

CONTRACT NO. 11222

**PROFESSIONAL
SERVICES AGREEMENT**

BETWEEN

CABRINI-GREEN LOCAL ADVISORY COUNCIL (LAC)

AND

LUCAS GREENE ASSOCIATES, L.L.C.

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AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT (hereinafter, "Agreement") is entered into as of this 19th day of December 2012 by and between the **Cabrini-Green Local Advisory Council** (the "LAC") with offices at 530 W. Locust Ave., Chicago, Illinois and **Lucas Greene Associates, L.L.C.** (the "Contractor"), a limited liability company with principal place of business at 7857 S. Shore Drive #4N, Chicago, Illinois.

RECITALS

WHEREAS, the LAC is an organization of elected public housing representatives dedicated to serving and advocating for the residents of Cabrini Green public housing; and

WHEREAS, the LAC released Request for Proposals No. 110512 ("RFP") on or about October 3, 2012, which is attached hereto as Exhibit I and incorporated by reference herein, to procure the services of a consultant to provide technical and advisory assistance to the LAC on preparation of Requests for Proposals, evaluation of specific redevelopment proposals, and redevelopment implementation; and

WHEREAS, the Contractor submitted its Proposal on or about November 5, 2012, which is attached hereto as Exhibit II to the LAC indicating it is ready, willing and able to provide the services as set forth in the RFP; and

WHEREAS, the LAC and the Contractor desire to enter into the Agreement for the provision of technical and advisory assistance to the LAC on preparation of Requests for Proposals, evaluation of specific redevelopment proposals, and redevelopment implementation services as set forth herein.

NOW THEREFORE, in consideration of the mutual promises and the terms and conditions set forth herein, the LAC and the Contractor 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

"Contract" means the contract entered into between the LAC and the Contractor. 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 Contractor's Affidavit and any other exhibits which have been specifically incorporated by reference in the Agreement.

ARTICLE 2. CONTRACTOR'S DUTIES AND RESPONSIBILITIES

Section 2.01 Services to be Performed

A. Scope of Work

The services that the Contractor shall provide during the term of the Agreement shall include, but not be limited to:

- Provide assistance and advice to the LAC on matters concerning procurement of developers and implementation of development plans, including preparation of Requests for Proposals and evaluation of development proposals. Assistance may include:
 - Organizing training, seminars and conferences to develop resident capacity
 - Conducting design charettes
 - Conducting design reviews
 - Providing cost estimates and reviewing budgets
 - Reviewing and evaluating management plans, screening policies, and resident programs
 - Assessing construction cost estimates and schedules
 - Reviewing loan documents, development agreements, management agreements, master leases, partnership agreements, and other agreements and documents pertaining to the financing, ownership, development, management, and operation of developments
 - Reviewing appraisals, market studies, surveys, environmental reports, and other development planning initiatives and documents
 - Providing construction administration and construction management services, as well as training for residents on this topic
- Provide assistance to residents in developing an understanding of the real estate development process, especially as it pertains to the mixed-income, mixed-finance environment, regarding, but not limited to financing and budgets, MBE/WBE and local hires initiatives and requirements, construction, partnership structures, property management, and applicable federal, state and local laws, regulations and ordinances, including HUD regulations and policies.
- Attend meetings with the LAC and the Working Group regarding redevelopment matters with respect to the Consent Decree.
- Provide board development training and training to build capacity of the LAC with respect to the development process and organizational development.
- Maintain strict confidentiality with the LAC and the Working Group regarding all materials, communications and interactions with residents and the LAC resulting from performance of its duties.
- Comply with MBE/WBE and Section 3 (local resident hire) requirements.

(hereinafter collectively referred to as the "Services").

B. Statement of Work

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

C. Deliverables

In performing the Services, the Contractor 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 in electronic format (hereinafter, collectively, "Deliverables"). The LAC reserves the right to reject Deliverables which in the reasonable judgment of the LAC 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 LAC made this Agreement with the Contractor. The LAC will notify the Contractor in writing of any deficiencies the LAC may identify involving a Deliverable.

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

The Contractor shall also furnish, at the end of each month, a detailed report indicating the progress that was made on all pending projects and services for the month.

