

CONTRACT NO. 11875

**ENVIRONMENTAL REMEDIATION
SERVICES AGREEMENT**

BETWEEN

THE LUSE COMPANIES

AND

THE CHICAGO HOUSING AUTHORITY

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AGREEMENT

THIS ENVIRONMENTAL REMEDIATION SERVICES AGREEMENT (hereinafter, "Agreement") 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 **THE LUSE COMPANIES** (the "Contractor"), an Illinois corporation with offices at 3990 Enterprise Court, Aurora, IL 60504, is made as of this 6th day of November, 2016.

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 Event No. 1293 ("RFP") on or about July 14, 2016 for vendors to provide lead abatement, asbestos abatement, and mold remediation services at CHA-owned properties on an as-needed basis; and

WHEREAS, the Contractor submitted its Proposal on or about August 19, 2016, to the CHA indicating it is ready, willing and able to provide the services as set forth in the RFP, and the CHA's Board of Commissioners authorized the CHA to enter into this Agreement by Resolution No. 2016-CHA-119 on October 18, 2016; and

WHEREAS, the CHA and the Contractor desire to enter into the Agreement for the provision of environmental remediation 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 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

"Abatement" means the work area preparation, complete removal of a hazardous substance by methods including encapsulation, enclosure, controlled renovation procedures, removal, and clean-up to prescribed levels of decontamination.

“Agreement” means the agreement entered into between the CHA and the Contractor resulting from the RFP.

“Asbestos” is the commercial term applied to the asbestiform varieties of six different minerals (chrysotile, amosite, crocidolite, anthophyllite, tremolite and actinolite).

“Asbestos-Containing Material (ACM)” means those manufactured products and construction materials including structural and mechanical building materials that contain more than one percent (1.0%) asbestos by weight.

“Contract” or “Contract Documents” include, as applicable, all written modifications, amendments and change orders to this Agreement, the Agreement, “Amendment(s) to Special Conditions”, if any, the “Special Conditions of the Contract for Construction”, “HUD’s General Conditions for Construction Contracts (Form 5370)”, the “Instructions to Bidders (form HUD-5369)”, applicable wage rate determinations from either the U.S. Department of Labor or HUD, the Performance and Payment Bond or Bonds or other assurances of completion, the Technical Specifications for each Task Order, including the “Technical Specifications for Lead Based Paint Abatement Services,” “Technical Specifications for Asbestos Abatement Services”, and “Technical Specifications for Mold Remediation Services,” drawings for each Task Order, if any, Contractor’s Affidavit or any other affidavits, certifications or representations the Contractor is required to execute under the Contract with the CHA, the Compliance Affidavit, MBE/WBE/DBE and Section 3 Utilization Plans, and the CHA’s Section 3 Policy. In the event that any provision in one of the component parts of the Contract conflicts with any provision of any other component part, the provision in the component part first enumerated herein shall govern except as otherwise specifically stated. The Contract Documents enumerated herein contain the entire Contract between the parties, and no representations, warranties, agreements, or promises (whether oral, written, expressed, or implied) by the CHA or the General Contractor are a part of the Contract unless expressly stated therein.

“Contractor” means the firm, company, organization, vendor, etc. awarded the Agreement pursuant to the RFP.

“DOSH” means Division of Occupational Safety & Health.

“Dwelling” means a single unit of residence for a family or one or more persons. Examples of dwelling units include: a single family home, an apartment unit in a low-rise or high-rise apartment building or a row/townhouse.

“Lead-based Paint” means paint or other surface coatings that contain lead equal to or in excess of 1.0 milligrams per square centimeter or more than 0.5 percent by weight.

“Mold Remediation” refers to techniques used in the process of removal and/or cleanup of mold from an indoor environment.

“Non-Dwelling” means public housing dwelling units that the CHA has decided to use for a purpose other than housing an eligible, low-income family. It also includes any other non-residential properties that the CHA may own including but not limited to: office spaces, community spaces, etc.

“OSHA” means the Federal Occupational Safety and Health Administration.

"Project" means the Work assigned through a Task Order.

"Property" means the CHA-owned property identified in the Task Order where Work is to be performed.

"Task Order" means the order issued by the CHA that sets forth the description of the Project, scope of work, time frame for performance and fixed fees for Contractor's Services to be performed in accordance with the terms and conditions of the Contract.

