan Forward.
8. "**Capital Maintenance Program**" ("**CMP**") means the CHA's program to provide regular maintenance and repair to the assets rehabilitated during the Plan for Transformation, including Plan Forward, and all other CHA assets, as required.
9. "**CHA's Construction Budget**" means the total amount of funds the CHA has allocated and is available for an Assigned Project. The A/E shall provide its best effort to design an Assigned Project to be within the confines of the CHA's Construction Budget, which may only be altered by the expressed written authorization of the CHA.
10. "**Scope of Work**" means the scope of work of an Assigned Project agreed to by the CHA and the A/E at the end of the Preliminary Design Phase, which generally details the work to be included in the Assigned Project Specifications and Drawings and the resulting Construction Contract.
11. "**Construction Contract**" means the agreement entered into between the CHA and the

General Contractor for an Assigned Project or portion thereof based on the Project Specifications and Drawings, prepared by the A/E, and the other Construction Contract Documents.

12. **"Construction Contract Documents"** means all those documents which form and are a part of the Construction Contract. The Construction Contract Documents include all written modifications, amendments and change orders; Specifications for Bids (Bid Form pages BF/l, et. seq.); the form of agreement incorporating additional terms and conditions such as the Special Conditions of the Contract for Construction and HUD General Conditions for Construction (form HUD-5370); Instructions for Bidders (form HUD-5369); applicable wage rate determinations from either the U.S. Department of Labor or HUD, the Bid Bond, the Performance and Payment Bond or Bonds or other assurances of completion; the Technical Specifications and Drawings; Contractor's Affidavits; MBE/WBE/DBE and Section 3 Utilization Plans and Instructions to Contractors regarding Affirmative Action under Executive Orders 11246 and 11914, all inclusive; any addenda issued prior to the opening of bids; and the Work Plan.
13. **"Construction Cost Estimate"** means the detailed estimate of cost by the Respondent's consultant for all work designed or specified by the A/E/Architect for the Assigned Project, representing the cost estimating firms and Architect's best judgment as design professionals familiar with the construction industry. The Construction Cost Estimate, including any adjustment for the scheduled date of bidding, shall be revised and resubmitted as required in various phases of an Assigned Project.
14. **"Design Criteria"** means the design standards and criteria established by the Government and by Federal, State and local laws, ordinances, codes, regulations and rules.
15. **"Drawings" or "Construction Drawings"** means the drawings prepared and stamped by the A/E.
16. **"Engineer"** means the person or entity engaged by the A/E either as an employee or as a sub-consultant, and is a Registered Professional or Structural Engineer licensed to practice in the State of Illinois.
17. **"General P/CM" ("GC")** means the person or entity entering into the Construction Contract with the CHA to perform all work required under the Construction Contract Documents for an Assigned Project.
18. **"Housing Quality Standards" (HQS)** as specified under 24 CFR 982. These are the minimum criteria required by HUD for health and safety of Public Housing Residents. Additionally, HQS will incorporate the Building Codes of the City of Chicago.
19. **"Local Advisory Council" ("LAC")** shall be the duly recognized resident council for residents of a CHA development pursuant to HUD regulations.
20. **"Modernization Program"** means the CHA's program to provide regular maintenance and repairs to its assets rehabilitated during the Plan for Transformation, including Plan Forward, and all other CHA assets, as required.
21. **"Project Manual"** means the bound volume consisting of the Bid Documents, the Construction Contract Documents, and the Project Specifications prepared by the A/E/Architect. The Project Manual may also be referred as the "Specifications."
22. **"Project Specifications and Drawings"** means the technical specifications and drawings prepared and professionally stamped by the A/E/Architect and which form the basis of the Construction Contract.
23. **"Property Manager"** shall be the CHA's authorized private property manager or Residential Management Corporation for the CHA properties included in an Assigned Project.

24. "**Retrofit**" means the CHA's modification of dwelling and non-dwelling units to comply with ADA requirements and/or the Voluntary Compliance Agreement ("VCA") and Memorandum of Understanding ("MOU") between the CHA and the U. S. Department of Housing and Urban Development ("HUD").
25. "**Technical Specifications**" means the A/E/Architect's detailed specifications for the Work to be performed under the Construction Contract.
26. "**Work**" means all construction activities performed under the CHA-procured Construction Contracts.
27. "**Work Plan**" means the GC's schedule of performance to complete the Work.

ARTICLE 2. P/CM'S DUTIES AND RESPONSIBILITIES

Section 2.01 Services to be Performed

A. Scope of Work

The services (hereinafter collectively referred to as the "Services") that the P/CM shall provide during the term of the Agreement shall include, but not be limited to, planning, design oversight, coordination, construction management, etc. It is expressly understood by the parties that, with respect to any Services related to design oversight, the P/CM is providing such Services in its role as a construction professional and not a design professional. The P/CM will maintain CHA program-wide and project-specific responsibilities that include, but are limited to, the following:

a) Program-wide responsibilities for which the P/CM shall be responsible may include, but may not be limited to:

- Maintain sufficient quantity of staff possessing the professional experience, skills and training to successfully provide all required services, including expertise in ADA/Section 504 of the Rehabilitation Act of 1973 ("504") regulations, Leadership in Energy and Environmental Design ("LEED"), newly acquired CHA units, environmental remediation, demolition, construction claims and errors/omissions analysis. This staff will be required to work on projects spread across the full range of CHA properties, including Family, Senior, Scattered Sites housing. Staff must be prepared to deal with projects ranging from small repairs at a single site to the full rehabilitation or oversight of new construction of an entire development;
- Have staff on-call 24/7 to deal with emergencies;
- Successfully integrate P/CM staff with CHA staff within the Capital Construction Department ("CCD") and Office of Development ("ODM");
- Effectively utilize the services of CHA's own Staff, including CHA Project Managers and CHA Field Managers, as part of the P/CM's project management staff, including proposing alternate functions or solutions;
- Assist in preparing and presenting annual budgets and cash flow projections for CHA consideration including periodic updates;
- Develop, in consultation with CHA Asset Management, Resident Services and Relocation Departments, implementation plans and schedules that insures minimal disruption to residents during construction activities;
- Support the planning, management and coordination of environmental projects;
- Support the planning, management and coordination of demolition projects;