Section 2.02 Performance Standards

The Contractor 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 Contractor 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 LAC. The Contractor must at all times act in the best interests of the LAC 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 Contractor 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 Contractor covenants with the LAC to furnish its best professional expertise and judgment in furthering the LAC's interests. The Contractor shall at all times use its best efforts to assure quality, timeliness, efficiency and creativity in rendering and completing the Services. The Contractor agrees that performance of the Services in a satisfactory manner shall include quick response to the LAC's

needs. Accordingly, the Contractor 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

Linda Greene shall be responsible for supervising Contractor's personnel and directing the Services to be performed during the term of the Agreement. The Contractor retains the right to substitute key personnel with reasonable cause by giving written notice to the LAC, provided that the LAC shall have the right to approve such staff changes and said approval shall not be unreasonably withheld.

Section 2.04 Non-Discrimination

Contractor shall comply with all federal, state and local non-discrimination laws, rules, regulations and ordinances including, but not limited to, The Civil Rights Act of 1964, 42 U.S.C. sec. 2000 et seq. (1989), as amended, and all regulations promulgated thereto. Contractor shall particularly remain in compliance at all times with: Exec. Order No. 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 511-101 et seq., as amended, and regulations promulgated in accordance therewith, including but not limited to the Equal Employment Opportunity Clause, 111. Admin. Code Tit. 44 s 750 Appendix A; Employment Opportunity Clause, 111. Admin. Tit. 44 s 750 Appendix A; Public Works Employment Discrimination Act, 775 ILCS 10/0.01 et seq., as amended. Chicago Human Rights ordinance, s2-160-010 et seq., of the Municipal Code of Chicago, as amended; and the Chicago Fair Housing Regulations, s5-8-010 et seq., of the Municipal Code of Chicago, as amended. In addition, Contractor must furnish such reports and information as requested by the Chicago Commission on Human Relations.

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

Contractor agrees to comply with the CHA's Minority, Women and Disadvantaged Business Enterprise ("MBE/WBE/DBE") requirements and the CHA's Section 3 requirements in accordance with the Contractor's MBE/WBE/DBE Utilization Plan and Section 3 Utilization Plan, which are attached hereto as Exhibit IV and incorporated by reference set forth herein, and otherwise comply with the CHA's MBE/WBE/DBE Policy (see the copy included in the RFP) and Section 3 Policy (see the copy included in the RFP) as may be required.

The Contractor and its subcontractors shall provide all required compliance data with respect to Contractor's MBE/WBE/DBE and Section 3 requirements to the CHA via CHA's electronic system available at <https://cha.diversitycompliance.com/>. The Contractor and its subcontractors shall be responsible for responding to any requests for data or information by the noted response due dates, and shall check the electronic system on a regular basis to manage contact information and contract records. The Contractor shall also be responsible for ensuring that all subcontractors have completed all requested items with complete and accurate information and that their contact information is current.

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 Contractor 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. Contractor 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 LAC (hereinafter, "Work Product") will belong solely to the LAC and the Contractor 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 LAC 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," Contractor hereby irrevocably grants, conveys, bargains, sells, assigns, transfers and delivers to the LAC, 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 therefore, 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. Contractor will execute assignments in the forms attached if requested by the LAC, without additional compensation. Contractor will document all work performed for the LAC and will turn such documentation over to the LAC on completion of the Contractor's services hereunder or earlier, if requested by the LAC. Contractor will make no use of the Work Product generated during the course of its work for the LAC during or after the term of this Agreement except to perform the work requested by the LAC.

