

CONTRACT NO.: 11498

PROFESSIONAL INDEPENDENT AUDIT

SERVICES AGREEMENT

BETWEEN

ERNST & YOUNG LLP

AND

CHICAGO HOUSING AUTHORITY

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- Exhibit I RFP #14-01348
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- Exhibit III Best and Final Offer dated July 28, 2014

AGREEMENT

THIS PROFESSIONAL INDEPENDENT AUDITING SERVICES AGREEMENT ("Agreement") is made effective as the 10th day of November 2014 by and between the **CHICAGO HOUSING AUTHORITY**, an Illinois municipal corporation of the City of Chicago, State of Illinois (hereinafter referred to as the "CHA") and **ERNST & YOUNG LLP**, a limited liability partnership authorized to do business in the State of Illinois (hereinafter referred to as the "Auditor").

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 USC 1437 et seq.; regulations promulgated by the United States Department of Housing and Urban Development ("HUD"), and the State Housing Authorities Act, 310 ILCS 10/1 et seq.; as amended, and other applicable laws, regulations and ordinances; and

WHEREAS, the CHA desires to retain the services of a professional auditor to perform independent audit functions for the CHA;

WHEREAS, the CHA released a Request for Proposal ("RFP") No. 14-01348 on June 13, 2014.

WHEREAS, in response to the RFP, the Auditor submitted its original proposal dated July 9, 2014 (as thereafter supplemented by its Best and Final Offer, the "Proposal"). The following portions of the Proposal are attached hereto in Exhibit II and are incorporated by reference as if fully set forth herein:

1. Schedule A – MWDBE Utilization Plan
2. Schedule B – Letter of Intent and Certification Letters;
3. Schedule C – Section 3 Utilization Plan; and
4. HUD forms 5369A, 5369C and 5370C-Non Construction;

WHEREAS, the CHA's Board of Commissioners has authorized the CHA's entry into this Agreement pursuant to that certain RESOLUTION NO. 2014-CHA-97, dated September 16, 2014; and

WHEREAS, the CHA and the Auditor desire to enter into this Agreement for independent auditing services and the Auditor states that it is ready, willing and able to provide the independent audit services in accordance with the terms and conditions of this Agreement.

NOW THEREFORE, in consideration of the mutual promises and the terms and conditions set forth herein, the CHA and the Auditor do hereby agree as follows:

ARTICLE 1 INCORPORATION OF RECITALS

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

ARTICLE 2 AUDITOR'S DUTIES AND RESPONSIBILITIES

Section 2.01 Services to be Performed

A. Scope of Services

The services, which the Auditor shall provide under this Agreement, are those services described below (the "Services"). The Services to be performed by the Auditor under this Agreement are as follows:

1. Audit CHA's general purpose financial statements, including the Statement of Net Assets and Statement of Revenues, Expenses, and Changes in Fund Net Assets, in accordance with generally accepted auditing standards and standards applicable to financial audits contained in Government Auditing Standards.
2. Audit CHA's federal program revenues and expenditures in accordance to standards applicable to financial audits contained in Government Auditing Standards (*OMB Circular A-133 Audits of States, Local Governments and Non-profit Organizations*);
3. Obtain an understanding of the CHA's internal control related to administering major federal programs and assess risk as required by OMB Circular A-133 for the purpose of expressing an opinion concerning compliance with laws and regulations related to major federal award programs; Complete auditor requirements, including review and attestation, on annual filings to Federal Audit Clearinghouse.
4. Complete auditor required procedures for HUD's Real Estate Assessment Center (REAC) on-line reporting applicable to the Financial Data Schedule (FDS), indicating whether the FDS is fairly presented in relation to CHA's general purpose financial statements included in the CAFR.
5. Read CAFR for CHA submission if CHA so desires to the Governmental Finance Officers Association (GFOA).
6. Perform an assessment of accounting principles used and significant estimates made by management and evaluate the overall financial statement presentation.
7. The annual audit of the general purpose financial statements will include the consideration of the Authority's annual actuarial report on Worker's Compensation, General Liability and other claims against the Authority, including an analysis of insurance reserves.

