

**CONTRACT NO. 12620A**

**INSURANCE BROKERAGE AND  
CONSULTING SERVICES AGREEMENT**

**BETWEEN**

**CHICAGO HOUSING AUTHORITY**

**AND**

**ARTHUR J. GALLAGHER  
RISK MANAGEMENT SERVICES, INC.**

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**AGREEMENT**

**THIS INSURANCE BROKERAGE AND CONSULTING SERVICES AGREEMENT** (hereinafter, "Agreement") is entered into effective as of December 1, 2020, 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 East Van Buren Street, Chicago, Illinois 60605 and **ARTHUR J. GALLAGHER RISK MANAGEMENT SERVICES, INC.** (the "Contractor"), an Illinois corporation with offices at 2850 Gold Road, Rolling Meadows, Illinois 60008.

**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;

**WHEREAS**, on August 3, 2020, the CHA released a Request for Proposals ("RFP") Event No. 2856, to provide the CHA with insurance brokerage and insurance consulting services and to administer the CHA's insurance program and its Owner Controlled Insurance Program commonly referred to as the Private Property Managers Insurance Program ("PMIP");

**WHEREAS**, on or about September 9, 2020, Contractor submitted its proposal to the CHA, indicating it is ready, willing and able to provide the services outlined in the RFP;

**WHEREAS**, the CHA desires to enter into this Agreement to secure professional insurance brokerage and risk management consulting services from Contractor, and Contractor states that it is ready, willing and able to provide the services outlined in the RFP and as fully set forth herein.

**NOW THEREFORE**, in consideration of the mutual promises hereunder and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties 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.

## **ARTICLE 2. CONTRACTOR'S DUTIES AND RESPONSIBILITIES**

### **Section 2.01 Services to be Performed**

#### **A. Scope of Services and Statement of Work**

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

#### **B. Deliverables**

In performing the Services, Contractor shall prepare and/or provide deliverables required by the Agreement 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 electronic media (hereinafter, collectively, "Deliverables"). The CHA reserves the right to reject Deliverables which, in the reasonable judgment of the CHA: (i) do not adequately represent the intended level of completion or standard of performance; (ii) do not include relevant information or data; (iii) do not include all documents specified in this Agreement and considered reasonably necessary for the purposes for which the CHA made this Agreement with Contractor. The CHA will notify Contractor in writing of any deficiencies the CHA 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 CHA. Such Deliverables may not be considered as satisfying the requirements of this Agreement and partial or incomplete Deliverables shall in no way relieve Contractor of its commitments hereunder.

### **Section 2.02 Performance Standards**

Contractor shall perform all Services required under this Agreement in a professional manner 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. Contractor shall at all times use its best efforts to assure quality, timeliness, efficiency and creativity in rendering and completing the services. Contractor agrees that performance of the Services in a satisfactory manner shall include quick response to the CHA's needs. Accordingly, Contractor shall return all telephone calls and respond to all electronic mail on a timely basis within twenty-four (24) hours. Contractor shall at all times act in the best interests of the CHA consistent with its professional obligations assumed by it in entering into this Agreement.

### **Section 2.03 Key Personnel**

Contractor's personnel who will be providing Services under this Agreement shall be under the supervision of the following key personnel: Marcus Henthorn, Miles Shepp and Niki Clarida. Contractor retains the right to substitute key personnel with reasonable cause. Notwithstanding, the CHA shall have the right to approve such staff changes, which approval shall not be

unreasonably withheld. Contractor must provide no less than 30 days prior notice, when possible, of any change in personnel. The notice must be accompanied by a transition plan to mitigate any disruption to the provision of Services.

#### Section 2.04 Non-Discrimination

Manager 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. § 2000 et seq. (1989), as amended, and all regulations promulgated thereto. Manager 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), 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. §§ 6101-6106 (1989); Rehabilitation Act of 1973, 29 U.S.C. § 793-794 (1988); Fair Housing Amendments Act, 42 U.S.C. § 3601 et seq. (1988); Americans with Disabilities Act of 1990, 42 U.S.C. 12101 and 41 C.F.R. Part 60 et seq. (1990). Illinois Human Rights Act, 775 ILCS 5/1-101 et seq. as amended, and regulations promulgated in accordance therewith, including but not limited to the Equal Employment Opportunity Clause, I11. Admin. Code Tit. 44 section 750 Appendix A, which is attached hereto as Exhibit II and incorporated by reference herein; Public Works Employment Discrimination Act, 775 ILCS 10/0.01 et seq. as amended. Chicago Human Rights ordinance, s2-160-010 et seq. of the Municipal Code of Chicago, as amended; and the Chicago Fair Housing Regulations, s5-8-010 et seq. of the Municipal Code of Chicago, as amended. In addition, Manager must furnish such reports and information as requested by the Chicago Commission on Human Relations.