To the extent the LAC 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 Contractor, Contractor grants to the LAC, 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, Contractor agrees that it will not do anything contrary to the LAC's ownership in the Work Product or which might impair the value of such ownership. Contractor agrees to cooperate with the LAC in executing all documentation requested by the LAC to enable the LAC 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 Contractor in connection with the performance of the Contractor's Services under this Agreement shall be the property of the LAC. The Contractor shall establish precautions against the destruction of all such CHA Documents, and except for loss or damage attributable solely to the LAC's actions as the Contractor's landlord, or to the LAC's provision of ITS, MIS or other similar services/systems to the Contractor during the performance of the Contractor's Services under the Agreement, the Contractor shall be responsible for any loss or damage to the CHA Documents while in the Contractor's possession or use and the Contractor shall be responsible for restoring such CHA Documents at its sole expense. Except as provided above, if any CHA Documents destroyed while in the Contractor's possession are not restorable, the Contractor shall be responsible for any loss suffered by the LAC on account of such loss or damage.
- C. The Contractor shall deliver or cause to be delivered all Work Product and/or CHA Documents, including, but not limited to, all Deliverables prepared for the LAC under the Agreement, to the LAC 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 Contractor's Services or expiration of the Agreement hereunder. In the event of the failure by Contractor to make such delivery, then and in that event, the Contractor shall pay to the LAC any damages the LAC may sustain by reason thereof. The Contractor shall maintain all CHA Documents not previously delivered to the LAC for a period of three (3) years after final payment made in connection with the Agreement.
- D. The Contractor 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 Contractor's Services under the Agreement. The Contractor 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 Contractor 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 LAC retains an irrevocable right to independently or, through a third party, audit the Contractor's books and records pertaining to this Agreement and disallow any inappropriate billings upon written notice to the Contractor. In the event of a disallowance, the Contractor shall refund the amount disallowed to the LAC.

Section 2.09 Confidentiality

The Contractor agrees that all Deliverables, reports, documents or other information prepared or assembled by, or received or encountered by the Contractor, its employees, agents and subcontractors pursuant to this Agreement are to remain confidential ("Confidential Information"). Further, the Contractor agrees that such Confidential Information shall not be made available to any individual or organization other than the LAC or courts of competent jurisdiction or administrative agencies pursuant to a subpoena without the prior written approval of the LAC. In the event the Contractor is presented with a *subpoena* regarding such Confidential Information, which may be in the Contractor's possession by reason of this Agreement, the Contractor must immediately give notice to the LAC with the understanding that the LAC 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 Contractor, 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 Contractor 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 LAC. 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 Contractor 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 LAC. 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 Contractor, without the prior written approval of LAC shall be void and of no legal effect. The LAC 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 LAC reserves an exclusive, perpetual and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use for LAC 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 Contractor 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 Contractor 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 Contractor shall establish procedures and policies to promote a "Drug-Free Workplace." Further, the Contractor shall notify all employees of its policy for maintaining a "Drug-Free Workplace," and the penalties that may be imposed for drug abuse violations occurring in the workplace. Further, the Contractor shall notify the LAC 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 Contractor 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 Contractor's reasonable control, including without limitation, fire or casualty, acts of God, strikes or labor disputes, war or violence, or any law, order or requirement of any government agency or authority.

ARTICLE 3. TERM OF AGREEMENT

Section 3.01 Term of Agreement

The term of this Agreement is for the period of December 19, 2012 through December 19, 2014 or until the Agreement is terminated in accordance with its terms, whichever occurs first.

Section 3.02 Contract Extension Options

The LAC, at its sole discretion, may extend this Agreement for two additional one (1) year option periods. 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 Contractor 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 LAC. The Contractor and the LAC 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 LAC and the Contractor, and the failure by the Contractor to meet deadlines may result in economic or other significant losses to the LAC. Therefore, except to the extent that the Contractor's inability to meet its deadlines is caused by the delay due to the LAC, by acts of God or other events outside the control of the Contractor, 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

During the term of the Agreement, the LAC shall pay the Consultant a fee not-to-exceed \$85,702 (the "Maximum Amount"), which is the amount of remaining, budgeted technical assistance funds referenced in Section 4.03 below, for the satisfactory performance of the Services, based upon the hourly rates, not-to-exceed 15 hours per week, set forth in the Consultant's Best and Final Offer, dated November 5, 2012, which is attached hereto as Exhibit VIII and incorporated by reference herein. The Consultant recognizes its affirmative duty to monitor its performance and billings to ensure that the Services are performed within the Maximum Amount. The Consultant waives any and all claims of payment for work which would result in compensation in excess of the Maximum Amount for performance of the Services.

Section 4.02 Payment.