- Work with the A/E's towards implementing sustainable design principles in CHA projects;
- Ensure internal coordination between all CCD activities as well as full cooperation with other CHA departments; and
- Provide oversight for Asset's Management Private Property Manager's for construction activities and documentation.
- Prepare HQS reports for newly acquired units or units that potentially will be acquired by CHA.
- Assist in the development and implementation of a construction management system.
- Assist in the transition of full CHA construction management by a date certain specified by CHA
- Prepare annual, monthly and weekly construction reports.

b) Construction Management for New Acquired CHA Units for which the P/CM shall be responsible may include, but may not be limited to:

- Construction Management for approximately 50 units in 2013 and approximately 150 units in 2014 of Mix-Income properties.
- Construction Management Services and Assessments for newly acquired units and properties
- Staff will be required to work on projects for newly acquired units and those that are being considered for acquisition.

c) Cost Assessment for Newly Acquired CHA Units and Properties for which the P/CM shall be responsible may include, but may not be limited to:

- Construction Needs Assessments
- Construction Oversight
- Scheduling and Budgets
- Compliance with HQS

d) Project specific responsibilities for which the P/CM shall be responsible may include, but may not be limited to, subject to changes in the projected time periods for the estimated Projects:

- Life/Safety Construction at Senior High Rise Buildings
- Scattered Sites – rehabilitation
- Family Housing
- Capital Maintenance Program

The Capital Maintenance Program ranges from small projects of limited scopes and durations to large scale projects covering multiple buildings over a period of years. It focuses on recurring maintenance projects such as the repair and replacement of roofs, porches and windows, façade repairs, rehabilitation of units and non-dwelling facilities (community space) and ADA/504 compliance at selected Scattered Sites locations not addressed in the above.

- Demolition of dwelling and non-dwelling properties
- Environmental

- Oversee all necessary environmental assessment, remediation and engineering services related to construction, rehabilitation, newly acquired CHA units and modernization activities, without, however, assuming responsibility for directing such environmental services. This includes, but is not limited to, soil remediation, storage tank removal and lead and asbestos abatement, environmental analysis, citation by regulatory agencies, emergency hazardous conditions and recommendations, reports and consulting services for environmental and remediation activities at all dwelling and non-dwelling units throughout the CHA.
- P/CM Services for Newly Acquired CHA Units
 - Provide Construction Management oversight at various developments and provide assessments for newly acquired property, or property being proposed for acquisition, to evaluate the property's conformance with CHA's standards throughout the Chicago City limits.

e) In addition, the P/CM shall:

- Take full ownership of all phases of projects, from participating in discussions as to a project's viability through the design, construction and complete closeout of approved projects;
- Oversee performance of the A/E's through all stages of design, construction oversight, and closeout, including but not limited to contract administration, payment processing and closeout activities;
- Coordinate the A/E's efforts to insure that projects are designed on time, and that bid documents are accurate;
- Work with the CHA's internal Quality Assurance/Quality Control ("QA/QC") Manager to review A/E created materials for errors and omissions to limit possible change orders during construction and other issues;
- Work with CHA procurement personnel to create and release bid packages, and provide continuous support during the bid process, including analysis of bid submittals, and recommendation of an awardee;
- Efficiently run and successfully conclude in compliance with specification, on time and within budget, all projects;
- Accurately maintain CHA's current and future electronic databases and recommend improvements; and
- Provide timely and thorough reporting on the status of current and forthcoming projects, including scheduling and costs.

B. Statement of Work

The Services to be performed by the P/CM during the term of the Agreement are more fully described in the Statement of Work set forth in Exhibit I, which is attached hereto and incorporated by reference herein.

C. Deliverables

In performing the Services, the P/CM shall prepare and/or provide the above deliverables along with any other required work product that may consist of documents, data, studies, reports,

findings or information in any form prepared or assembled either in hard copy or on diskette (hereinafter, collectively, "Deliverables"). The CHA reserves the right to reject Deliverables which in the sole opinion of the CHA do not adequately represent the intended level of completion or standard of performance, do not include relevant information or data, or do not include all documents specified in this Agreement, or reasonably necessary for the purposes for which the CHA made this Agreement with the P/CM. The CHA will notify the P/CM in writing of any deficiencies the CHA may identify involving a Deliverable. Corrected Deliverables must be resubmitted at no cost to the CHA with the appropriate level of information and must include a recovery schedule and narrative to demonstrate how the project will be kept on track.

Partial or incomplete Deliverables may be accepted for review only when required for a specific purpose and when consented to in advance by the CHA. Such Deliverables may not be considered as satisfying the requirements of this Agreement and partial or incomplete Deliverables shall in no way relieve the P/CM of its commitments hereunder.

Section 2.02 Performance Standards

The P/CM shall perform all Services required under this Agreement with the degree of skill, care and diligence normally shown by an entity performing services of a scope, purpose and magnitude comparable with the nature of the Services to be provided under this Agreement. Furthermore, the P/CM shall perform or cause to be performed all Services required by the Agreement in accordance with the terms and conditions of this Agreement, in accordance with any federal, state and local laws, statutes, applicable to this Agreement, and to the satisfaction of the CHA. The P/CM must at all times act in the best interests of the CHA consistent with the professional and fiduciary obligations assumed by it in entering into this Agreement and will assure timely and satisfactory rendering and completion of its Services, including but not limited to Deliverables. Specifically, all services shall be performed in accordance with the due professional care standards required by and in accordance with the terms and conditions of this Agreement.