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

Contractor agrees to comply with the CHA's Section 3 requirements and MBE/WBE/DBE Minority and Women Disadvantaged Business Enterprise requirements, in accordance with Contractor's Section 3 and MBE/DBE/WBE Utilization Plans, which are attached hereto as Exhibit III and incorporated by reference as if fully set forth herein, and otherwise comply with CHA's Section 3 and MBE/WBE policies as may be required.

#### Section 2.06 Ownership of Work Product, Documents, Records and Reports

- A. CHA and Contractor agree that all Deliverables, information and data in any form prepared, assembled or encountered by or provided to Contractor by CHA shall be the property of the CHA. During the performance of its Services, Contractor shall be responsible for any loss or damage to such Deliverables while in Contractor's possession and shall restore any lost or damaged Deliverables at Contractor's sole cost and expense.
- B. Contractor shall maintain its books and records and adopt a system of accounting in accordance with generally accepted accounting principles and practices, to properly reflect all costs of whatever nature claimed to have been incurred or anticipated to be incurred or in connection with Contractor's performance under this Agreement. In addition, Contractor shall keep such books and records in a safe place and make them available for audit, examination, excerpt, and transcription to be conducted by the CHA, HUD, the

Comptroller General of the United States or their duly authorized representatives, and allow inspection, copying and abstracting for at least three (3) years after the final payment is made in connection with this Agreement and all other pending matters are closed.

Section 2.07 Audit Requirement

CHA retains an irrevocable right to independently or, through a third party, audit Contractor's books and records pertaining to this Agreement and disallow any inappropriate billings upon written notice to Contractor.

Section 2.08 Confidentiality

Contractor agrees that all Deliverables, reports, documents and information prepared, assembled, received or encountered by Contractor pursuant to this Agreement (collectively, "Confidential Information") shall remain confidential and used solely for the purposes of meeting the objectives of this Agreement. 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 Contractor is presented with a subpoena duces tecum regarding such Deliverables, reports, records, documents data and/or information, which may be in Contractor's possession by reason of this Agreement, Contractor must immediately give notice to the CHA's Chief Executive Officer and General Counsel with the understanding that that the CHA will have the opportunity to contest such process by any means available to it before the Deliverables, reports, records, documents data and/or information are submitted to a court or other third party. 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 duces tecum or request is quashed or the time to produce is otherwise extended.

Section 2.09 Subcontracts and Assignments

Unless otherwise provided for herein, Contractor shall not subcontract, assign or otherwise delegate all or any part of its obligations under this Agreement or any part hereof without the prior written approval of the CHA. Any attempted subcontract, assignment or delegation without such approval shall be void and of no legal effect.

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 Contractor, without the prior written approval of CHA shall be void. CHA expressly reserves the right to assign or otherwise transfer all or any part of its rights or interests hereunder.

Section 2.10 Patents and Copyrights

To the extent applicable, 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 Contractor purchases ownership with funds awarded pursuant to this Agreement for the purpose of meeting the objectives of this Agreement.

#### Section 2.11 Religious Activities

In connection with the Services to be provided under this Agreement, 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 2.12 Drug-Free Workplace

Contractor shall establish procedures and policies to promote a “Drug-Free Workplace” and 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. Furthermore, 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 2.13 Force Majeure

Notwithstanding any other provision in this Agreement, 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, order or requirement of any government agency or authority.

#### Section 2.14 General Conditions for Non-Construction Contracts

Contractor agrees to comply with the terms and conditions of HUD’s General Conditions for Non-Construction Contracts (HUD form 5370-C 1/2017)) (“General Conditions”), which is attached hereto as Exhibit IV and incorporated by reference as if fully set forth herein. In the event of a conflict between the terms and conditions of General Conditions and the Agreement, the terms and conditions of the Agreement shall control.