8. Read Pension Plan Financial Statements and audit report of other auditors.
9. Perform two quarterly limited reviews of the Authority's Financial Statements, during 2011 and 2012 for the quarters ending June 30th and September 30th. The reviews should be completed 60 days after the end of each quarter.

B. Partial Schedule of Deliverables.

1. Upon completion of the applicable audit(s), the following reports should be sent to CHA:
 - a. Auditor's opinion on the audited financial statements, Schedule of programs and REAC's Financial Data Schedules included in the CAFR.
 - b. Single Audit Report in conformity with OMB Circular A-133.
 - c. Management letter regarding matters of accounting, administration, operations, and internal controls.
 - d. Quarterly Review Findings from completion of the limited review procedures.
2. In carrying out its Services, the Auditor shall prepare and provide certain work product, reports, charts, evaluations, documents, data and other information, including but not limited to, work materials, devices, documents, data, studies, reports, findings or information in any form prepared or assembled either in hard copy or on diskette, (collectively "Deliverables") for delivery to the CHA. All reports shall include at a minimum; (i) a description of Auditor's methodology used to perform the review; (ii) the extent of the review; (iii) the limitations on the scope of the review, if any; and (iv) when applicable, findings and recommendations related to the particular subject matter of the review. 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, do not include all documents specified in this Agreement, or are reasonably necessary for the purposes for which the CHA made this Agreement with the Auditor. The CHA will notify the Auditor in writing of any deficiencies the CHA may identify involving a Deliverable, and the Auditor shall remedy such deficiencies within a reasonable time not to exceed ten (10) days. 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 Auditor of its commitments hereunder. Specifically, all services shall be performed in accordance with the professional care standards required by the American Institute of Certified Public Accountants (AICPA) and industry best practices, and in accordance with the terms and conditions of this Agreement.

C. Timeline.

- a) The audit fieldwork is to commence prior to the end of each year with the Comprehensive Financial Annual Report review including the audit report scheduled to be completed by May 1 of the following year.
- b) The single audit fieldwork including the audit report should be scheduled for completion by May 31. The CHA would like for interim work to occur prior to the end of each year.
- c) Quarterly review is to start with quarter ending June 30, 2015. The quarter reviews should be completed not later than sixty (60) days after quarter end.
- d) Other deliverables such as attestation of FDS and submission of Single Audit (Federal Audit Clearinghouse) reporting has to be completed prior to federal submission due dates.

Section 2.02 Performance Standards

The Auditor shall perform all Services required of it under this Agreement with that 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. Specifically, all Services shall be performed in accordance with the professional care standards required by the American Institute of Certified Public Accountants (AICPA) and in accordance with the terms and conditions of this Agreement. The Auditor acknowledges that it may be provided with or have access to valuable and confidential information and records of the CHA. The Auditor shall at all times provide the Services in accordance with applicable laws, regulations and professional standards.

Section 2.03 Key Personnel

Key personnel providing Services shall include Brian Ofenloch, Partner, and Jeannette Kunz, Senior Manager. The Auditor retains the right to substitute key personnel with reasonable cause, provided, however, the CHA shall have the right to approve such staff changes, which approval shall not be unreasonably be withheld.

Section 2.04 Non-Discrimination

A. The Auditor shall comply with the Civil Rights Act of 1964, 42 U.S.C. sec. 2000 et seq. (1989), as amended; 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); and Americans with Disabilities Act of 1990, 42 U.S.C. §12101; as supplemented by 41 C.F.R. Part 60 et seq. (1990).

Section 2.05 MBE/WBE and Section 3 Participation

The Auditor agrees to comply with the CHA's Minority Business Enterprise/Women's Business Enterprise Participation ("MBE/WBE") requirements and the CHA's Section 3 requirements in accordance with the Auditor's MBE/WBE Utilization Plan and Section 3 Utilization Plan, which is attached hereto and incorporated herein by reference.

