

**CONTRACT NO. 11466**

**PROFESSIONAL  
SERVICES AGREEMENT**

**BETWEEN**

**EFFICIENCY ENERGY LLC**

**AND**

**THE CHICAGO HOUSING AUTHORITY**

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## **AGREEMENT**

**THIS PROFESSIONAL SERVICES AGREEMENT** (hereinafter, "Agreement") is entered into as of this 1st day of August, 2014 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 **EFFICIENCY ENERGY LLC** (the "Contractor"), a Colorado limited liability company with offices at 288 Clayton Street, Suite 302, Denver, Colorado 80206.

## **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**, pursuant to the Energy Policy Act of 2005, as amended ("EPACT"), section 1331, Section 1790 of the United States Internal Revenue Service Code ("1790") was enacted to provide tax deductions to taxpayers when energy conservation measures have been implemented on public or private property after December 31, 2005 and before January 1, 2014;

**WHEREAS**, in the case of an energy efficient commercial building property (or a partially qualifying commercial building property for which a deduction is allowed under 1790) that is installed on or in property owned by a Federal, State, or local government or a political subdivision thereof, the owner of such property may allocate the 1790 deduction to the person primarily responsible for designing the property (a "Designer");

**WHEREAS**, credits, deductions and other forms of financial benefits and support available under EPACT and related energy efficiency laws and regulations may be modified, extended or otherwise affected pursuant to legislation enacted subsequent to the execution of this Agreement;

**WHEREAS**, the CHA desires the services of qualified contractors to provide consulting and coordinator services (including accounting, legal, engineering and related services) relating to EPACT, which are or may be necessary to pursue and monetize various EPACT and related funding and support opportunities, including without limitation, various deductions, exemptions, credits (e.g., Section 179D tax credits) and other arrangements allowable under the Energy Policy Act and similar federal and state energy efficiency programs;

**WHEREAS**, the CHA issued its Request for Proposals No. 14-01300 (the "RFP") on or about March 21, 2014 (hereinafter referred to as the "RFP" inclusive of any Addenda issued subsequently thereto), which is attached hereto as Exhibit I, to solicit proposals from qualified contractors capable of providing EPACT consulting and coordination services;

**WHEREAS**, the Contractor submitted its proposal to provide the desired services on or about April 21, 2014, and thereafter amended/supplemented such original proposal through the subsequent submission of its Best and Final Offer and Proposal (as so amended or supplemented the "Proposal"), which is attached hereto as Exhibit II;

**WHEREAS**, the Contractor represents that it is ready, willing and able to provide the desired services as further specified herein; and

**WHEREAS**, the CHA's Board of Commissioners has authorized the Chief Executive Officer or his designee to enter into a contract with the Contractor to provide the required services as more fully set forth in Article 2 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 AND DEFINITIONS**

**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 Work**

The services that the Contractor shall provide during the term of the Agreement shall include, but not be limited to, providing professional and consulting services to assist the CHA to maximize tax benefits available from and relating to various capital and operational improvements to buildings, facilities, amenities and other operations, pursuant to federal, state and local incentives and support, such as the Energy Policy Act of 2005.

**B.     Scope of Services**

The Services to be performed by the Contractor during the term of the Agreement are more fully described in Exhibit III, which is attached hereto and incorporated by reference herein. In addition to the scope and deliverables set forth in Exhibit III, the parties shall also utilize a generalized timeline consistent with the Sample Timeline incorporated in Exhibit IV as a resource and reference for the performance and timing of Services herein.

### **C. Deliverables**

In performing the Services, the Contractor shall prepare and/or provide certain deliverables, including those defined in Exhibit III, that are defined as consisting of work product from performing the Services that include, but are not limited to, documents, data, studies, reports, findings or information in any form prepared or assembled either in hard copy or on diskette (hereinafter, collectively, "Deliverables".) The CHA reserves the right to reject Deliverables which in the reasonable judgment of the CHA do not adequately represent the intended level of completion or standard of performance, do not include relevant information or data, or do not include all documents specified in this Agreement, or reasonably necessary for the purposes for which the CHA made this Agreement with the Contractor. The CHA will notify the 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 the Contractor of its commitments hereunder.

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

#### **Section 2.02 Performance Standards**

The Contractor shall perform all Services required under this Agreement with the degree of skill, care and diligence normally shown by an entity performing Services of a scope, purpose and magnitude comparable with the nature of the Services to be provided under this Agreement. The Contractor shall at all times use its best efforts to assure quality, timeliness, efficiency and creativity in rendering and completing the Services. The Contractor agrees that performance of the Services in a satisfactory manner shall include quick response to the 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.