"Work" means the performing, furnishing and/or installing of all labor, materials and equipment necessary at the Property in accordance with the Agreement.

ARTICLE 2. CONTRACTOR'S DUTIES AND RESPONSIBILITIES

Section 2.01 Services to be Performed

A. Scope of Work

The Scope of Work of this Contract is construction related activities related to environmental remediation services at various CHA locations, Chicago, Illinois. The services that the Contractor shall provide during the term of the Agreement shall include, but not be limited to, provision of asbestos and lead-based paint abatement and mold remediation services for CHA owned properties including both Dwelling and Non-Dwelling units (hereinafter collectively referred to as the "Services"). The work will be performed at various CHA locations in Chicago, IL. The Services are to be completed as indicated in the Task Orders issued hereunder. The specific commencement and completion dates for the Services shall be established by the CHA and set forth in the Notice to Proceed for each Task Order.

When the Contractor is required to perform one or more of the required abatement or remediation services in a particular unit, the Contractor shall not charge the CHA additional mobilization and demobilization for such Dwelling or Non-Dwelling unit.

B. Statement of Work and Technical Specifications

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

C. Deliverables

1. Deliverables Generally. In connection with its performance of the Services, the Contractor shall prepare and/or provide to the CHA, at the times specified in the Task Order or at such other times as the CHA shall designate, certain deliverables that may include, but are not limited to, the items described below (hereinafter, collectively "Deliverables"). All Deliverables shall be in the form described in the Task Order or in such other form as the CHA shall require. The CHA reserves the right to reject any or all Deliverables which, in the reasonable judgment of the CHA, the Architect/Engineer, CHA's Project Manager, or CHA's Field Manager

are incomplete or inadequate. The CHA shall notify the Contractor in writing of any deficiencies the CHA identifies with respect to any Deliverable within fifteen (15) calendar days after receipt of such Deliverable, in which event the Contractor shall have a period of not more than fifteen (15) calendar days to correct such deficiency. The CHA may, at its sole and absolute discretion, accept a partial or incomplete Deliverable from the Contractor for review, but such acceptance shall not constitute a waiver of the CHA's right to insist upon completion and/or correction of such Deliverable.

2. Nature and Format of Deliverables. The Deliverables to be provided by the Contractor shall, in general, be sufficient to communicate the progress of and details concerning the Work. Deliverables may include, without limitation, such things as samples, reports, spreadsheets, critical path schedules, photographs, construction administration records or reports, as-built drawings and specifications, as-built surveys, and inspection reports.
 - i. Reports, studies, surveys, property inspections, recommendations and similar documents shall be provided in written and bound format and all photographic documentation and graphics shall be in either digital or color photographic form.
 - ii. All reports shall be submitted in triplicate, with original quality graphics (either color or half-tone) capable of color Xerox[®]-type reproduction.
 - iii. Deliverables such as samples, reports, spreadsheets, sketches, photographs, and drawings shall be provided in accordance with the schedule and delivery dates set forth in the Task Orders.

(c) Deliverables Upon Completion. Upon completion of the Task Order Work, the Contractor is required to submit a final report that includes daily logs, worker credentials, waste manifests, and photographs.

(d) Electronic Data Formats. The Contractor shall be capable of collaborating with the CHA, the A/E, the Project Manager, and Field Manager electronically via the systems set forth in Paragraph 55 of the Special Conditions of the Contract, attached hereto.

The Contractor shall also provide all electronic files and media in formats directly readable and compatible with the CHA's information management software.

Section 2.02 Performance Standards

The Contractor shall perform all Services required under this Agreement to the satisfaction of the CHA, and 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, and in accordance with any federal, state, and local laws, statutes or regulations applicable to this Agreement or the Work. The Contractor must at all times act in the best interests of the CHA consistent with the professional obligations assumed by it in entering into 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 CHA to furnish its best professional expertise and judgment in rendering and completing the Services, and shall at all times use its best efforts to assure quality, timeliness, and efficiency in completing the Work. The Contractor agrees that performance of the Services in a satisfactory manner shall include quick response to the CHA'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 Contract Administration and Task Ordering Procedures