The Consultant shall submit monthly invoices detailing the services performed and deliverables provided (if any) and by whom, along with the dates services were provided, the number of hours and the hourly rates. Such invoice shall be reviewed and approved or disapproved within ten (10) days of receipt by the LAC, and the LAC will immediately transmit the approval to the CHA which will make payment for approved services rendered under this Agreement within sixty (60) days after receipt and approval of an invoice.

The Consultant shall not be entitled to receive payment unless an invoice relating to such payment is first submitted to, and approved by the LAC. If the LAC objects to all or any portion of an invoice, it shall notify the Consultant of its objection and both parties shall make every effort to settle the disputed portion of the invoice. Notwithstanding the foregoing, the LAC may, at its option, pay the undisputed portion of any invoice without being deemed to have accepted the disputed portion.

Section 4.03 Compensation Limited to Budgeted Technical Assistance Funds

Funding for this Agreement is subject to: (1) availability of remaining, budgeted technical assistance funds as identified in the Cabrini-Green Consent Decree in *Cabrini-Green Local Advisory Council v Chicago Housing Authority, et al.*, and/or (2) the Consultant's satisfactory performance of this Agreement. Furthermore, in the event that the above described technical assistance funds are exhausted in any fiscal period of the term of this Agreement for payments to be made under this Agreement, then the LAC may notify the Consultant of such occurrence and this Agreement shall terminate on the day when remaining, budgeted technical assistance funds are exhausted. The identified technical assistance funds are finite and are not replenished or related to CHA appropriations of federal funds.

ARTICLE 5. DISPUTES

Section 5.01 Disputes

In the event of a dispute between LAC and the Contractor involving this Agreement, both parties will attempt to negotiate a resolution. If the dispute cannot be settled through negotiation,

the parties agree first to try in good faith to settle the dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Rules before resorting to arbitration. If a party fails to respond to a written request for mediation within 30 days after service or fails to participate in any scheduled mediation conference, that party shall be deemed to have waived its right to mediate the issues in dispute. If the mediation does not result in settlement of the dispute within 30 days after the initial mediation conference or if a party has waived its right to mediate any issues in dispute, then any unresolved controversy or claim arising out of or relating to this contract or breach thereof shall be settled by arbitration administered by the American Arbitration Association in accordance with its Arbitration Rules for the Real Estate Industry and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

The dispute shall be determined by one arbitrator. The place of arbitration shall be Chicago, Illinois.

ARTICLE 6. RISK MANAGEMENT

Section 6.01 Insurance

The Contractor agrees to comply with and meet or exceed all of the LAC'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 Contractor agrees to protect, defend, indemnify, keep save, and hold the LAC, CHA, and their 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 Contractor, 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 Contractor 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, Contractor waives any limits on Contractor'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 LAC and CHA shall have the right, at Contractor's expense, to participate in the defense of any suit, without relieving the Contractor of any of its obligations under this indemnity provision. The Contractor expressly understands and agrees that the requirements set forth in this indemnity to protect, defend, indemnify, keep, save and hold the LAC and CHA free and harmless are separate from and not limited by the Contractor'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 Contractor to the LAC.
- B. The Contractor'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 Contractor'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 LAC, 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 Contractor'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 Contractor without

the prior written approval of the LAC, which written approval shall not be unreasonably withheld.

- D. The Contractor's default under any other agreement it may presently have or may enter into with the LAC during this Agreement. The Contractor acknowledges and agrees that in the event of a default under this Agreement the LAC may also declare a default under any such other agreements.

Section 7.02 Remedies

The occurrence of any event of default which the Contractor fails to cure within thirty (30) calendar days after receipt of written notice given in accordance with the terms of this Agreement and specifying the event of default or, if such event of default cannot be reasonably cured within thirty (30) calendar days after notice, or if the Contractor has failed to commence and continue diligent efforts to cure such default within thirty (30) days, the LAC may, at its sole option, declare the Contractor in default. Whether to declare the Contractor in default is within the sole discretion of the LAC 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 LAC to terminate the Agreement, shall be provided to the Contractor and such decision shall be final and effective upon the Contractor's receipt of such notice pursuant to Article 10. Upon the giving of such notice, the LAC 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 LAC.
- B. The right to pursue any and all remedies, legal and/or equitable, available to the LAC.
- C. The right to withhold all or any part of Contractor'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 Contractor non-responsible in future contracts to be awarded by the LAC.
- E. The right to take over and complete the Services or any part thereof as agent for and at the cost of contractor, either directly or through others.