The P/CM must assure that all Services which require the exercise of professional skills or judgment must be accomplished by professionals qualified and competent in the applicable discipline and appropriately licensed, if required by law. The P/CM covenants with the CHA to furnish its best professional expertise and judgment in furthering the CHA's interests. The P/CM shall at all times use its best efforts to assure quality, timeliness, efficiency and creativity in rendering and completing the Services. The P/CM agrees that performance of the Services in a satisfactory manner shall include quick response to the CHA's needs. Accordingly, the P/CM shall return all telephone calls and respond to all electronic mail on a timely basis within one (1) business day.

Section 2.03 Key Personnel

Thomas Fallon shall be responsible for supervising P/CM's personnel and directing the Services to be performed during the term of the Agreement. The P/CM retains the right to substitute key personnel for reasonable cause by giving written notice to the CHA within a reasonable timeframe, provided that the CHA shall have the right to approve such staff changes and all other personnel staffing changes and said approval shall not be unreasonably withheld. The CHA shall have the right to request changes of key personnel.

Section 2.04 Non-Discrimination

P/CM 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. P/CM shall particularly remain in compliance at all times with: Exec. Order No. 11,246, 30 Fed. Reg. 12,319 (1965), reprinted in 42 U.S.C. 2000 (e) note, as amended by Exec. Order No. 11,375, 32 Fed. Reg. 14,303 (1967) and by Exec. Order No. 12,086, 43 Fed. Reg. 46,501 (1978); Age Discrimination Act, 42 U.S.C. sec. 6101-6106 (1989); Rehabilitation Act of 1973, 29 U.S.C. sec. 793-794 (1988); Fair Housing Amendments Act, 42 U.S.C. Sec. 3601 et seq., (1988); Americans with Disabilities Act of 1990, 42 U.S.C. 12101 and 41 C.F.R. Part 60 et seq., (1990). Illinois Human Rights Act, 775 ILCS 5/1-101 et seq., as amended, and regulations promulgated in accordance therewith, including but not limited to the Equal Employment Opportunity Clause, I11. Admin. Code Tit. 44 section 750 Appendix A, which is attached hereto as Exhibit II 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, P/CM must furnish such reports and information as requested by the Chicago Commission on Human Relations.

Section 2.05 Section 3 and MBE/WBE/DBE Participation and Requirements

A. Section 3 – Compliance: The CHA has determined that the contract awarded under this solicitation 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), 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 P/CM agrees to send to each labor organization or representative of workers with which the P/CM has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the P/CM'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.
- iv. The P/CM 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 P/CM will not subcontract with any subcontractor where the P/CM has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.
- v. The P/CM will certify that any vacant employment positions, including training positions, that are filled (1) after the P/CM 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 P/CM'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. P/CM and its subcontractors may demonstrate compliance by committing to employ section 3 residents and by subcontracting with section 3 business concerns in accordance with the requirements of 24 CFR Part 135.

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

- (a) 51 percent or more owned by section 3 residents; or
- (b) Whose permanent, full-time employees include persons, at least 30 percent of whom are currently section 3 residents, or within three years of the date of first employment with the business concern were section 3 residents; or
- (c) That provides evidence of a commitment to subcontract in excess of 25 percent of the dollar award of all subcontracts to be awarded to business concerns that meet the qualifications set forth in paragraphs (1) or (2) in this definition of "section 3 business concern."

- ii. P/CM and subcontractors may demonstrate compliance with the requirements for contracting with Section 3 Business Concerns by committing to award to Section 3 Business Concerns at least 10 percent of the total dollar amount of the contract awarded to the P/CM for building trades work for maintenance, repair modernization or development of public housing, or for building trades work arising in connection with housing rehabilitation, housing construction and other public construction and at least 3 percent of the total dollar amount of all other Section 3 covered contracts.
- iii. In evaluating compliance with 24 CFR Part 135, contractors and their subcontractors have the burden of demonstrating to the greatest extent feasible their ability or inability to meet the goals set forth in 24 CFR Part 135 for providing training, employment and contracting opportunities to section 3 residents and section 3 business concerns.
- iv. P/CM and its subcontractors are also encouraged to provide other economic opportunities to train and employ section 3 residents including, but not limited to, use of “upward mobility”, “bridge” and trainee positions to fill vacancies, and hiring section 3 residents in part-time positions (24 CFR 135.40).

3. Documenting and Reporting

- i. P/CM agrees to comply with the above Section 3 requirements in accordance with the P/CM’s Section 3 Utilization Plan, which shall be prepared by the P/CM and agreed to by CHA. CHA shall not be required to agree to the P/CM’s Utilization Plan until the P/CM meets its burden to establish that it will comply with 24 CFR Part 135 and otherwise comply with CHA’s Section 3 Policy (see http://www.thecha.org/pages/section_3/65.php or the copy included in the solicitation) as may be required. P/CM’s Section 3 Utilization Plan is attached hereto as Exhibit III and is incorporated by reference herein.
- iii. The P/CM and its subcontractors shall provide all required compliance data with respect to P/CM’s Section 3 requirements to the CHA via CHA’s electronic system available at <https://cha.diversitycompliance.com/>. The P/CM 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 P/CM 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.** P/CM agrees to comply with the CHA’s Minority and Women Disadvantaged Business Enterprise (“MBE/WBE/DBE”) requirements in accordance with the P/CM’s MBE/WBE/DBE Utilization Plan, which is attached hereto as Exhibit IV and incorporated by reference herein, and otherwise comply with the CHA’s MBE/WBE Policy (see http://www.thecha.org/pages/mbe_wbe_dbe/36.php or the copy included in the RFP).

Documenting and Reporting. The P/CM and its subcontractors shall provide all required compliance data with respect to P/CM's MBE/WBE/DBE to the CHA via CHA's electronic system available at <https://cha.diversitycompliance.com/>. The P/CM 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 P/CM 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.