- A. Establishment of List Order. The Contracting Officer shall establish a random list order of the selected Contractors. Task Orders will be offered to each Contractor in the order they appear on the list. The first Task Order will be offered to the Contractor first on the list, the second task order will be offered to the next Contractor on the list and so on. Once the CHA reaches the end of the list, the CHA shall start at the beginning of the established list and continue to offer Task Orders to the next Contractor on the list. The CHA will not reorder the list each time it reaches the end of the list.**
- B. Services shall be requested via a Task Order Proposal Request issued to the next-in-line Contractor, which shall include a description of the Scope of Work for the Task Order. Once contacted, the Contractor shall proceed to the location where the work is to be performed to review the proposed Scope of Work. On the basis of the Scope of Work and the Contractor's site inspection, the Contractor shall prepare and submit a proposal to perform the Scope of Work outlined in the Task Order Proposal Request on a Lump Sum Basis within three (3) days, unless otherwise directed by the CHA. The Contractor is solely responsible for any expenses incurred to prepare the proposal. The Contractor's cost for the Task Order Work shall be based on the quantity of hazardous material to be remediated and the fixed unit costs for specific types of tasks submitted by the Contractor in Contractor's Fee Proposal, attached hereto as **Exhibit II** and incorporated by reference herein. The CHA reserves the right to further negotiate the cost for the Task Order work with the Contractor.**
- C. Once the CHA and the Contractor have agreed upon the Scope of Work and compensation for the Task Order work, the parties shall execute a Task Order Authorization form, and CHA's Department of Procurement and Contracts shall issue a Purchase Order form and a Notice to Proceed. All Task Orders are subject to the terms and conditions of the Contract, notwithstanding the terms and conditions appearing on the reverse side of CHA's Purchase Order form. Task Orders may not be issued orally, but may be issued by fax or email.**
- D. Exceptions to Ordering Process. The CHA may not offer or finalize a Task Order with the next-in-line Contractor if the following conditions occur, including, but not limited to:**

- i. The CHA determines that the Contractor cannot perform the Task Order work because the Contractor's proposed staffing or work plan to perform the Task Order Work will not meet the CHA's needs for the Project, or will not be advantageous to CHA;
- ii. The Contractor fails to submit a proposal for the Task Order work within three (3) days, or within such other time requested by the CHA;
- iii. The CHA determines that the Contractor's fee proposal to perform the Task Order Work is excessive in comparison to the independent cost estimate for the Task Order Work, and the CHA and the Contractor cannot agree upon the firm fixed price for the Task Order Work. The CHA's decision not to finalize a Task Order with the Contractor shall be final and not subject to the Article V Disputes provision; or
- iv. It is necessary to place a Task Order with a specific Contractor to satisfy the guaranteed minimum value of work in the Contractor's Agreement.

Section 2.04 Key Personnel

Steven T. Luse, President, 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 CHA, provided that the CHA shall have the right to approve such staff changes and said approval shall not be unreasonably withheld.

Section 2.05 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 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 III** 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, Contractor must furnish such reports and information as requested by the Chicago Commission on Human Relations.

Section 2.06 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 Contractor agrees to send to each labor organization or representative of workers with which the Contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- iv. The Contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The Contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.
- v. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the Contractor is selected but before the contract is executed, and (2) with persons other than those to whom the

regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135.

- 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. Contractors and their 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. Contractor and sub-contractors 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 contractor 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. Contractors and their 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).
 - v. **Section 3 Hiring**
The Section 3 Regulations provide that contractors and their subcontractors demonstrate compliance by employing Section 3 Residents as 30 percent of the

aggregate number of New Hires. A contractor or subcontractor is required to hire only when a New Hire is needed to perform the work.

(a) CHA Preferences

The hiring efforts of the CHA's contractors and subcontractors, shall be directed to provide training and employment opportunities to Section 3 Residents in the following order of priority:

1. Residents of the housing development or developments for which the Section 3 Covered Assistance is expended;
2. Residents of other housing developments managed by the CHA;
3. CHA Housing Choice Voucher Participants;
4. Participants in HUD Youthbuild Programs being carried out in the Chicago Metropolitan Area;
5. Other Section 3 Residents.

3. Documenting and Reporting

- i. Contractor agrees to comply with the above Section 3 requirements in accordance with the Contractor's Section 3 Utilization Plan submitted with each Task Order, which shall be prepared by the Contractor and agreed to by CHA. CHA shall not be required to agree to the Contractor's Utilization Plan until the Contractor 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. Contractor's Compliance Affidavit is attached hereto in **Exhibit IV** and is incorporated by reference herein.
- iii. The Contractor and its subcontractors shall provide all required compliance data with respect to Contractor's 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.