Section 2.06 Ownership of Documents; Records and Reports

- A. All Deliverables and all information in any form prepared, assembled or encountered by or provided to the Auditor under this Agreement, not including the Auditor's work papers, (collectively the "Owned Deliverables") are the property of the CHA, except as provided below in paragraph B. During the performance of its Services, the Auditor shall be responsible for any loss or damage to such Owned Deliverables and information while in the Auditor's possession and shall restore any lost or damaged Owned Deliverables at the Auditor's sole cost and expense. If not restorable, the Auditor shall be responsible for any loss suffered by the CHA because of such destruction.

The Owned Deliverables shall become the property of the CHA upon full and final payment for such Owned Deliverables; provided, however, that the Auditor shall have the right to retain copies of all Owned Deliverables required for compliance with applicable professional standards or internal policies for record keeping purposes only. All work papers of the Auditor shall remain the property of the Auditor.

- B. The Auditor has created, acquired or owns various concepts, methodologies, and techniques, models, templates, software, user interfaces or screen designs; general purpose consulting and software tools, and logic, coherence and methods of operation of systems, all of which have been specifically identified and established as being the Auditor's property (collectively, the "Auditor Property"). Auditor shall retain all ownership rights to Auditor Property, including any enhancements thereto made during the course of providing the Services. To the extent that the Auditor utilizes any Auditor Property (including, without limitation, any hardware, software, proprietary or confidential information or trade secrets of the Auditor) in performing the Services hereunder and contained in the Owned Deliverables, such property shall remain the property of the Auditor and the CHA shall acquire no right or interest in such property, except for a royalty-free, non-exclusive license to use Auditor Property in connection with the use of the Owned Deliverables for the purpose for which they were contemplated to be used.
- C. The Auditor shall use reasonable efforts, subject to laws, regulations and professional standards applicable to the Services and to the provisions of Sections 9.04 and 9.05 herein, to deliver or cause to be delivered all documents, data,

studies, reports, findings or information including, but not limited to, all Deliverables prepared for the CHA under the terms and conditions of this Agreement, to the CHA promptly in accordance with the time limits prescribed in this Agreement, and if no time limit is specified, then upon reasonable demand therefor or upon termination or completion of the Services hereunder. If the Auditor fails to make such delivery upon demand, then the Auditor shall pay to the CHA any damages the CHA may sustain by reason thereof to the extent such damages have been awarded through a final disposition and determination of any claim of damage arising under this Section. The Auditor shall maintain any such records and Deliverables not delivered to the CHA or demanded by the CHA for a period of three (3) years after the final payment made in connection with this Agreement.

The Auditor shall maintain its books, records, documents, and other evidence and adopt accounting procedures and practices sufficient to properly reflect all costs of whatever nature claimed to have been incurred or anticipated to be incurred in connection with the Auditor's performance of this Agreement. The accounting procedures shall be in accordance with commercially reasonable accounting principles and practices, consistently applied throughout the Auditor's performance of its obligations under this Agreement.

The Auditor shall maintain records showing actual time devoted and costs incurred. The Auditor shall keep books, documents, papers, records and accounts in connection with the Services to be performed hereunder sufficient to substantiate Auditor's invoices copies of which would (1) be open to an independent audit to be conducted by the CHA, HUD, the Comptroller General of the United States or their duly authorized representatives; and allow inspection, copying, abstracting and transcriptions of these materials. In addition, the Auditor shall maintain said documents, in a safe place and make them available for at least five (5) years after the final payment made in connection with this Agreement.

Section 2.07 Audit Requirement

The CHA retains an irrevocable right to audit the Auditor's books and records sufficient to substantiate Auditor's invoices and propose the disallowance of any billings deemed by CHA to be inappropriate upon written notice to the Auditor.