#### Section 2.15 CHA Inspector General

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



### Section 2.16 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](http://www.thecha.org/assets/1/6/CHA_Minimum_Wage_Requirement.pdf).

### Section 2.17 Compliance with CHA Policies

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

- Ethics Policy
- Social Security Number Protection 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

This Agreement shall take effect as of December 1, 2020 and shall continue through November 30, 2022 (the "Base Term"), or until the Agreement is terminated in accordance with its terms, whichever occurs first.

### Section 3.02 Contract Extension Options

The CHA may, at its sole discretion, extend this Agreement for three (3) additional one-year option periods under the same prevailing terms and conditions as provided for under this original Agreement by providing written notice to Contractor. Such notice shall set forth the extension period. The Agreement shall be modified to reflect the time extension in accordance with the provisions of Section 9.03.

### Section 3.03 Timeliness of Performance

Contractor shall provide the Services and Deliverables in a timely manner as required under this Agreement, or, from time to time, as otherwise required by the CHA. Contractor and the CHA acknowledge that deadlines for certain Services provided for in this Agreement are dictated by the requirements of agencies or events outside the control of the CHA and Contractor. The failure by Contractor to meet deadlines will significantly affect the CHA. In those circumstances, except to the extent that Contractor's inability to meet its deadlines is caused by delay due to the CHA, by acts of God or other events outside the control of Contractor, "Time Is of The Essence."

## **ARTICLE 4.            COMPENSATION AND PAYMENT**

### **Section 4.01    Compensation**

The CHA will pay Contractor for Services performed satisfactorily under this Agreement a firm-fixed fee in an amount not-to-exceed Four Hundred Thirty-Eight Thousand and 00/100 Dollars (\$438,000.00) during the Base Term of this Agreement (the “Base Term Total Fees”) in accordance with Contractor’s Best and Final Fee Proposal (“Fee Proposal”), which is attached hereto as Exhibit V. The firm-fixed fee set forth herein is subject to the Pay for Performance Measures identified in Section 4.02 and Exhibit VI.

Compensation for any option year(s) that may be exercised by the CHA shall be in accordance with the same prevailing terms and conditions of this Agreement, except as to any price or cost terms that would be governed by the Fee Proposal for any exercised option year term(s). Contractor agrees not to perform and waives any and all claims for payment of work that would result in billings beyond this amount without prior written amendment to this Agreement authorizing said additional work. Contractor recognizes an affirmative duty to monitor its performance and billings to ensure that the scope of work is completed within this maximum fee amount.

### **Section 4.02    Payment**

During the Base Term of the Agreement, Contractor shall submit equal semi-annual (2) invoices totaling no more than \$219,000.00 per year. The Pay for Performance Measures Schedule, which is attached hereto as Exhibit VI and incorporated by reference herein, sets forth the percentage of the Base Term Total Fees which may be earned by Contractor for its successful completion of each Performance Measure at their respective due dates. Accordingly, in the event that Contractor has not met any of the Pay for Performance Measures as set forth in Exhibit VI, Contractor shall not be entitled to those portions of the Base Term Total Fees for any Performance Measure that is not timely and satisfactorily completed. CHA shall be entitled to withhold the amount of any unearned fees attributable to the Pay for Performance Measures Schedule from Contractor’s invoice(s) not as a penalty, but because Contractor did not earn the fees attributable to those Performance Measures. In addition to CHA’s right to withhold and/or deduct sums equivalent to unearned performance fees from future payments, the offset or reduction for unearned fees may be accounted for through repayment to CHA directly by Contractor. The determination of whether the Pay for Performance Measures Schedule, where subjective, has been met shall be within CHA’s sole reasonable determination.

All invoices are subject to review and approval by the CHA. Contractor shall furnish supporting documents and additional information as may be requested by CHA to approve each invoice. Contractor shall not be entitled to receive payment unless an invoice relating to such payment is first submitted and approved by the CHA. The CHA will make its best efforts to make payment for approved Services rendered under this Agreement within 30 days after receipt and approval of an invoice. If the CHA objects to all or any portion of any invoice, it shall notify 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. All disputes regarding invoices shall be handled in accordance with the provisions of Article 5 herein.