4. This Section 3 Contract Provision shall flow down to each subcontract at every tier.

- B. MBE/WBE/DBE Compliance.** Contractor agrees to comply with the CHA's Minority and Women Disadvantaged Business Enterprise ("MBE/WBE/DBE") requirements in accordance with the Contractor's MBE/WBE/DBE Utilization Plans, where required by a Task Order, and otherwise comply with the CHA's MBE/WBE Policy (see http://www.thecha.org/assets/1/22/Amendment_to_Special_Conditions_-_M-WBE.pdf or the copy included in the RFP). Contractor's Compliance Affidavit is attached hereto as **Exhibit IV** and is incorporated by reference herein.

Documenting and Reporting. The Contractor and its subcontractors shall provide all required data with respect to Contractor's MBE/WBE/DBE compliance 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 2.07 HUD's General Conditions for Construction Contracts

HUD's General Conditions for Construction Contracts (the "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, as applicable to the Work.

Section 2.08 CHA's Special Conditions for Construction Contracts

CHA's Special Conditions for Construction Contracts (the "Special Conditions") supplement HUD's General Conditions, and are attached hereto as **Exhibit VI** and incorporated by reference as if fully set forth herein. The Contractor agrees to fully comply with the CHA's Special Conditions, as applicable to the Work.

Section 2.09 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 by electronic media, pursuant to the work contracted for by the CHA hereunder (hereinafter, "Work Product") will belong solely to the CHA 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 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," Contractor 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. Contractor will execute assignments if requested by the CHA, without additional compensation. Contractor will document all work performed for the CHA and will turn such documentation over to the CHA on completion of the Contractor's services hereunder or earlier, if requested by the CHA. Contractor 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 Contractor, Contractor 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, Contractor 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. Contractor 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 Contractor in connection with the performance of the Contractor's Services under this Agreement shall be the property of the CHA. The Contractor 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 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 CHA 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 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 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 CHA any damages the CHA may sustain by reason thereof. The Contractor shall maintain all CHA Documents not previously delivered to the CHA for a period of three (3) years after final payment is 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 2.09 shall survive the expiration or termination of the Agreement.
- F. The Contractor shall flow down the provisions of this Section 2.09 titled "Ownership of Work Product, Documents, Records and Reports" to its subcontractors at every tier.

Section 2.10 Audit Requirement

The CHA 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 CHA.

Section 2.11 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 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 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 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 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. The Contractor agrees that this Section 2.11 of the Agreement shall survive the termination of the Agreement.

Section 2.12 Subcontracts and Assignments

Unless otherwise provided for herein, the Contractor shall not subcontract, assign, 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 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 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 Contractor, 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 2.13 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 Contractor purchases ownership with funds awarded pursuant to this Agreement for the purpose of meeting the objectives of this Agreement.

Section 2.14 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 2.15 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 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 2.16 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.

Section 2.17 CHA Inspector General

It is the duty of the Contractor and its subcontractors to cooperate with the CHA Inspector General in any investigation or hearing undertaken. All of the Contractor's subcontracts must include this provision and require agreement and compliance with the same.

Section 2.18 CHA Minimum Wage Requirement

In accordance with CHA's Minimum Wage Requirements, Contractor shall (i) pay its employees no less than Thirteen Dollars per hour (\$13.00/hr.) for work performed under the Contract; and shall (ii) require any subcontractors of the Contractor to pay its employees no less than Thirteen Dollars per hour (\$13.00/hr) for work performed under the Contract. CHA's Minimum Wage Requirements may be found on CHA's website at http://www.thecha.org/assets/1/6/CHA_Minimum_Wage_Requirement.pdf.

Section 2.19 Compliance with CHA Policies

The Contractor shall comply with the applicable provisions of all CHA policies including, but not limited to:

- Ethics Policy

- Local Transportation & Mileage Reimbursement Policy
- CHA Travel Guidelines
- General Business Expense Policy
- CHA's Language Access Policy

ARTICLE 3. TERM OF AGREEMENT

Section 3.01 Term of Agreement

The term of this Agreement is for the period of **November 7, 2016 through November 6, 2018** (the "Base Term") or until the Agreement is terminated in accordance with its terms, whichever occurs first. At the Agreement's expiration date, the Agreement's terms and conditions shall continue to remain in effect with respect to any Task Order issued pursuant to a Task Order Proposal Request that was made by the CHA **prior** to the expiration of the Contract term. Task Order Proposal Requests may be issued through the last day of the contract term. Task Order work not completed within the term of the Agreement shall continue until the entire scope of work required under an assigned Task Order has been completed in accordance with its respective terms and all Work has been accepted by the CHA.