Section 2.08 Confidentiality

All Deliverables, reports, documents, data and information prepared, or assembled by or provided by the CHA to the Auditor pursuant to this Agreement ("Confidential Information") are to remain confidential and to be used solely in connection with this Agreement. The Auditor agrees to comply with applicable professional standards regarding the handling, use and disclosure of CHA's Confidential Information.

The Auditor shall comply with AICPA Ethics Rule 301 and the Auditor shall not disclose or make available Confidential Information to any third party individual or organization in violation of AICPA Ethics Rule 301. In the event the Auditor is served or presented with a *subpoena* or is otherwise required by law to disclose Confidential Information which may be in the Auditor's possession by reason of this Agreement, the Auditor must, unless prohibited by law or mandatory professional standards applicable to Auditor, promptly give notice to the CHA's Chief Executive Officer and General Counsel of such *subpoena* or requirement so that the CHA will have, at CHA's sole cost and expense, the opportunity to contest such *subpoena* or requirement by any means available to it before the Confidential Information is submitted or disclosed by the Auditor to a court or other third party.

Pursuant to the Company's engagement of Auditor for the purposes of providing external audit services, Company and Auditor further agree that the CHA shall not impose any additional policy, protocol or any other instrument of any type (whether oral, written or electronic) upon Auditor or its personnel with respect to the confidentiality provisions of this Agreement, not otherwise required by applicable law, regulation or other binding agreement.

Section 2.09 Subcontracts and Assignments

The Auditor shall not subcontract, assign, delegate or otherwise transfer all or any part of its obligations under this Agreement, unless otherwise provided for herein, 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 Auditor 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 Auditor, without the prior written approval of CHA shall be void. 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 to which the Auditor purchases ownership with funds awarded pursuant to this Agreement for the purpose of meeting the objectives of this Agreement.

Section 2.11 Religious Activities

Concerning the Services to be provided under this Agreement, the Auditor 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 Auditor shall establish procedures and policies to promote a "Drug-Free Workplace." Further, the Auditor 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 Auditor shall notify the CHA if any of its employees providing Audit Services 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 V 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, as permitted by professional auditing standards and regulation. 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 initial term of this Agreement shall be for a period of two (2) years, commencing on and effective from November 10, 2014 through November 10, 2016.

Section 3.02 Contract Extension Options

The CHA may extend this Agreement for three (3) additional one-year terms under the same terms and conditions as this original Agreement, subject, however, to any price or cost adjustments applicable as the result of the reserved option term(s) identified in Exhibits II and III, by providing written notice of its intent to exercise such option to the Auditor within thirty (30) days prior to the expiration of this Agreement. 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 hereof.

Section 3.03 Timeliness of Performance

The Auditor shall work in a professional and workmanlike manner and with the diligence required by professional standards to provide the Services and Deliverables within the time limits required by the Chief Financial Officer. The timelines, dates and deadlines set forth in Section 2.01 of this Agreement are deemed to be material terms affecting the CHA's rights and Auditor's duties hereunder. The Auditor and the CHA acknowledge that sometimes deadlines are dictated by the requirements of agencies or events outside of the control of the CHA and the Auditor.

Section 3.04 Engagement Letters

For each one-year term of this Agreement, including any option years, Auditor shall issue an Engagement Letter or a supplemental letter updating the prior year Engagement Letter (each

an "Engagement Letter") setting forth additional terms and conditions agreed upon between Auditor and CHA which would form part of this Agreement and be applicable to the Audit Services to be provided for such year.

ARTICLE 4. COMPENSATION

Section 4.01 Amount of Compensation

The CHA shall pay to the Auditor for the due performance of the Services under and in accordance with this Agreement a firm fixed fee in the amount of One Million Five Hundred Ninety Seven Thousand Six Hundred and 00/100 Dollars (\$1,597,600.00) for the initial two (2) year base term, comprised of component fixed fee amounts (for each base term year and identified component tasks), as more specifically set forth for each respective base term year in the Attachments incorporated into the Auditor's Proposal(s) in Exhibits II and III, portions of which are attached hereto. In the event of an early termination of this Agreement, the CHA shall only be obligated to pay only for Services and authorized costs incurred in accordance with the terms and conditions of this Agreement up to the date of termination. The Auditor agrees not to perform, and waives any and all claims of payment for work that would result in billings beyond the respective fixed fee amount(s) for any base term year of the initial term specified herein without a prior written amendment to this Agreement authorizing said additional work. The Auditor recognizes an affirmative duty to monitor its performance and billings to such that that the scope of work is completed within this firm fixed fee amount.