If the LAC 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 LAC and that if the LAC permits Contractor to continue to provide the Services despite one or more events of default, the Contractor shall in no way be relieved of any of its responsibilities, duties or obligations under this Agreement nor shall the LAC 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 LAC 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 LAC to Contractor when the Agreement may be deemed to be no longer in the best interests of the LAC. If the LAC 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 Contractor shall continue to render the services until the effective date of termination. No cost incurred by the Contractor 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 LAC shall pay to Contractor 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 Contractor shall flow down the provisions of Section 7.03 in all of its contracts with its subcontractors, if any.

Section 7.04 Suspension

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

Section 7.05 No Damages for Delay

The Contractor agrees that it shall make no claims against the LAC for damages, charges, interest, additional costs or fees incurred by reason of delays or suspension of work caused by the LAC in the performance of its obligations under this Agreement. The Contractor's sole and exclusive remedy for delays or suspension of work caused by the LAC is an extension of time equal to the duration of delay or suspension to allow the Contractor 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 LAC may offset any incremental costs and other damages the LAC incurs in any and all of the following circumstances:
 - i. if the LAC terminates the Agreement for default or any other reason resulting from the Contractor's performance or non-performance;

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

The LAC may offset these incremental costs and any other damages by use of any payment due for Services completed before the LAC terminated the Agreement or before the LAC exercised any remedies. If the amount offset is insufficient to cover those incremental costs and other damages, the Contractor shall be liable for and must promptly remit to the LAC 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 LAC.

- B. Without breaching this Agreement, the LAC 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 LAC has against the Contractor arising out of any other agreements between the LAC and the Contractor or otherwise unrelated to this Agreement. If and when the LAC's claims against the Contractor are finally adjudicated in a court of competent jurisdiction or otherwise resolved, the LAC will reimburse the Contractor to the extent of the amount the LAC 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 Contractor warrants and represents to the LAC:

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

- D That, except only for those representations, statements, or promises expressly contained in this Agreement, and any exhibits attached hereto and incorporated by reference herein, no representation, statement or promise, oral or in writing, or of any kind whatsoever, by the LAC, its officers, agents or employees has induced the Contractor to enter into this Agreement or has been relied upon by the Contractor.
- E That the Contractor has carefully examined and analyzed the provisions and requirements of this Agreement and that it understands the nature of the Services required;
- F That the Contractor acknowledges that the LAC, in its selection of the Contractor to perform the Services hereunder, materially relied upon the Contractor's Proposal, that the Proposal was accurate at the time it was made and that no material changes in it have been nor will be made without the express consent of the LAC;
- G. That the Contractor and, to the best of its knowledge, its subcontractors are not in violation of the provisions of 18 U.S.C. § 666 (a)(2) and other Federal criminal laws applicable to public contracts funded with federal government funds, the Illinois Criminal Code, 720 ILCS 5/33E-1 et seq. (1989), as amended; and the CHA's Ethics Policy, as amended (see http://www.thecha.org/pages/forms_documents/66.php).
- H. That the Contractor has disclosed any and all relevant information to the LAC and the Contractor understands and agrees that any certification, affidavit or acknowledgment made under oath or failure to disclose in connection with this Agreement is made under penalty of perjury and, if false, is also cause for termination of this Agreement.
- I. That the Contractor is a duly organized and validly existing corporation under the laws of the State of Illinois 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 Contractor 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 Contractor.