The Contractor shall at all times act in the best interests of the CHA consistent with its obligations assumed by it in entering into this Agreement. Specifically, all services shall be performed in accordance with the due professional care standards required by and in accordance with the terms and conditions of this Agreement.

#### **Section 2.03 Key Personnel**

William Volker shall be responsible for supervising Contractor's other key personnel and for directing the Services to be performed during the term of the Agreement. The Contractor may request to substitute key personnel with reasonable cause by giving written notice of such request(s) to the CHA. The CHA shall have the right to approve such staff changes and said approval shall not be unreasonably withheld.

## Section 2.04 Non-Discrimination

Contractor shall comply with all federal, state and local non-discrimination laws, rules, regulations and ordinances including, but not limited to, The Civil Rights Act of 1964, 42 U.S.C. sec. 2000 et seq. (1989), as amended, and all regulations promulgated thereto. Contractor shall particularly remain in compliance at all times with: Exec. Order No. 11,246, 30 Fed. Reg. 12,319 (1965), reprinted in 42 U.S.C. 2000 (e) note, as amended by Exec. Order No. 11,375, 32 Fed. Reg. 14,303 (1967) and by Exec. Order No. 12,086, 43 Fed. Reg. 46,501 (1978); Age Discrimination Act, 42 U.S.C. sec. 6101-6106 (1989); Rehabilitation Act of 1973, 29 U.S.C. sec. 793-794 (1988); Fair Housing Amendments Act, 42 U.S.C. Sec. 3601 et seq., (1988); Americans with Disabilities Act of 1990, 42 U.S.C. 12101 and 41 C.F.R. Part 60 et seq., (1990). Illinois Human Rights Act, 775 ILCS 511-101 et seq., as amended, and regulations promulgated in accordance therewith, including but not limited to the Equal Employment Opportunity Clause, 111. Admin. Code Tit. 44 s 750 Appendix A; Employment Opportunity Clause, 111. Admin. Tit. 44 s 750 Appendix A; Public Works Employment Discrimination Act, 775 ILCS 10/0.01 et seq., as amended. Chicago Human Rights ordinance, s2-160-010 et seq., of the Municipal Code of Chicago, as amended; and the Chicago Fair Housing Regulations, s5-8-010 et seq., of the Municipal Code of Chicago, as amended. In addition, Contractor must furnish such reports and information as requested by the Chicago Commission on Human Relations.

## Section 2.05 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.

### I. 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 notices 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, 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](http://www.thecha.org/pages/section_3/65.php) or the copy included in the solicitation) as may be required. Contractor's Section 3 Utilization Plan is attached hereto as Exhibit III 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 Plan, which is attached hereto as Exhibit IV and incorporated by reference herein, and otherwise comply with the CHA's MBE/WBE Policy (see [http://www.thecha.org/pages/mbe\\_wbe\\_dbe/36.php](http://www.thecha.org/pages/mbe_wbe_dbe/36.php) or the copy included in the RFP).

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

### Section 2.06 Ownership of Documents; Records and Reports

- A. All Deliverables, information and data in any form prepared, assembled or encountered by or provided to Contractor under this Agreement are the property of the CHA. During the performance of its Services, the Contractor shall be responsible for any loss or

damage to such Deliverables while in the Contractor's possession and shall restore any lost or damaged Deliverables at the Contractor's sole cost and expense.

B. The 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 the Contractor's performance under this Agreement. In addition, the 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 audit, inspection, copying and abstracting for at least three (3) years after the final payment is made and all other pending matters are closed in connection with this Agreement.

#### **Section 2.07 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.

#### **Section 2.08 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.

#### **Section 2.09 Subcontracts and Assignments**

Unless otherwise provided for herein, the Contractor shall not subcontract, assign otherwise delegate or otherwise transfer all or any part of its obligations under this Agreement or any part hereof without the prior written approval of the 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 2.10 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 the 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, 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 2.12 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 2.13 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 2.14 - General Conditions for Non-Construction Contracts**

The Contractor agrees to comply with the terms and conditions of HUD's General Conditions for Non-Construction Contracts (HUD form 5370-C (10/2006)) ("General Conditions"), which is attached hereto as Exhibit VI 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 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 2.16 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

### **ARTICLE 3. TERM OF AGREEMENT**

#### **Section 3.01 Term of Agreement**

The Term of this Agreement is for the base term of two (2) years, commencing on August 1, 2014 and continuing through July 31, 2016 ("Base Term"), with three (3) additional one-year extension options (each an "Option Term") reserved to the CHA and exercisable in its sole discretion, or until the Agreement is terminated in accordance with its terms, whichever occurs first.