Section 4.02 Payment

The Contractor shall submit periodic invoices on a progress basis during the term of this Agreement. Each invoice shall contain back-up information as required by the CHA, including but not limited to, a brief description of the services provided during the invoice period. The CHA shall not be required to give approval or make payments pursuant to a submitted invoice unless the information required to be included with the invoice, or that has been specifically requested by the CHA, and all the reporting requirements and Deliverables as set forth in this Agreement, or other reasonable and written requests by CHA for additional information, have been met.

CHA will make commercially reasonable efforts to make payment for services rendered under this Agreement within thirty (30) days after receipt and approval of each invoice submitted. All invoices shall be subject to review and approval by the CHA. If the CHA objects to all or any portion of any invoice, it shall notify the 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 paragraph no. 7 of the General Conditions.

Section 4.03 Availability of Funds/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 Auditors performance of the Services in accordance with the terms of this Agreement. Furthermore, in the event that no funds or insufficient funds are appropriated and budgeted in any fiscal period of the CHA for payments to be made under this Agreement, then the CHA may notify the Auditor 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. No payments shall be made or due to Auditor under this Agreement beyond those amounts appropriated and budgeted by the CHA to fund payments hereunder.

ARTICLE 5 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

1. The Auditor shall obtain, pay for and maintain at all times during the term of this Agreement the types of insurance specified below. All policies shall be issued by a carrier or carriers acceptable to the CHA. With the exception of the Professional Liability insurer, all other insurance providers shall be licensed to do business in the State of Illinois and shall have an "A" rating according to the most recent edition of Best's Insurance Guide.

A. Workers Compensation and Occupational Disease Insurance

Workers Compensation and Occupation 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.

B. Commercial Liability Insurance (Primary and Umbrella)

Commercial Liability Insurance or equivalent with limits of not less than \$1,000,000 per occurrence with an Aggregate of not less than \$1,000,000. In addition to the stipulations outlined above, the insurance policy is to include coverage for Contractual Liability, Product Liability-Completed Operations, Personal and Advertising Injury and will also cover injury to Auditor's agents, subcontractors,

invitees and guests and their personal property. The CHA is to be endorsed as additional insured on Auditor's policy and such insurance will be endorsed as primary and non-contributory with any other insurance available to the CHA.

C. Automobile Liability Insurance (Primary and Umbrella)

When any motor vehicles (owned, non-owned and hired) are used in connection with the Services to be performed, the Manager 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 policy and such insurance will be endorsed primary and non-contributory with any other insurance available to the CHA.

D. Professional Liability

Whenever, any architects, engineer, accountants or other professional consultants perform work in connection with the Agreement, 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. 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.

E. Umbrella Liability

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

2. Related Requirements

The Auditor shall furnish the Chicago Housing Authority, Department of Procurement and Contracts, 60 East Van Buren, Chicago, Illinois 60605, original Certificates of Insurance evidencing the required coverage to be in force on the Effective Date of this Agreement, and Renewal Certificates of Insurance, or such similar evidence, if coverage have an expiration or renewal date occurring during the term of this Agreement or extensions thereof. 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 are in compliance with all Agreement requirements. The insurance policies shall provide for ninety (90) days prior written notice to be given to the CHA in the event coverage is substantially changed, canceled or non-renewed.