Section 8.02 Joint and Several Liability

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

Section 8.03 Business Documents and Contractor's Affidavit

The Contractor shall provide to the LAC evidence of its authority to conduct business in the State of Illinois, including without limitation, registrations of assumed names or limited partnerships and certifications of good standing with the Office of the Secretary of the State of Illinois. The Contractor's Affidavit is attached hereto as Exhibit VII 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 LAC or CHA or other units of government and no other officer, employee, or agent of the LAC or 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, or LAC member shall be entitled to any share or part of this Agreement or to any financial benefit to arise from it.
- B. The Contractor covenants that it and its employees, or sub-contractors, presently have no interest and shall acquire no interest, direct or indirect, in this Agreement which would conflict in any manner or degree with the performance of the Services hereunder. The Contractor further covenants that during the performance of this Agreement, no person having any such interest shall be employed. Contractor agrees that if the LAC determines that any of Contractor's services for others conflict with the Services that the Contractor is to render for the LAC under this Agreement; Contractor shall terminate such other services immediately upon request of the LAC.
- 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 or the LAC 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 Contractor 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 LAC or CHA shall be personally liable to the Contractor or the Contractor's successor in interest for: (i) any default or breach by the LAC under this Agreement, (ii) any fee due to the Contractor or the Contractor's successor in interest or (iii) any other obligation arising under this Agreement.

Section 8.06 Independent Contractor

The Contractor and the LAC recognize that Contractor is an independent contractor and not an employee, agent, partner, joint venturer, covenantor, or representative of the LAC and that LAC will not incur any liability as the result of Contractor's actions. Contractor and its employees, representatives, and agents shall at all times represent and disclose that they are independent contractors of the LAC and shall not represent to any third party that they are an employee, agent, covenantor, or representative of the LAC. The LAC shall not be obligated to

withhold any funds from Contractor for tax or other governmental purposes, with respect to its employees, agents, representative or subcontractors. Contractor and its employees, representatives, and agents shall not be entitled to receive any employment benefits offered to employees of the LAC 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 Contractor and by the LAC or his/her respective designees. The LAC shall incur no liability for additional Services without a written amendment to this Agreement pursuant to this Section.

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

Section 9.04 Compliance with All Laws and Regulations

- A. The Contractor 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 Contractor 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 Contractor 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 Contractor hereby irrevocably submits itself to the original jurisdiction of those courts located within the County of Cook, State of Illinois, with regard to any controversy arising out of, relating to, or in any way concerning the execution or performance of this Agreement. The Contractor agrees that service of process on the Contractor may be made, at the option of the LAC, 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 Contractor, or by personal delivery on any managing partner, partners and principals of the Contractor. If the Contractor brings any action against the LAC 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 Contractor agrees at all times to cooperate fully with the LAC and to act in the LAC's best interests. If this Agreement is terminated for any reason, or if it is to expire on its own terms, the Contractor shall make every effort to assure an orderly transition to another Contractor, the uninterrupted provision of Services during any transition period and shall otherwise comply with the reasonable requests and requirements of the LAC in connection with the termination or expiration of this Agreement.

Section 9.11 Waiver

Whenever under this Agreement the LAC, by a proper authority, expressly waives the Contractor's performance in any respect or expressly waives a requirement or condition to either the LAC's or the Contractor'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 LAC may have waived the performance of a requirement or condition.

Section 9.12 Flow-Down Provisions

The Contractor 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 Contractor and the LAC shall be through Linda Greene 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 Contractor shall be mailed by certified mail, return receipt requested, postage prepaid to:

Lucas Greene Associates, LLC.
P.O. Box 49-6248
Chicago, Illinois 60649

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

Cabrini-Green Local Advisory Council
530 W. Locust Ave.
Chicago, Illinois 60610

Copy to:

Jeff Leslie
Paul J. Tierney Director, Housing Initiative & Clinical Professor of Law
Edwin F. Mandel Legal Aid Clinic
University of Chicago Law School
6020 S. University Ave.
Chicago, Illinois 60637

ARTICLE 11. AUTHORITY

Section 11.01 LAC's Authority

Execution of this Agreement by the LAC 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 Contractor has been made with complete and full authority to commit the Contractor 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 LAC and the Contractor have executed this Agreement as of the date first written above.

**CABRINI-GREEN
LOCAL ADVISORY COUNCIL**

BY: *Carol Steele*
Carol Steele, President,
Cabrini Green Local Advisory Council

LUCAS GREENE ASSOCIATES L.L.C.

By: *Linda Greene*
Linda Greene, Principal,
Lucas Greene Associates, L.L.C.