#### **Section 3.02 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 will significantly affect 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**

The compensation payable to the Contractor for satisfactory performance of the Services under this Agreement is structured as contingency compensation conditioned upon the successful completion and closing of monetized EPACT or similar tax credits for the ultimate receipt and benefit of CHA, which are paid or credited to CHA as the direct result of Contractor's provision of the Services.

In accordance with the Contractor's Proposal and Best and Final Offer, the contingency compensation shall be subject to tiered percentages as set forth more specifically below:

- 25% contingency compensation of actual monetized tax benefits to the CHA up to One Million Dollars (\$1,000,000.00) under this Agreement;
- 20% contingency compensation of actual monetized tax benefits to the CHA between One Million Dollars (\$1,000,000.00) and Two Million Dollars (\$2,000,000.00) under this Agreement; and
- 15% contingency compensation of actual monetized tax benefits to the CHA in excess of Two Million Dollars (\$2,000,000.00) under this Agreement;

The Contractor recognizes its affirmative duty to monitor its performance and billings and agrees to complete the Services within the compensation amount. The Contractor waives any and all claims of payment for work which would result in compensation in excess of the compensation amount for performance and completion of the Services.

### **Section 4.02   Payment**

The Contractor shall submit periodic invoices detailing the fees due for the Services provided with back-up documentation verifying such Services and their associated costs. The Contractor shall furnish such supporting documents and additional information as may be required to support and approve each invoice. The CHA shall make commercially reasonable efforts to pay the invoices within thirty (30) days of receipt of a properly submitted invoice. All invoices shall be subject to the review and approval of the CHA. However, notwithstanding the regular invoicing and payment process(es) set forth above, upon specific written approval of the CHA's Contracting Officer and the CHA's designated contract administrator, the parties may agree to payment(s) for the Contractor's completed Services to be made directly from a Designer or other third party within the parameters and settings of a financial closing or similar transaction where the CHA receives its payment, credit or other value as part of a structured and completed transaction, disbursement and/or closing.

The Contractor shall not be entitled to receive payment unless an invoice relating to such payment is first submitted to, and approved by the CHA. If the CHA objects to all or any portion of any invoices, it shall notify the Contractor of its objection 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 4.03 Non-Appropriation**

Funding for this Agreement is subject to: (1) availability of federal funds from HUD, (2) the approval of funding by the CHA's Board of Commissioners, and (3) the 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, who shall, with reasonable promptness, render a decision concerning the dispute submitted. The decision of the Director of Procurement and Contracts shall be final and binding.

### **ARTICLE 6. RISK MANAGEMENT**

#### **Section 6.01 Insurance**

Prior to the commencement of this Agreement, the 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 the Contractor, its officers, officials, subcontractors, joint ventures, partners, agents or employees. The insurance carriers used by the 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 the 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 Liability)

Commercial/General Liability Insurance provided is to have limits of not less than One Million Dollars (\$1,000,000) per occurrence with an Aggregate of not less than One Million Dollars (\$1,000,000) (i.e. \$1,000,000/\$1,000,000). 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 Contractors agents, subcontractors, invitees and guests and their personal property. The CHA is to be endorsed as an additional insured on the Contractors 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, the Contractor shall provide Comprehensive Automobile Liability Insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence CSL, for bodily injury and property damage. The CHA is to be endorsed as an additional insured on the 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

Whenever any architects, engineers, construction managers, property managers or other professional Contractors perform work in connection with this Agreement, Professional Liability Insurance covering acts, errors, or omissions shall be maintained with limits of not less than One Million Dollars (\$1,000,000) per occurrence. 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.