Section 4.03 Non-Appropriation

Funding for this Agreement is subject to: (1) availability of federal funds from HUD, (2) the approval of funding by the CHA's Board of Commissioners, and (3) 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 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 Contractor involving this Agreement, both parties agree to attempt to negotiate a resolution. If the parties cannot resolve the dispute through negotiation, either party may, unless otherwise set forth herein, submit the dispute in writing to the Deputy Chief of Procurement and Contracts (the "Director") for decision, who shall, with reasonable promptness, render a decision concerning the dispute submitted. Unless Contractor, within thirty (30) days after receipt of the decision, notifies the Director in writing that it takes exception to the decision, the decision of the Director shall be final and binding. Provided that Contractor has given written notice within the time stated and has brought suit against the CHA not later than one year after Contractor has received notice of the decision of the Director, then the decision of the Director shall not be final, and the dispute shall be determined on the merits by a court of competent jurisdiction.

**ARTICLE 6. RISK MANAGEMENT**

Section 6.01 Insurance

Prior to the commencement of this Agreement, Contractor agrees to procure and maintain at all times during the term of this Agreement, the types of insurance specified below in order to protect the CHA from the acts, omissions and negligence of Contractor, its officers, officials, subcontractors, joint ventures, partners, agents or employees. The insurance carriers used by Contractor must be authorized to conduct business in the State of Illinois and shall have a BEST Rating of not less than an "A". The insurance provided shall cover all operations under the Agreement, whether performed by Contractor or by its subcontractor, joint ventures, partners, agents, officers or employees.

A. Required Insurance Coverage

1. Workers Compensation and Occupational Disease Insurance

Workers Compensation and Occupational Disease Insurance in accordance with the laws of the State of Illinois (Statutory), Coverage A, and Employer's Liability, Coverage B, in an amount of not less than \$500,000/\$500,000/\$500,000.

2. Commercial/General Liability Insurance written on an occurrence form (Primary and Excess)

Commercial Liability Insurance provided is to have limits of not less than One million dollars (\$1,000,000.00) per occurrence with an Aggregate of not less than two million dollars (\$2,000,000.00) (i.e. \$1,000,000.00/\$2,000,000.00). In addition to the stipulations outlined above, the insurance policy is to include coverage for Contractual Liability, Products-Completed Operations, Personal & Advertising Injury and will also cover injury to Contractor's officers, employees, agents subcontractor, invitees and guests and their personal property. The CHA is to be endorsed as an additional insured on Contractor's policy and such insurance will be endorsed as primary and non-contributory with any other insurance available to the CHA.

3. Automobile Liability Insurance

When any motor vehicles (owned, non-owned and hired) are used in connection with the Services to be performed, Contractor shall provide Comprehensive Automobile Liability Insurance with limits of not less than one million dollars (\$1,000,000.00) per occurrence CSL, for bodily injury and property damage. The CHA is to be endorsed as an additional insured on Contractor's policy and such insurance will be endorsed as primary and non-contributory with any other insurance available to the CHA.

4. Professional Liability

Professional Liability Insurance covering acts, errors, or omissions shall be maintained with limits of not less than one million dollars (\$1,000,000.00) per occurrence. Coverage extensions shall include Blanket Contractual Liability. When policies are renewed or replaced, the policy retroactive date must coincide with, or precede, the start of services under the Contract. A claims-made policy which is not renewed or replaced must have an extended reporting period of two (2) years.

5. Excess Liability

Excess Liability coverage, if applicable, is to follow form of the Primary Insurance requirements outlined above.

## B. Related Requirements

Contractor shall advise all insurers of the contract provisions regarding insurance. The failure of Contractor to notify insurers of the Agreement provisions shall not relieve Contractor from its insurance obligations under this Agreement. Non-fulfillment of the insurance provisions shall constitute a breach of the Agreement and the CHA retains the right to stop work until proper evidence of insurance is provided.

Contractor shall furnish the Chicago Housing Authority, Department of Procurement and Contracts, 60 E. Van Buren St. 13th Floor, Chicago, Illinois 60605, original Certificates of Insurance evidencing the required coverage to be in force on the Effective Date of the Agreement. In addition, copies of the endorsement(s) that add the CHA to Contractor's as an additional insured are required.