Section 2.06 HUD's General Conditions for Non-Construction Contracts

HUD's General Conditions for Non-Construction Contracts (HUD form 5370-C (10/2006)) ("General Conditions"), are attached hereto as Exhibit V and incorporated by reference as if fully set forth herein. The P/CM agrees to fully comply with the General Conditions. In the event of a conflict between the terms and conditions of the General Conditions and the terms and conditions of the Agreement, the terms and conditions of the Agreement shall control.

Section 2.07 Ownership of Work Product, Documents, Records and Reports

- A. P/CM acknowledges that all Deliverables in any form including but not limited to, work papers, reports, spreadsheets, data, data-bases, documentation, training materials, drawings, photographs, film and all negatives, software, tapes and the masters thereof, prototypes, and other material, or other work product generated and assembled either in hard copy or on diskette, pursuant to the work contracted for by the CHA (hereinafter, "Work Product") will belong solely to the CHA and the P/CM will retain no rights therein. The Work Product is conclusively deemed by the parties as "works made for hire" within the meaning and purview of Section 101 of the United States Copyright Act, 17 U.S.C. §101 et seq. (hereinafter, "the Act"), and the CHA will be the copyright owner thereof and of all aspects, elements and components thereof in which copyright can subsist.

To the extent the Work Product does not qualify as "work made for hire," P/CM hereby irrevocably grants, conveys, bargains, sells, assigns, transfers and delivers to the CHA, its successors and assigns, all right, title and interest in and to the copyrights and all U.S. and foreign copyright registrations, copyright applications and copyright renewals therefor, and other intangible, intellectual property embodied in or pertaining to the Work contracted for under this Agreement, free and clear of any liens, claims or other encumbrances, to the fullest extent permitted by law. P/CM will execute assignments in the forms attached if requested by the CHA, without additional compensation. P/CM will document all work performed for the CHA and will turn such documentation over to the CHA on completion of the P/CM's services hereunder or earlier, if requested by the CHA. P/CM will make no use of the Work Product generated during the course of its work for the CHA during or after the term of this Agreement except to perform the work requested by the CHA.

To the extent the CHA is unable to effectively or economically use the Work Product without also using rights which are the subject of patent applications, patents, copyrights

or other statutory protection owned by P/CM, P/CM grants to the CHA, a royalty-free, irrevocable, worldwide, nonexclusive license to make, have made, sell, use, reproduce, disclose, and publish such rights as necessary to fully utilize the Work Product.

In addition, P/CM agrees that it will not do anything contrary to the CHA's ownership in the Work Product or which might impair the value of such ownership. P/CM agrees to cooperate with the CHA in executing all documentation requested by the CHA to enable the CHA to perfect its right in and to the Work Product.

- B. All Work Product and CHA Documents provided to, or prepared or assembled by the P/CM in connection with the performance of the P/CM's Services under this Agreement shall be the property of the CHA. The P/CM shall establish precautions against the destruction of all such CHA Documents and shall be responsible for any loss or damage to the CHA Documents while in the P/CM's possession or use and the P/CM shall be responsible for restoring such CHA Documents at its sole expense. Except as provided above, if any CHA Documents destroyed while in the P/CM's possession are not restorable, the P/CM shall be responsible for any loss suffered by the CHA on account of such loss or damage.
- C. The P/CM shall deliver or cause to be delivered all Work Product and/or CHA Documents, including, but not limited to, all Deliverables prepared for the CHA under the Agreement, to the CHA promptly in accordance with the time limits prescribed in the Agreement, or if no time limit is specified, then upon reasonable demand thereof or upon termination or completion of the P/CM's Services or expiration of the Agreement hereunder. In the event of the failure by P/CM to make such delivery, then and in that event, the P/CM shall pay to the CHA any damages the CHA may sustain by reason thereof. The P/CM shall maintain all CHA Documents not previously delivered to the CHA for a period of three (3) years after final payment made in connection with the Agreement.
- D. The P/CM shall maintain its books, records, documents, and other materials related to the performance of the Agreement for a period of three (3) years following the expiration or termination of the Agreement and after final payment has been made and all other pending matters are closed, and adopt accounting procedures and practices sufficient to reflect properly all costs of whatever nature claimed to have been incurred or anticipated to be incurred for or in connection with the performance of the P/CM's Services under the Agreement. The P/CM shall maintain its accounting system, books and records in a manner that complies with generally accepted accounting principles ("GAAP"), consistently applied throughout.
- E. The provisions of Section 2.08 shall survive the expiration or termination of the Agreement.
- F. The P/CM shall flow down the provisions of this Section 2.08 titled "Ownership of Work Product, Documents, Records and Reports" to its subcontractors at every tier.

Section 2.08 Audit Requirement

The CHA retains an irrevocable right to independently or, through a third party, audit the P/CM's books and records pertaining to this Agreement and disallow any inappropriate billings

upon written notice to the P/CM. Further, the P/CM agrees to cooperate with the CHA's Inspector General. In the event of a disallowance, the P/CM shall refund the amount disallowed to the CHA.

Section 2.09 Confidentiality

The P/CM agrees that all Deliverables, reports, documents or other information prepared or assembled by, or received or encountered by the P/CM, its employees, agents and subcontractors pursuant to this Agreement are to remain confidential ("Confidential Information"). Further, the P/CM agrees that such Confidential Information shall not be made available to any individual or organization other than the CHA, HUD or courts of competent jurisdiction or administrative agencies pursuant to a subpoena without the prior written approval of the CHA. In the event the P/CM is presented with a *subpoena* regarding such Confidential Information, which may be in the P/CM's possession by reason of this Agreement, the P/CM must immediately give notice to the CHA's Chief Executive Officer and General Counsel with the understanding that the CHA will have the opportunity to contest such process by any means available to it before the Confidential Information is submitted to a court or other third party. The P/CM, however, is not obligated to withhold the delivery of such Confidential Information beyond the time ordered by the court or administrative agency, unless the subpoena or request is quashed or the time to produce is otherwise extended.