B. Related Requirements

The Contractor shall furnish the CHA, Department of Procurement and Contracts, 60 E. Van Buren, 13<sup>th</sup> Floor., Chicago, Illinois 60605, original Certificates of Insurance evidencing the required coverage to be in force on the Effective Date of the Contract. In addition, copies of the endorsement(s) adding the CHA to Contractor's policy as an additional insured are required. The required documentation must be received prior to the Contractor commencing work under this Agreement. Renewal Certificates of Insurance, or such similar evidence, is to be received by the Procurement and Contracts Department prior to expiration or renewal date occurring during the term of this Agreement or extensions thereof. 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 the Contractor and will charge back all cost to the Contractor; (2) all payments due the



Contractor will be held until the Contractor has complied with the Agreement; or (3) the Contractor will be assessed Five Hundred Dollars (\$500.00) for every day of non-compliance. The receipt of any certificates does not constitute agreement by the CHA that the insurance requirements in the Agreement have been fully met or that the insurance policies indicated on the certificate comply with all Agreement requirements. The insurance policies shall provide for thirty (30) days prior written notice to be given to the CHA in the event coverage is substantially changed, canceled or non-renewed.

**THE REQUIRED DOCUMENTATION MUST BE RECEIVED PRIOR TO THE CONTRACTOR COMMENCING WORK AT THE DESIGNATED CHA LOCATION.**

Renewal Certificates of Insurance or such similar evidence must be received by the Purchasing and Contracts Department prior to expiration of insurance coverage.

The receipt of any certificate does not constitute an agreement by the CHA that the insurance requirements in the Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with the requirements of the Contract. The insurance policies shall provide for thirty (30) days written notice to be given to the CHA in the event that coverage is substantially changed, canceled or non-renewed.

If any of the required insurance is underwritten on a claims made basis, the retroactive date shall be prior to or coincident with the date of the Agreement and the Certificate of Insurance shall state the coverage is "claims made" and also the Retroactive Date. The Contractor shall maintain coverage for the duration of the Agreement. Any extended reporting period premium (tail coverage) shall be paid by the Contractor. The Contractor shall provide to the CHA, annually, a certified copy of the insurance policies obtained pursuant hereto. It is further agreed that the Contractor shall provide the CHA a thirty (30) day 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.

The Contractor shall require all subcontractors to carry the insurance required herein or the 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 above.

The Contractor expressly understands and agrees that any insurance or self-insurance programs maintained by the CHA shall apply in excess of and will not contribute with insurance provided by the Contractor under the Agreement.

**Section 6.02 Indemnification**

The 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 this Agreement and/or the acts and omissions of the Contractor, its agents, employees, and subcontractors, including but not limited to, the enforcement of this indemnification provision. Without limiting the foregoing, any and all such Claims, relating to personal injury, death, damage to property, defects in material or workmanship, actual or alleged infringement of any patent, trademark, copyright or any other tangible or intangible personal or property right, or any actual or alleged violation of any applicable statute, ordinance, order, rule or regulation, or decree of any court, shall be included in the indemnity hereunder. The Contractor further agrees to investigate, handle, respond to, provide defense for and defend all suits for any and all Claims at its sole expense and agrees to bear all the costs and expenses related thereto, even if the Claims are considered groundless, false or fraudulent.

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

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

### **Section 7.01 Events of Default Defined**

Each of the following shall constitute an event of default:

- A. Any material misrepresentation, whether negligent or willful and whether in the inducement or in the performance, made by Contractor to the 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 Sub-grantees reasonable 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 Sub-grantee's reasonable control;
  6. Failure to comply with a material term of this Agreement, including, but not limited to, the provisions concerning compliance with HUD regulations, insurance and nondiscrimination; and
  7. Any other acts specifically and expressly stated in this Agreement as constituting an event of default.
- C. Any change in majority ownership or majority control of the Contractor without the prior written approval of the 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**

The occurrence of any event of default which the Contractor fails to cure within thirty (30) calendar days after receipt of written notice given in accordance with the terms of this Agreement and specifying the event of default or, if such event of default cannot be reasonably cured within thirty (30) calendar days after notice, or if the Contractor has failed to commence and continue diligent efforts to cure such default within thirty (30) days, the CHA may, at its sole option, declare the Contractor in default. 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 is subject to review or challenge under the disputes provision of this Agreement. Written notification of the default, and any intention of the CHA to terminate the Agreement, shall be provided to the Contractor and such decision shall be final and effective upon the Contractor's receipt of such notice pursuant to Article 10. Upon the giving of such notice, the 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 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. 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 (Director of Procurement and Contracts).

#### **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.

### **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, agents or 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 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.
- H. 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.
- I. That the Contractor is a duly organized and validly existing not-for profit corporation under the laws of the State of Illinois and has and will continue to have at all times during the term of this Agreement, all licenses necessary to render the Services required hereunder.
- J. That the Contractor has the power and authority to enter into and perform all of its obligations under this Agreement, and that this Agreement, when executed will constitute the duly authorized, valid and legally binding obligation of the Contractor.