Renewal Certificates of Insurance, requested endorsements, or such similar evidence is to be received by the Department of Procurements and Contracts prior to expiration of insurance coverage. The receipt of any certificate 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 any of the insurance required herein 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. The Auditor shall maintain coverage for the duration of this Agreement. Any extended reporting period premium (tail coverage) shall be paid by Auditor. The Auditor shall annually provide to the CHA a certificate of insurance evidencing the required coverage. It is further agreed that the Auditor 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.

The Auditor shall require all subcontractors to carry the insurance required herein or the Auditor 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 (1) above.

The Auditor 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 Auditor under this Agreement.

Section 6.02 Indemnification

A. Personal Injury/Property Damage

The Auditor agrees to protect, defend, indemnify, keep, save, and hold the CHA, its officers, officials, employees and agents free and harmless from and against any and all liabilities, losses, penalties, damages, settlements, environmental liability, costs, charges, professional fees, including attorney's 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, judgment or settlements, proceeding or causes of action of every kind, nature and character for bodily injury, illness or death to individuals and physical damage to real or tangible personal property (collectively "Claims") in connection with or arising directly or indirectly out of the negligence, acts or omissions of the Auditor, its partners, employees, agents and subcontractors while engaged in the performance of the Services under this Agreement. The Auditor 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 other costs and expenses related thereto, even if the Claims are considered groundless, false or fraudulent. As a condition to the foregoing indemnity obligation, the CHA shall provide the Auditor with prompt notice of any claim arising under this indemnification provision and shall cooperate with the Auditor in connection with defending such claim. The Auditor shall be entitled to control the handling of any such Claims and to defend or settle any such claim in its entirety in its discretion, with counsel of its own

choosing.

The CHA shall have the right, at its option and at CHA's expense, to participate in the defense of any suit, without relieving the Auditor of any of its obligations under this indemnity provision.

B. Infringement

- 1) The Auditor agrees to indemnify, defend and hold the CHA harmless from and against all claims, liabilities, losses, expenses, professional fees, including reasonable attorney's fees, fines, penalties, taxes or damages (collectively "Liabilities") asserted by any third party against the CHA to the extent such Liabilities result from the infringement by the Deliverables, or Auditor Property of any third party's trade secrets, trademarks, copyrights, or patents. The preceding provisions shall not apply to any infringement arising out of the following:
 - a) Use of the Deliverables other than in accordance with applicable documentation or instructions supplied by Auditor; or
 - b) Any alteration, modification or revision of the Deliverables not expressly authorized by the Auditor; or
 - c) The combination of the Deliverables with materials not supplied by the Auditor.

As a condition to the foregoing indemnity obligation, the CHA shall provide the Auditor with prompt notice of any claim arising under this indemnification provision and shall cooperate with the Auditor in connection with defending such claim. The Auditor shall be entitled to control the handling of any such claims subject to this indemnity and to defend or settle any such claims in its entirety in its discretion, with counsel of its own choosing.

- 2) In case any of the Deliverables or Auditor Property, or any portion of either are held, or in the Auditor's reasonable opinion is likely to be held in any such suit to constitute an infringement and the use thereof enjoined, in, the Auditor shall within a reasonable time at its option, either:
 - a) Secure a right to continue use of such infringing item by procuring a license for the CHA; or
 - b) Replace, at Auditor's expense, such item with a substantially equivalent non-infringing item or modify such item so that it becomes non-infringing.

C. The Auditor expressly understands and agrees that the requirements set forth in these indemnity provisions to protect, defend, indemnify, keep, save and hold the CHA free and harmless are separate from and not limited by the Auditor's responsibility to obtain, procure and

maintain insurance pursuant to Section 6.01 of this Agreement. Further, the indemnities contained in this Article shall survive the expiration or termination of this Agreement. The provisions of this Article are solely for the benefit of the parties hereto and not intended to grant any rights, contractual or otherwise, to any other person or entity.