Section 2.10 Subcontracts and Assignments

Unless otherwise provided for herein, the P/CM shall not subcontract, assign otherwise delegate or otherwise transfer all or any part of its obligations under this Agreement or any part hereof without the prior written approval of the CHA. The absence of such prior written approval shall void the attempted subcontracting, assignment, delegation or transfer and shall have no legal effect on the Services or this Agreement.

The P/CM shall not transfer or assign, in whole or in part, any funds or claims due or which may become due under this Agreement without the prior written approval of the CHA. Any attempted transfer or assignments of any contract funds, either in whole or in part, or any interest therein, which shall be due or to become due to the P/CM, without the prior written approval of CHA shall be void and of no legal effect. The CHA expressly reserves the right to assign or otherwise transfer all or any part of its rights or interests hereunder.

Section 2.11 Patents and Copyrights

The CHA reserves an exclusive, perpetual and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use for CHA or HUD purposes, including, but not limited to, commercial exploitation: (a) the copyright or patent in any work developed or discovered in the performance of the Services under this Agreement, and (b) any rights of copyright or patent of which the P/CM purchases ownership with funds awarded pursuant to this Agreement for the purpose of meeting the objectives of this Agreement.

Section 2.12 Religious Activities

In connection with the Services to be provided under this Agreement, the P/CM agrees:

A. That it shall not discriminate against any person on the basis of religion and shall not limit employment or give preference in employment to persons on the basis of religion; and

B. That it shall not discriminate when rendering the Services hereunder against any person on the basis of religion and shall not limit such Services or give preference to persons on the basis of religion.

Section 2.13 Drug-Free Workplace

The P/CM shall establish procedures and policies to promote a "Drug-Free Workplace." Further, the P/CM 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, the P/CM 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.

Section 2.14 Force Majeure

Notwithstanding any other provision in this Agreement, the P/CM shall not be liable or held responsible for any failure to perform or for delays in performing its obligation under the Agreement, including but not limited to, the scope of services set forth hereunder which result from circumstance or causes beyond P/CM'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 3. TERM OF AGREEMENT

Section 3.01 Term of Agreement

The term of this Agreement is for the period of July 10, 2013 through July 9, 2014 or until the Agreement is terminated in accordance with its terms, whichever occurs first.

Section 3.02 Contract Extension Options

The CHA, at its sole discretion, may extend this Agreement for two separate 1-year option periods, each subject to CHA Board approval. 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 9.03 of this Agreement.

Section 3.03 Timeliness of Performance

The P/CM shall use its best efforts to provide the Services and Deliverables within the time limits required under this Agreement, or from time to time as otherwise required by the CHA. The P/CM and the CHA acknowledge that deadlines for certain Services provided for in this Agreement may be dictated by the requirements of agencies or events outside the control of the CHA and the P/CM, and the failure by the P/CM to meet deadlines may result in economic or other significant losses to the CHA. Therefore, except to the extent that the P/CM's inability to meet its deadlines is caused by the delay due to the CHA, by acts of God or other events outside the control of the P/CM, TIME IS OF THE ESSENCE, so that failure to perform in a timely

manner shall be considered a material breach of the Agreement.

ARTICLE 4. COMPENSATION AND PAYMENT

Section 4.01 Compensation

The CHA shall pay the P/CM compensation in an amount not-to-exceed \$3,963,823.00 for the satisfactory performance of the Services during the base term of this Agreement, in accordance with the Fee Schedule attached hereto as Exhibit VIII and incorporated by reference as if fully set forth herein. The P/CM agrees not to perform, and waives any and all claims for payment of work, materials, expenses, resources or other claims which would result in billings beyond this amount; including, but not limited to, compensation for overtime hours. The P/CM shall only be compensated for positions that are filled, for days worked by staff, and for adjustments for staffing as approved in writing by the Chief Development Officer. The P/CM shall provide the Chief Development Officer, prior notice of absences, if possible, and vacations. It is mutually understood and agreed by the parties that the above agreed upon compensation amount, which includes all reimbursable expenses, is the only compensation provided for in this agreement and there will be no additional costs, fees or other type of profit allowable or paid under this Agreement without an express written amendment to the Agreement authorizing said additional work or expenses. All reimbursement shall be subject to the applicable CHA policies including, but not limited to those attached hereto as Exhibit IX. The P/CM acknowledges an affirmative duty to monitor its performance and billings to ensure that the scope of work is completed within the previously agreed compensation amount.

Section 4.02 Payment

The P/CM shall submit an invoice within ten (10) business days after the end of each month during the term of this Agreement. Each invoice shall contain back-up information as required by the CHA, including but not limited to, a brief description of the services provided during the invoice period, The CHA shall not be required to give approval or make payments pursuant to a submitted invoice unless the information required to be included with the invoice, or that has been specifically requested by the CHA, and all the reporting requirements and Deliverables as set forth in this Agreement, or other reasonable and written requests by CHA for additional information, have been met.

CHA will make commercially reasonable efforts to make payment for services rendered under this Agreement within thirty (30) days after receipt and approval of each invoice submitted. All invoices shall be subject to review and approval by the CHA. If the CHA objects to all or any portion of any invoice, it shall notify the P/CM of its objection in writing and both parties shall make every effort to settle the disputed portion of the invoice. Notwithstanding the foregoing, the CHA may, at its option, pay the undisputed portion of any invoice without being deemed to have accepted the disputed portion. All disputes regarding invoices shall be handled in accordance with the paragraph no. 7 of the General Conditions.