**THE REQUIRED DOCUMENTATION MUST BE RECEIVED PRIOR TO CONTRACTOR COMMENCING WORK UNDER THIS AGREEMENT. CONTRACTOR OR ITS AUTHORIZED REPRESENTATIVES ARE NOT TO ENTER ONTO THE CHA'S PROPERTY PRIOR TO FULL COMPLIANCE WITH THIS AGREEMENT AND RECEIPT OF NOTIFICATION FROM THE CHA TO PROCEED.**

Renewal Certificates of Insurance, requested endorsements, or such similar evidence is to be received by the Department of Procurement and Contracts prior to expiration of insurance coverage. At the CHA's option, non-compliance will result in one or more of the following actions: (1) The CHA will purchase insurance on behalf of Contractor and will charge back all costs to Contractor; (2) Contractor will be immediately removed from the CHA's property and the Agreement revoked; (3) all payments due Contractor will be held until Contractor has complied with this Agreement; or (4) Contractor will be assessed Five Hundred Dollars (\$500) for every day of non-compliance. The receipt of any Certificate of insurance does not constitute agreement by the CHA that the insurance requirements in this Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with the requirements of this Agreement. The insurance policies shall provide for thirty (30) days written notice to be given to the CHA in the event coverage is substantially changed, canceled or non-renewed.

If the required insurance is underwritten on a claims-made basis, the retroactive date shall be prior to or coincident with the date of this Agreement and the Certificate of Insurance shall state the coverage is "claims made" and also the Retroactive Date. Contractor shall maintain coverage for the duration of this Agreement. Any extended reporting period premium (tail coverage) shall be paid by Contractor. Contractor shall provide to the CHA, annually, a certified copy of the insurance policies obtained pursuant hereto. It is further agreed that Contractor shall provide the CHA a thirty (30) days' notice in the event of the occurrence of any of the following conditions: aggregate erosion in advance of the Retroactive Date, cancellation and/or non-renewal.

Contractor shall require all subcontractors to carry the insurance required herein or Contractor may provide the coverage for any or all of its subcontractors, and if so, the evidence of insurance submitted shall so stipulate and adhere to the same requirements and conditions as outlined in Section 6.01(A) above. Evidence of such coverage must be submitted to CHA.

Contractor expressly understands and agrees that any insurance programs maintained by the CHA shall apply in excess of and will not contribute to insurance provided by Contractor under this Agreement.

Section 6.02 Indemnification

Contractor agrees to protect, defend, indemnify, keep save, and hold the CHA, its officers, officials, employees and agents and contractors free and harmless from and against any and all liabilities, losses, penalties, damages, settlements, environmental liability, costs, charges, professional fees or other expenses or liabilities of every kind, nature and character arising out of or relating to any and all claims, liens, demands, obligations, actions, suits, judgments or settlements, proceedings or causes of action of every kind, nature and character (collectively, "Claims") in connection with or arising directly or indirectly out of Contractor's performance of, or obligations under this Agreement and/or the acts and omissions of 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. 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.

The CHA shall have the right, at its option and at Contractor's expense, to participate in the defense of any suit, without relieving Contractor of any of its obligations under this indemnity provision. Contractor expressly understands and agrees that the requirements set forth in this indemnity to protect, defend, indemnify, keep, save and hold the CHA free and harmless are separate from and not limited by 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 CHA.
- B. Contractor's failure to perform any of its obligations under this Agreement including, but not limited to, the following:

1. Inability to perform the Services satisfactorily in accordance with the performance standards or as a result of insolvency, filing for bankruptcy or assignment for the benefit of creditors;
  2. Failure to comply with any term of this Agreement, including, but not limited to the provisions concerning compliance with HUD regulations, insurance and nondiscrimination.
  3. 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 Contractor without the prior written approval of the CHA, which written approval shall not be unreasonably withheld.
- D. Contractor's default under any other agreement it may presently have or may enter into with the CHA during this Agreement. 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

The occurrence of any event of default which 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 Contractor has failed to commence and continue diligent efforts to cure such default within thirty (30) days, the CHA may, at its sole option, declare Contractor in default. Whether to declare Contractor in default is within the sole discretion of the CHA and neither that decision nor the factual basis for it is subject to review or challenge under the disputes provision of this Agreement. Written notification of the default, and any intention of the CHA to terminate the Agreement, shall be provided to Contractor and such decision shall be final and effective upon Contractor's receipt of such notice pursuant to Article 10. Upon the giving of such notice, the CHA may invoke any or all of the following remedies:

- A. The right to terminate this Agreement as to any or all of the Services yet to be performed effective at a time specified by the CHA.
- B. The right to pursue any and all remedies, legal and/or equitable, available to the CHA.
- C. The right to withhold all or any part of 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.