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 Auditor to the CHA.
- B. The Auditor's material 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 and equipment or with sufficient material in order to comply with Auditor's obligations under this Agreement;
 - 2. Inability to perform the Services as a result of insolvency, filing for bankruptcy or assignment for the benefit of creditors;
 - 3. Failure to promptly re-perform, within a reasonable time, Services/Deliverables that are erroneous or otherwise not in accordance with the terms of this Agreement unsatisfactory to the CHA;
 - 4. 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
 - 5. Any other acts specifically and expressly stated in this Agreement as constituting an event of default.

Section 7.02 Remedies

The occurrence of any event of default which the Auditor 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 Auditor 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 Auditor in default. Whether to declare the Auditor in default is within the sole

discretion of the CHA. Written notification of the default, and any intention of the CHA to terminate the Agreement, shall be provided to the Auditor. 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 Auditor'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 Auditor non-responsible in future contracts to be awarded by the CHA.

If the CHA considers it to be in its best interests, it may elect not to declare default or to terminate this Agreement hereunder. The parties acknowledge that this provision is solely for the benefit of the CHA and that if the CHA permits Auditor to continue to provide the Services despite one or more events of default, the Auditor 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 that accrues upon an event of default, or acquiescence therein, shall prohibit the CHA from pursuing such right, and every such right may be exercised from time to time and as often as may be deemed expedient at the sole discretion of the CHA.

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 Auditor 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) days after the date of receipt of the notice in accordance with ARTICLE 10 of this Agreement if no date is given, or upon the effective date stated in the notice. The Auditor shall be compensated in accordance with Section 4.01 herein for all Services rendered in accordance with the terms and conditions of this Agreement through the date of termination.

If the CHA's election to terminate this Agreement for default pursuant to Section 7.01 hereof is determined by a court of competent jurisdiction to have been wrongful, then in that case the termination shall be deemed to be a termination for convenience pursuant to this section 7.03.

Section 7.04 Suspension

The CHA may at any time request that the Auditor suspend its Services, or any part thereof, by giving fifteen (15) days prior written notice to the Auditor or upon no notice in the event of an emergency. No costs incurred after the effective date of such suspension shall be allowed. The Auditor shall promptly resume its performance of such Services under the same terms and conditions as stated herein upon written notice by the CHA and such equitable extension of time as may be mutually agreed upon by the CHA and the Auditor when necessary for continuation or completion of Services.

Section 7.05 No Damages for Delay

The Auditor agrees that it shall make no claims against the CHA for damages, charges, 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 Auditor'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 Auditor to perform its obligation under this Agreement.

ARTICLE 8. WARRANTIES, REPRESENTATIONS AND SPECIAL CONDITIONS

Section 8.01 Warranties and Representations

In connection with the execution of this Agreement, the Auditor Warrants and Represents:

- A. That it and each of its employees, agents, subcontractors of any tier are competent to perform the Services required under this Agreement and that the Auditor 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 Auditor 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-consultants to the Auditor or anyone associated therewith, as an inducement for the award of a subcontract or order; and the Auditor further acknowledges that any Agreement entered into, negotiated or performed in violation of any of the provisions set forth herein shall be void;
- C. That the Auditor shall not knowingly use the services of any ineligible subcontractor or consultant for any purpose in the performance of its Services

under this Agreement;

- D. That the Auditor 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 Business Services Department 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;
- E. That the Auditor 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 Agreement is feasible of performance in accordance with all of its provisions and requirements and that the Auditor can and shall perform, or cause to be performed, the Services in accordance with the provisions and requirements of this Agreement;
- G. That, no representation, statement or promise, except those written representations, statements, or promises expressly made and contained in this Agreement, and any exhibits attached hereto and incorporated by reference herein, by the CHA, its officials, agents, or employees, have induced the Auditor to enter into this Agreement or have been relied upon by the Auditor;
- H. That neither the Auditor nor, to the best of its knowledge, its subcontractors are 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;
- I. Auditor 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 cause for termination of this Agreement; and
- J. Services will be rendered by duly licensed professionals. .