Section 4.03 Non-Appropriation

Funding for this Agreement is subject to: (1) availability of federal funds from HUD, (2) the approval of funding by the CHA's Board of Commissioners, and (3) the P/CM's satisfactory

performance of this Agreement. Furthermore, in the event that no funds or insufficient funds are appropriated and budgeted or appropriated funds are rescinded by Congress in any fiscal period of the term of this Agreement for payments to be made under this Agreement, then the CHA may notify the P/CM 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 5. DISPUTES

Section 5.01 Disputes

In the event of a dispute between the CHA and the P/CM involving this Agreement, both parties will attempt to negotiate a resolution. If the parties cannot resolve the dispute through negotiation, either party shall, unless otherwise set forth herein, submit the dispute in writing to CHA's Director of Procurement and Contracts, who shall, with reasonable promptness, render a decision concerning the dispute submitted. The decision of the Director of Procurement and Contracts shall be final and binding.

ARTICLE 6. RISK MANAGEMENT

Section 6.01 Insurance

The P/CM agrees to comply with and meet or exceed all of CHA's insurance requirements that are set forth in Exhibit VI, which is attached hereto and incorporated by reference herein as if fully set forth herein.

Section 6.02 Indemnification

The P/CM agrees to protect, defend, indemnify, keep save, and hold the CHA, its officers, officials, employees and agents and contractors free and harmless from and against any and all liabilities, losses, penalties, damages, settlements, environmental liability, costs, charges, professional fees or other expenses or liabilities of every kind, nature and character arising out of or relating to any and all claims, liens, demands, obligations, actions, suits, judgments or settlements, proceedings or causes of action of every kind, nature and character (collectively, "Claims") in connection with or arising directly or indirectly out of this Agreement and/or the acts and omissions of the P/CM, its agents, employees, and subcontractors, including but not limited to, the enforcement of this indemnification provision. Without limiting the foregoing, any and all such Claims, relating to personal injury, death, damage to property, defects in material or workmanship, actual or alleged infringement of any patent, trademark, copyright or any other tangible or intangible personal or property right, or any actual or alleged violation of any applicable statute, ordinance, order, rule or regulation, or decree of any court, shall be included in the indemnity hereunder. The P/CM further agrees to investigate, handle, respond to, provide defense for and defend all suits for any and all Claims at its sole expense and agrees to bear all the costs and expenses related thereto, even if the Claims are considered groundless, false or fraudulent.

To the extent permissible by law, P/CM waives any limits on P/CM's liability that it would otherwise have by virtue of the Workers Compensation Act or any other law or judicial

decision (specifically Kotecki v. Cyclops Welding Corporation, 146 Ill.2d 155 (1991)).

The CHA shall have the right, at P/CM's expense, to participate in the defense of any suit, without relieving the P/CM of any of its obligations under this indemnity provision. The P/CM expressly understands and agrees that the requirements set forth in this indemnity to protect, defend, indemnify, keep, save and hold the CHA free and harmless are separate from and not limited by the P/CM's responsibility to obtain, procure and maintain insurance pursuant to any other section of this Agreement. Further, the indemnities contained in this section shall survive the expiration or termination of this Agreement.

ARTICLE 7. EVENTS OF DEFAULT, REMEDIES, TERMINATION, RIGHT TO OFFSET, SUSPENSION

Section 7.01 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 P/CM to the CHA.
- B. The P/CM's failure to perform any of its obligations under this Agreement including, but not limited to, the following:
 - 1. Failure to perform the Services with sufficient personnel or with sufficient material to ensure the performance of the Services or due to a reason or circumstance within the P/CM's control;
 - 2. Failure to meet any of the performance standards set forth in this Agreement;
 - 3. Failure to perform the Services in a manner reasonably satisfactory to the CHA, or inability to perform the Services satisfactorily as a result of insolvency, filing for bankruptcy or assignment for the benefit of creditors;
 - 4. Failure to promptly re-perform within a reasonable time Services or Deliverables that were rejected as erroneous or unsatisfactory;
 - 5. Discontinuance of the Services for reasons or circumstances not beyond the P/CM's control;
 - 6. Failure to comply with a material term of this Agreement, 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 P/CM without the prior written approval of the CHA, which written approval shall not be unreasonably withheld.
- D. The P/CM's default under any other agreement it may presently have or may enter into with the CHA during this Agreement. The P/CM 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.

Section 7.02 Remedies

The occurrence of any event of default which the P/CM fails to cure within thirty (30) calendar days after receipt of written notice given in accordance with the terms of this Agreement and specifying the event of default or, if such event of default cannot be reasonably cured within thirty (30) calendar days after notice, or if the P/CM has failed to commence and continue diligent efforts to cure such default within thirty (30) days, the CHA may, at its sole option, declare the P/CM in default. Whether to declare the P/CM in default is within the sole discretion of the CHA and neither that decision nor the factual basis for it is subject to review or challenge under the disputes provision of this Agreement. Written notification of the default, and any intention of the CHA to terminate the Agreement, shall be provided to the P/CM and such decision shall be final and effective upon the P/CM's receipt of such notice pursuant to Article 10. Upon the giving of such notice, the CHA may invoke any or all of the following remedies:

- A. The right to terminate this Agreement as to any or all of the Services 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 P/CM's compensation hereunder with respect to Services not completed in accordance with the terms hereof prior to the termination of this Agreement.
- D. The right to deem P/CM non-responsible in future contracts to be awarded by the CHA.
- E. The right to take over and complete the Services or any part thereof as agent for and at the cost of P/CM, either directly or through others.

If the CHA considers it to be in its best interests, it may elect not to declare default or to terminate the Agreement hereunder. The parties acknowledge that this provision is solely for the benefit of the CHA and that if the CHA permits P/CM to continue to provide the Services despite one or more events of default, the P/CM 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 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, and every such right and power may be exercised from time to time and as often as may be deemed expedient.

Section 7.03 Termination for Convenience

The CHA may terminate this Agreement, or all or any portion of the Services to be performed under it, at any time by written notice from the CHA to P/CM when the Agreement may be deemed to be no longer in the best interests of the CHA. If the CHA elects to terminate the Agreement in full, all Services to be performed hereunder shall cease effective ten (10) calendar days after the date written notice has been provided. The P/CM shall continue to render the services until the effective date of termination. No cost incurred by the P/CM after the effective date of termination shall be allowed. Subject to performance within the requisite performance standards and audits of invoices as set forth above, the CHA shall pay to P/CM on a pro-rata basis, costs incurred for Services rendered through the date of termination. This Section 7.03 is not subject to Article 5 of this Agreement.