If the CHA considers it to be in its best interest, 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, 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 shall be construed as a waiver, 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 for convenience, 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 or such Services may be deemed by the CHA to be no longer in the best interests of the CHA. If the CHA elects to terminate the Agreement in full, all Services to be performed hereunder shall cease effective five (5) days after the date of receipt of the notice. Contractor shall continue to render the services until the effective date of termination. No cost incurred by 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, fees incurred for services rendered through the date of termination. This Section 7.03 is not subject to Article 5 of this Agreement.

#### Section 7.04 Suspension

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

#### Section 7.05 No Damages for Delay

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. 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 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 un-liquidated 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, Contractor warrants and represents:

- A. That it is financially solvent. That it and each of its employees, agents, subcontractors 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; and
- B. That Contractor's execution and performance of this Agreement is not prohibited by, or in conflict with any other agreement or obligation of Contractor; and
- C. That no officer, agent or employee of the CHA is employed by 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 any sub-contractors to Contractor or anyone associated therewith, as an inducement for the award of a subcontract or order; and Contractor further acknowledges that any Agreement entered into, negotiated or performed in violation of any of the provisions set forth herein shall be void; and

- D. That Contractor shall not knowingly use the services of any ineligible subcontractor or consultant for any purpose in the performance of its Services under this Agreement; and
- E. 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 Deputy Chief of Procurement and Contracts to have, within five (5) years immediately preceding the date of this Agreement, been found to be in default on any contract awarded by the CHA and/or HUD; and
- F. That Contractor has carefully examined and analyzed the provisions and requirements of this Agreement and that it understands the nature of the Services required; and
- G. That the Agreement is feasible of performance in accordance with all of its provisions and requirements, and that Contractor has the power to enter into and can and shall perform, or cause to be performed, the Services in strict accordance with the provisions and requirements of this Agreement;
- H. That, no representation, statement or promise, except only for those representations, statements, or promises expressly contained in this Agreement, and any exhibits attached hereto and incorporated by reference herein, oral or in writing, or of any kind whatsoever, by the CHA, its officials, agents, or employees, have induced Contractor to enter into this Agreement or have been relied upon by Contractor; and
- I. That neither Contractor or, to the best of its knowledge, its subcontractors are in violation of the provisions of 18 U.S.C. § 666 (a)(1) and the Illinois Criminal Code, 720 ILCS 5/33E-1 et seq. (1989), as amended; or the CHA's Ethics Policy as amended; and
- J. That Contractor acknowledges that the CHA, in its selection of Contractor to perform the Services hereunder, materially relied upon Contractor's Proposal, that the Proposal was accurate at the time it was made; that no material changes in it have been nor will be made without the express consent of the CHA; and
- K. Contractor understands and agrees that any certification, affidavit or acknowledgment made under oath in connection with this Agreement is made under penalty of perjury and, if false, is also cause for termination of this Agreement.

#### Section 8.02 Joint and Several Liability

In the event that 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 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:

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. Contractor has executed a Contractor's Affidavit, which is attached hereto as Exhibit VII and incorporated by reference herein. Contractor shall at all times during the term of this Agreement comply with and remain in compliance with the terms of its Contractor's Affidavit.

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. Contractor covenants that it and its officers, directors, employees, or subcontractors, presently have no interest and shall acquire no interest, direct or indirect, in this Agreement which would conflict in any manner or degree with the performance of the Services hereunder. Contractor further covenants that in 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 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 requirements in OMB Circular A-102 and 24 C.F.R. §85.36(b)(3), no person who is an employee, agent, consultant, officer, or appointed official of the CHA and who exercises or has exercised any functions or responsibilities with respect to HUD assisted activities, or who is in a position to participate in a decision making process or gain inside information with regard to HUD activities, may obtain a financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, 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, 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 Contractor or Contractor's successor in interest for: (i) any default or breach by the CHA under this Agreement, (ii) any fee due to Contractor or Contractor's successor in interest or (iii) any other obligation arising under this Agreement.