Section 3.02 Contract Extension Options

The CHA, at its sole discretion, may extend this Agreement for 2 additional 1-year option periods. Any extension shall be under the same terms and conditions as this original Agreement and in accordance with the Option Year pricing included in Contractor's Fee Proposal, attached hereto as **Exhibit II**. 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 CHA. The Contractor 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 Contractor, and the failure by the Contractor to meet deadlines may result in economic or other significant losses to the CHA. Therefore, except to the extent that the Contractor'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 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

This is an indefinite delivery, indefinite quantity contract as defined in the HUD Procurement Handbook (7460.8 Rev. 2) and as such, the Contractor shall be entitled to a minimum value of work of **Fifty-Thousand and 00/100 Dollars (\$50,000.00)** under this Agreement during the Base Term. The CHA shall pay the Contractor an amount up to and not-

to-exceed **Two Million and 00/100 Dollars (\$2,000,000.00)** for the satisfactory performance of the Services (the “NTE Amount”), in accordance with the fixed rates set forth in Contractor’s Fee Proposal, which is attached hereto as **Exhibit II** and incorporated by reference herein. The Contractor acknowledges that the CHA is not obligated to issue Task Orders to the Contractor for more than the minimum value of work set forth above. Compensation is subject to all conditions and requirements contained in the Task Orders and other Contract Documents. It is mutually understood and agreed by the parties that the above agreed upon NTE Amount 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 beyond the NTE Amount without an express written amendment to the Agreement increasing the NTE Amount.

Section 4.02 Claims for Additional Costs

In the event that additional Services not described in a Task Order are discovered to be necessary or are requested by the CHA, the Contractor must submit a Task Order Modification proposal on a form approved by the CHA for those additional Services within seven (7) calendar days of said discovery or request. Upon receipt of written approval, the Contractor shall proceed to complete the additional Services. The Contractor shall not be allowed any additional fees/costs without such written approval from the CHA. **The Contractor agrees to and waives any and all claims for payment for Work that would result in billings beyond the agreed upon Lump Sum Total established in a Task Order without a prior written amendment to the Task Order authorizing said additional work and additional costs.** The Contractor acknowledges an affirmative duty to monitor its performance and billings to ensure that the Scope of Work is completed within the previously agreed upon compensation amount for any Task Order. In no event may the Contractor make any claims against the CHA for equitable adjustments or additional fees or costs, direct or indirect, after completion of a Task Order assignment.

Section 4.03 Payment

The Contractor shall submit an invoice within ten (10) business days after completion of a Task Order. 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 has been provided, and all reporting requirements and Deliverables as set forth in this Agreement or any Task Order issued hereunder are received.

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 Contractor 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.

Section 4.04 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 Contractor’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 Contractor 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 Contractor 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 in accordance with the provision set forth in Paragraph No. 31 of the HUD General Conditions (**Exhibit V**).

ARTICLE 6. RISK MANAGEMENT

Section 6.01 Insurance

The Contractor agrees to comply with and meet or exceed all of CHA's insurance requirements that are set forth in CHA's Special Conditions-Section 36 (**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 indemnify the CHA in accordance with the indemnification provisions contained in CHA's Special Conditions, Paragraph 49.

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 CHA.
- 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 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 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, nondiscrimination, and CHA policies.
 7. Failure to ensure appropriate licensure of abatement contractors and compliance with regulatory requirements regarding abatement procedures, including, but not limited to, Occupational Safety and Health Administration requirements and notification of municipal authorities, the Department of Public Health or the Illinois Environmental Protection Agency, as required; and
 8. Any other acts specifically and expressly stated in this Agreement or in Paragraph 32 of the General Conditions or the Special Conditions 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 CHA, 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 CHA during this Agreement. The Contractor 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

CHA may, at its sole discretion, declare the Contractor in default upon the occurrence of any event of default which the Contractor fails to cure within thirty (30) calendar days after receipt of written notice specifying the event of default given in accordance with the terms of this Agreement, or, if such event of default cannot be reasonably cured within thirty (30) calendar days after notice, the Contractor has failed to commence and continue diligent efforts to cure such default within thirty (30) days. Whether to declare the Contractor in default is within the sole discretion of the CHA and neither that decision nor the factual basis for it are subject to review or challenge under the disputes provision of this Agreement. 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 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 CHA.
- 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.