The P/CM shall flow down the provisions of Section 7.03 in all of its contracts with its subcontractors, if any.

Section 7.04 Suspension

The CHA may at any time request that the P/CM suspend its Services, or any part thereof, by giving ten (10) days prior written notice to the P/CM or upon no notice in the event of an emergency. No costs incurred after the effective date of such suspension shall be allowed. The P/CM shall promptly resume its performance of such Services under the same terms and conditions as stated herein upon written notice by the CHA (Director of Procurement and Contracts).

Section 7.05 No Damages for Delay

The P/CM agrees that it shall make no claims against the CHA for damages, charges, interest, additional costs or fees incurred by reason of delays or suspension of work caused by the CHA in the performance of its obligations under this Agreement. The P/CM's sole and exclusive remedy for delays or suspension of work caused by the CHA is an extension of time equal to the duration of delay or suspension to allow the P/CM to perform its obligation under this Agreement.

Section 7.06 Right to Offset

To the extent permitted by applicable law:

- A. In connection with performance under the Agreement, the CHA may offset any incremental costs and other damages the CHA incurs in any and all of the following circumstances:
 - i. If the CHA terminates the Agreement for default or any other reason resulting from the P/CM's performance or non-performance;

- ii. If the CHA exercises any of its remedies under Section 7.02 of the Agreement;
- iii. If the CHA has any credits due or has made any overpayments under the Agreement.

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

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

ARTICLE 8. WARRANTIES, REPRESENTATIONS AND SPECIAL CONDITIONS

Section 8.01 Warranties, Representations and Covenants

In connection with the execution of this Agreement, the P/CMP warrants and represents to CHA:

- 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 P/CM 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 P/CM 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 P/CM to any employee of the CHA; and the P/CM 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 P/CM 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 P/CM to enter into this Agreement or has been relied upon by the P/CM.
- E That the P/CM 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 P/CM acknowledges that the CHA, in its selection of the P/CM to perform the Services hereunder, materially relied upon the P/CM'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 P/CM to enter into this Agreement or has been relied upon by P/CM.
- G. That the P/CM 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 (see http://www.thecha.org/pages/forms_documents/66.php).
- H. That the P/CM has disclosed any and all relevant information to the CHA and the P/CM 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.
- I. That the P/CM is a duly organized and validly existing corporation under the laws of the State of Rhode Island and has and will continue to have at all times during the term of this Agreement, all licenses necessary to render the Services required hereunder.
- J. That the P/CM has the power and authority to enter into and perform all of its obligations under this Agreement, and that this Agreement, when executed will constitute the duly authorized, valid and legally binding obligation of the P/CM.

Section 8.02 Joint and Several Liability

In the event that the P/CM, 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 P/CM shall be the joint and several obligation or undertaking of each individual or other legal entity.

Section 8.03 Business Documents and Contractor's Affidavit

The P/CM 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 and Contractor's Certifications and Representations of Offerors – Non-Construction Contracts (HUD Form 5369-C) are attached hereto as Exhibit V and incorporated by reference as if fully set forth herein.

Section 8.04 Conflict of Interest

- A. No member of the governing body of the CHA or other units of government and no other officer, employee, or agent of the CHA or other unit of government who exercises any functions or responsibilities in connection with the Services to which this Agreement pertains, shall have any personal interest, direct, or indirect, in this Agreement. No member of or delegate to the Congress of the United States or the Illinois General Assembly or CHA employee shall be entitled to any share or part of this Agreement or to any financial benefit to arise from it.
- B. The P/CM covenants that it and its employees, or subcontractors, 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 P/CM further covenants that during the performance of this Agreement, no person having any such interest shall be employed. P/CM agrees that if the CHA determines that any of P/CM's services for others conflict with the Services that the P/CM is to render for the CHA under this Agreement; P/CM shall terminate such other services immediately upon request of the CHA.
- C. Additionally, pursuant to the conflict of interest requirements in OMB Circular A-102 and 24 C.F.R. §85.36(b)(3), 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.
- D. Furthermore, the P/CM represents that it currently is and will remain in compliance with federal restrictions on lobbying set forth in Section 319 of the Department of the Interior and Related Agencies Appropriations Act for Fiscal year 1990, 31 U.S.C. Subsection 1352, and related rules and regulations set forth at 54 Fed. Reg. 52,309 ff. (1989), as amended.

Section 8.05 Non-Liability of Public Officials

No official, employee or agent of the CHA shall be personally liable to the P/CM or the P/CM's successor in interest for: (i) any default or breach by the CHA under this Agreement, (ii) any fee due to the P/CM or the P/CM's successor in interest or (iii) any other obligation arising under this Agreement.

Section 8.06 Independent Contractor

The P/CM and the CHA recognize that P/CM is an independent contractor and not an employee, agent, partner, joint venturer, covenantor, or representative of the CHA and that CHA will not incur any liability as the result of P/CM's actions. P/CM and its employees, representatives, and agents shall at all times represent and disclose that they are independent contractors of the CHA and shall not represent to any third party that they are an employee, agent, covenantor, or representative of the CHA. The CHA shall not be obligated to withhold any funds from P/CM for tax or other governmental purposes, with respect to its employees, agents, representative or subcontractors. P/CM and its employees, representatives, and agents shall not be entitled to receive any employment benefits offered to employees of the CHA including workers' compensation insurance coverage.

ARTICLE 9. GENERAL CONDITIONS

Section 9.01 Entire Agreement

This Agreement and the Exhibits attached hereto shall constitute the entire agreement between the parties hereto relating to the subject matter hereof and no other warranties, inducements, considerations, covenant, conditions, promises or interpretations shall be implied between the parties that are not set forth herein. In the event of a conflict between the Agreement and any Exhibits that have been incorporated by reference, the terms of the Agreement shall control.