#### **Section 8.02 Joint and Several Liability**

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

#### **Section 8.03 Business Documents and Contractor's Affidavit:**

The Contractor shall provide to the 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 is attached hereto as Exhibit VIII and incorporated by reference as if fully set forth herein.

#### **Section 8.04 Conflict of Interest**

- A. No member of the governing body of the CHA or other units of government and no other officer, employee, or agent of the CHA or other unit of government who exercises any functions or responsibilities in connection with the Services to which this Agreement pertains, shall have any personal interest, direct, or indirect, in this Agreement. No member of or delegate to the Congress of the United States or the Illinois General Assembly or CHA employee shall be entitled to any share or part of this Agreement or to

any financial benefit to arise from it.

- B. The Contractor covenants that it and its employees, or sub-consultants, 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 requirements in OMB Circular A-102 and 24 C.F.R. §85.36(b)(3), no person who is an employee, agent, consultant, officer, or appointed official of the CHA and who exercises or has exercised any functions or responsibilities with respect to HUD assisted activities, or who is in a position to participate in a decision making process or gain inside information with regard to HUD activities, may obtain a financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds hereunder, either for himself or herself or for those whom he or she has family or business ties, during his or her tenure or for one year thereafter.
- D. Furthermore, the 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 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 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:**

- A. The 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. 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.
- 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 Compliance with HUD Regulations**

The 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); 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).

#### **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 2.04, Section 2.05, Section 2.06, Section 2.07, Section 2.08, Section 2.09, Section 2.10, Section 2.11, Section 2.12, Section 2.13, Section 2.14, Section 2.15, Section 2.16, Section 7.03, Section 7.03, Section 7.04, and Section 9.04 of the Agreement and paragraph numbers 2, 3, 4, 5, 6, 10, 11, 12, 13, 14, 15, 16, 17, 20, 21 and 22 of the General Conditions.

**ARTICLE 10. COMMUNICATION AND NOTICES**

**Section 10.01 Communication Between the Parties**

All verbal and written communication, including required reports and submissions between the Contractor and the CHA shall be through the Finance Division 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:

Efficiency Energy LLC  
288 Clayton Street, Suite 302  
Denver, Colorado 80206  
Attn: Will Volker

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., 12<sup>th</sup> Floor  
Chicago, Illinois 60605  
Attention: Chief Executive Officer

Chicago Housing Authority  
60 E. Van Buren St.  
Chicago, Illinois 60605  
Attention: Finance Division

Copy to:

Office of the General Counsel  
Chicago Housing Authority  
60 E. Van Buren St., 12<sup>th</sup> Floor  
Chicago, Illinois 60605  
Attention: General Counsel

**ARTICLE 11. AUTHORITY**

**Section 11.01 CHA's Authority**

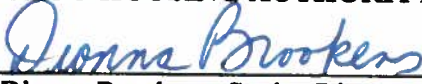
Execution of this Agreement by the CHA is pursuant to the United States Housing Act of 1937, 42 U.S.C. §1437 et seq.; regulations promulgated by HUD, and the State Housing Authorities Act, 310 ILCS 10/1 et seq., as amended, and other applicable laws, regulations and ordinances.

**Section 11.02 Contractor's Authority**

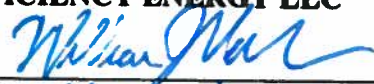
The signature of the person signing on behalf of the Contractor has been made with complete and full authority to commit the Contractor to all terms and conditions of this Agreement, including each and every representation, certification and warranty contained herein, including without limitation such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

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

**CHICAGO HOUSING AUTHORITY**

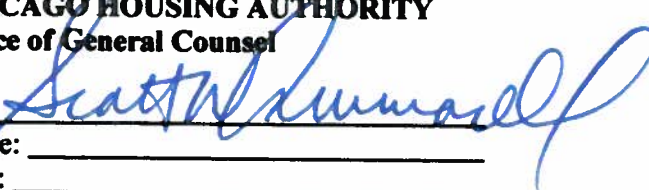
By:   
Dionna Brookens, Senior Director  
Department of Procurement and Contracts

**EFFICIENCY ENERGY LLC**

By:   
Name: William Volker  
Title: President

Approved As to Form

**CHICAGO HOUSING AUTHORITY**  
**Office of General Counsel**

By:   
Name: \_\_\_\_\_  
Title: \_\_\_\_\_