Written notification of the default or any intention of the CHA to terminate the Agreement, shall be provided to the Contractor pursuant to Article 10. Any such decision by the CHA to declare default or terminate the Agreement shall be final and effective upon the Contractor's receipt of such notice. 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 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 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 Contractor when the Agreement may be deemed to be no longer in the best interests of the CHA or pursuant to any provision of Paragraph 34 of the General Conditions or the Special Conditions. 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 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 CHA 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 CHA 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 CHA.

Section 7.05 No Damages for Delay

The Contractor 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 Contractor'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 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 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 Contractor'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 Contractor 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 Contractor arising out of any other agreements between the CHA and the Contractor or otherwise unrelated to this Agreement. If and when the CHA's claims against the Contractor are finally adjudicated in a court of competent jurisdiction or otherwise resolved, the CHA will reimburse the Contractor 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 Contractor 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 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 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 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 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 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 CHA, its officials, 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 CHA, 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 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 Contractor to enter into this Agreement or has been relied upon by Contractor.
- H. 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) and during the term of the Agreement will not violate the provisions of such laws and policies.

- I. That the Contractor has disclosed any and all relevant information to the CHA 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.
- J. 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.
- K. 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 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 Representations, Certifications, and Other Statements of Bidders, Public and Indian Housing Programs of Offerors – Construction Contracts (HUD Form 5369-A), are attached hereto as **Exhibit VII** and incorporated by reference as if fully set forth herein. The Contractor shall at all times comply with, and be in compliance with the Contractor's Affidavit and the Contractor's Certifications and Representations of Offerors – Construction Contracts (HUD Form 5369).

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 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 CHA determines that any of Contractor's services for others conflict with the Services that the Contractor is to render for the CHA under this Agreement; Contractor shall terminate such other services immediately upon request of the CHA.

- C. Additionally, pursuant to the conflict of interest provisions in 2 C.F.R. §200.318 (c), 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 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 CHA shall be personally liable to the Contractor or the Contractor's successor in interest for: (i) any default or breach by the CHA 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 CHA recognize that Contractor 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 Contractor's actions. Contractor 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 Contractor for tax or other governmental purposes, with respect to its employees, agents, representatives or subcontractors. Contractor 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 Contractor 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 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 Section 6 of the Housing Act of 1937, 42 U.S.C. §1437, the Privacy Act of 1974, 5 U.S.C. §552(a), The Freedom of Information Act ("FOIA"), 5 U.S.C. §552, and Section 208 of the E-Government Act, and 24 CFR Part 5 and all other applicable HUD regulations; the Uniform Administrative Requirements, Cost Principles, and Audit Requirements contained in 2 C.F.R. Part 200, (2014), 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 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 Contractor, or by personal delivery on any managing partner, partners and principals of the Contractor. If the Contractor 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 Contractor 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 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 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 Contractor's performance in any respect or expressly waives a requirement or condition to either the CHA'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 CHA 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 2.05, 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 2.15, Section 2.16, Section, Section 2.17, Section 2.18, Section 7.03, Section 7.04, Section 9.04 of the Agreement and paragraph numbers 9, 10, 34, 45(a), 46 of the General and Special Conditions, and such other clauses so designated in the General or Special 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 CHA shall be through the Department of Capital Construction, 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 Contractor shall be mailed by certified mail, return receipt requested,

postage prepaid to:

Steven T. Luse, President
The Luse Companies
3990 Enterprise Court, Aurora, IL 60504
Phone: (630) 862-2600
Fax: (630) 862-2673

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 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.

[REMAINDER OF PAGE INTENTIONALLY BLANK; SIGNATURE PAGE ATTACHED HERETO]

IN WITNESS WHEREOF, the CHA and the Contractor have executed this Agreement as of the 6th day of November, 2016.

CHICAGO HOUSING AUTHORITY

BY: 
Dionna Brookens
Chief Procurement Officer

THE LUSE COMPANIES, INC

By: 
Steven T. Luse
President

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

BY: 
James L. Bebley
Chief Legal Officer