**Section 8.06 Independent Contractor**

Contractor shall perform under this Agreement as an independent contractor to the CHA and not as a representative, employee, agent, or partner of the CHA.

**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 any provision of this Agreement and the RFP, the terms of this Agreement, then the RFP shall control, in that order.

**Section 9.02 Counterparts**

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which, when taken together, constitute one and the same document. Return of this document by electronic transmission bearing the signature of a party hereto, constitutes the execution and acceptance of such party. This Agreement may be executed via DocuSign or other electronic signature software, which shall be deemed an original.

**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 Contractor and by the Chief Executive Officer of the CHA or his 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 Contractor is required to obtain prior written approval, the effect of any approval which may be granted pursuant to 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. Contractor shall at all times observe and comply with all applicable laws, ordinances, rules, regulations 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.
- B. 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(s) required by law, ordinances, rules, regulations, or executive orders to be inserted shall be deemed inserted whether or not they appear in this Agreement or, upon application by either party, this Agreement shall forthwith be amended to literally make such insertion. However, in no event shall the failure to insert such provision(s) prevent the enforcement of this Agreement.

Section 9.06 Compliance with HUD Regulations

Contractor shall comply with all the provisions of HUD Regulations, and all state and local laws, ordinances and executive orders including, but not limited to, 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) as supplemented by Department of Labor regulations (29 CFR Part 51); Section 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.) as supplemented by Department of Labor regulations (29 CFR part 51); 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) as supplemented in Department of Labor regulation (29 CFR Part 3); Byrd “Anti-Lobbying” Amendment (31 U.S.C. § 1352); and Debarment and Suspension (Executive Orders 12549 and 12689), and Mandatory Standards and Policies relating to energy and efficiency which are contained in the State Emergency Conservation Plan issued in compliance with Energy Policy and Conservation Act (Pub. L 94163, 89 Stat. 87). Additionally, Contractor shall comply with the applicable provisions of OMB Circulars A-133, A-102, A-122, A-i 10 and A-87, as amended, succeeded or revised.

Section 9.07 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 9.08 Governing Law and Jurisdiction

This Agreement shall be governed as to performance and interpretation in accordance with the laws of the State of Illinois. 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. Contractor agrees that service of process on 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 Contractor, or by personal delivery on any managing partner, partners and principals of Contractor. If 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 9.09 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 9.10 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 9.11 Cooperation

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, 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 9.12 Waiver

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

**ARTICLE 10. COMMUNICATION AND NOTICES**

Section 10.01 Communication Between the Parties

Except as otherwise required by Section 10.02, all verbal and written communication, including required reports and submissions between Contractor and the CHA shall be through the CHA's Risk Management Department 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 Contractor shall be mailed by certified mail return receipt requested, postage prepaid to:

Arthur J. Gallagher Risk Management Services, Inc.  
Two Pierce Place  
Itasca, IL 60143  
Attention: Robert McWeeney, Area Executive Vice President

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

Chicago Housing Authority  
60 East Van Buren Street  
Chicago, Illinois 60605  
Attention: Chief Executive Officer

With a copy to:

Office of the General Counsel  
Chicago Housing Authority  
60 East Van Buren Street

Chicago, Illinois 60605  
Attention: General Counsel

**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 Contractor has been made with complete and full authority to commit 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.

*Signature Page Follows*



**IN WITNESS WHEREOF**, the CHA and Contractor have executed this Agreement as of the date first written above.

**CHICAGO HOUSING AUTHORITY**

By: DocuSigned by:  
Sheila Johnson  
02DBAECFF536465...  
Sheila Johnson  
Deputy Chief Procurement Officer

**ARTHUR J. GALLAGHER RISK  
MANAGEMENT SERVICES, INC.**

By: Cindy LaMantia  
Cindy LaMantia  
President-Great Lakes Region

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

By: DocuSigned by:  
Cheryl Colston  
7C7C97E7F721409...  
Cheryl J. Colston  
Chief Legal Officer