Section 9.02 Counterparts

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

Section 9.03 Amendments

No changes, amendments, modifications, or discharge of this Agreement, or any part thereof, shall be valid unless in writing and signed by the authorized agent of the P/CM and by the CEO of the CHA or his/her respective designees. The CHA shall incur no liability for additional Services without a written amendment to this Agreement pursuant to this Section.

Whenever in this Agreement the P/CM is required to obtain prior written approval, the effect of any approval which may be granted pursuant to the P/CM's request shall be prospective only from the later of the date approval was requested or the date on which the action for which the approval was sought is to begin. In no event may approval apply retroactively to a date before the approval was granted.

Section 9.04 Compliance with All Laws and Regulations

A. The P/CM shall at all times observe and comply with all applicable laws, ordinances, rules, regulation and executive orders of the federal, state and local government, now existing or hereinafter in effect, which may in any manner affect the performance of this Agreement, including but not limited to HUD regulations, the Uniform Administrative Requirements contained in 24 C.F.R. Section 85.1 et seq., (1993), as amended; Title VI

of the Civil Rights Act of 1967 (42 U.S.C. 2000d et seq.); Fair Housing Act (42 U.S.C. 3601-20 et seq.); Executive Order 11063, as amended by Executive Order 12259; Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.); Rehabilitation Act of 1973 (29 U.S.C. 794); Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-5); Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.); National Environmental Policy Act of 1969 (24 C.F.R. Part 58); Clean Air Act (42 U.S.C. § 7401/et seq.); Federal Water Pollution Control Act (33 U.S.C. §1251 et seq.), as amended; Executive Order 11246, as amended by Executive Orders 12086 and 11375; Executive Order 12372; Copeland "Anti-Kickback" Act (18 U.S.C. § 874 and 40 U.S.C. § 276); Byrd "Anti-Lobbying" Amendment (31 U.S.C. § 1352); and Debarment and Suspension (Executive Orders 12549 and 12689). Additionally, the P/CM shall comply with the applicable provisions of OMB Circulars A-133, A-102, A-122, A-110 and A-87, as amended, succeeded or revised; and the Mandatory Standards and Policies relating to energy efficiency which are contained in the State Energy Conservation Plan issued in compliance with Energy Policy and Conservation Act (Pub. L 94-163, 89 Stat. 871).

- B. The P/CM shall take such actions as may be necessary to comply promptly with any and all governmental orders imposed by any duly constituted government authority whether imposed by Federal, state, county or municipal authority.

Section 9.05 Deemed Inclusion

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

Section 9.06 Severability

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

Section 9.07 Jurisdiction

This Agreement shall be governed as to performance and interpretation in accordance with the laws of the State of Illinois. The P/CM 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. The P/CM agrees that service of process on the P/CM 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 and to the office actually maintained by the P/CM, or by personal delivery on any managing partner, partners and principals of the P/CM. If the P/CM 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.

Section 9.08 Interpretation

Any 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 and thereof. 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.

Section 9.09 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 respective legal representatives, successors, transferees and assigns.

Section 9.10 Cooperation

The P/CM agrees at all times to cooperate fully with the CHA and to act in the CHA's best interests. If this Agreement is terminated for any reason, or if it is to expire on its own terms, the P/CM shall make every effort to assure an orderly transition to another P/CM, the uninterrupted provision of Services during any transition period and shall otherwise comply with the reasonable requests and requirements of the CHA in connection with the termination or expiration of this Agreement.

Section 9.11 Waiver

Whenever under this Agreement the CHA, by a proper authority, expressly waives the P/CM's performance in any respect or expressly waives a requirement or condition to either the CHA's or the P/CM's performance, the waiver 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.

Section 9.12 Flow - Down Provisions

The P/CM shall flow down the following provisions of the Agreement and General Conditions to its contracts with subcontractors: Section 2.04, Section 2.05, Section 2.06, Section 2.07, Section 2.08, Section 2.09, Section 2.10, Section 2.11, Section 2.12, Section 2.13, Section 2.14, Section 7.03, Section 7.03, Section 7.04, and Section 9.04 of the Agreement and paragraph numbers 2, 3, 4, 5, 6, 10, 11, 12, 13, 14, 15, 16, 17, 20, 21 and 22 of the general Conditions.

ARTICLE 10. COMMUNICATION AND NOTICES

Section 10.01 Communication Between the Parties

All verbal and written communication, including required reports and submissions between the P/CM and the CHA shall be through the Chief Development Officer and his or her designee, 60 E. Van Buren St., Chicago, IL 60605 when required. 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.

Section 10.02 Notices

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

Gilbane Building Company
8550 West Bryn Mawr Avenue, Suite 500
Chicago, Illinois 60631
Attention: Thomas Fallon

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

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

ARTICLE 11. AUTHORITY

Section 11.01 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 State Housing Authorities Act, 310 ILCS 10/1 et seq., as amended, and other applicable laws, regulations and ordinances.

Section 11.02 Contractor's Authority

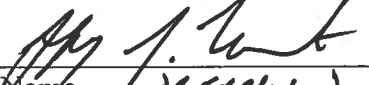
The signature of the person signing on behalf of the P/CM has been made with complete and full authority to commit the P/CM to all terms and conditions of this Agreement, including each and every representation, certification and warranty contained herein, including without limitation such representations, certifications and warranties collectively attached hereto and incorporated by reference herein.

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


CHICAGO HOUSING AUTHORITY

BY: 
Linda Riley Mitchell
Executive Vice President-Finance/CFO

GILBANE BUILDING COMPANY

By: 
Print Name JEFFREY J. MASTROS
Title VICE PRESIDENT

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

BY: 
Scott W. Ammarell
Chief Legal Officer