Section 8.02 Joint and Several Liability

In the event that the Auditor, 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 Auditor shall be in accordance with the firm's legal status as a limited liability partnership.

Section 8.03 Business Documents

The Auditor 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 Auditor has executed a Contractor's Affidavit which is incorporated into this Agreement by reference.

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.

The Auditor 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 Auditor further covenants that in the performance of this Agreement, no person having any such interest shall be employed.

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.

Auditor shall perform the Services in accordance with all applicable laws and regulations related to conflicts of interest.

B. Furthermore, the Auditor represents that it 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 Auditor or the

Auditor's successor in interest for: (i) any default or breach by the CHA under this Agreement, (ii) any fee due to the Auditor or the Auditor's successor in interest or (iii) any other obligation arising under this Agreement.

Section 8.06 Independent Contractor

The Auditor 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 and incorporated by reference shall constitute the entire Agreement between the parties hereto relating to the subject matter hereof and no other covenant, conditions, promises or interpretations shall be implied between the parties that are not set forth herein.

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 Auditor and by the Chief Executive Officer of the CHA or their respective designees. The CHA shall incur no liability for additional Services without a written amendment to this Agreement.

Whenever in this Agreement the Auditor is required to obtain prior written approval, the effect of any approval which may be granted pursuant to the Auditor'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/Governmental Orders

A. The Auditor 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. The Auditor 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 Auditor 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). The HUD Regulations implementing these laws re set forth in 24 C.F.R. Part 85 (1993), as amended. Additionally, the Auditor 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.

Section 9.06 Governing Law

This Agreement shall be governed as to performance and interpretation in accordance with the laws of the State of Illinois. The Auditor 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 Auditor agrees that service of process on the Auditor 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 Auditor, or by personal delivery on any managing partner, partners and principals of the Auditor. If the Auditor 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 9.07 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 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 Auditor agrees at all times to reasonably cooperate with the CHA . If this Agreement is terminated for any reason, or if it is to expire on its own terms, the Auditor shall make reasonable efforts with respect to an orderly transition to another auditor, and shall otherwise comply at the cost and expense of CHA 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 Auditor's performance in any respect or expressly waives a requirement or condition to either the CHA's or the Auditor'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, requirement or condition.

Section 9.12 Force Majeure

Notwithstanding any other provision in this Agreement, the Auditor shall not be liable or held responsible for any failure to perform or delays in performing its obligations under this Agreement including, but not limited to, the scope of Services set forth herein, which result from circumstances or causes beyond the Auditor's reasonable control, including, without limitation,

fire or casualty, acts of God, strike or labor dispute, war or other violence, or any law, order or requirement of any government agency or authority.

ARTICLE 10. COMMUNICATION AND NOTICES

Section 10.01 Communication Between the Parties

All verbal and written communication, including required reports and submissions between the Auditor and the CHA shall be through the CHA's Chief Executive Officer. 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 Auditor shall be mailed by certified mail return receipt requested, postage prepaid to:

Ernst & Young LLP
155 North Wacker Drive
Chicago, IL 60606
Attention: Brian L. Ofenloch

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

Chief Executive Officer
Chicago Housing Authority
60 East Van Buren St.
Chicago, IL 60605-1207

Copy to:

General Counsel
Chicago Housing Authority
60 E. Van Buren St., 12th Floor
Chicago, Illinois 60605-1207

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 Illinois Housing

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

Section 11.02 Auditor's Authority

The signature of the person signing on behalf of the Auditor has been made with complete and full authority to commit the Auditor 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 Auditor have executed this Agreement as of the date first written above.

CHICAGO HOUSING AUTHORITY

By: Dionna Brookens

Dionna Brookens, Senior Director
Department of Procurement and Contracts

ERNST & YOUNG LLP

By: Shawn Benloch

PARTNER

APPROVED AS TO FORM AND LEGALITY
FOR CHICAGO HOUSING AUTHORITY
PURPOSES ONLY:

Chicago Housing Authority
Office of the General Counsel

By: Scott W. Hummel