

**PROFESSIONAL ARCHITECTURE/ENGINEERING SERVICES**

**AGREEMENT**

**BETWEEN**

**THE CHICAGO HOUSING AUTHORITY**

**AND**

**HOLABIRD & ROOT LLC**

## **TABLE OF CONTENTS**

<b>RECITALS.....</b>	<b>1</b>
<b>DEFINITIONS OF CERTAIN TERMS AND PHRASES.....</b>	<b>1-5</b>
<b>ARTICLE A: SCOPE OF WORK.....</b>	<b>5-7</b>
<b>ARTICLE B: REQUIRED SERVICES .....</b>	<b>7</b>
1. Architect of Record; Project Architect .....	7
(a) AOR: Project Architect.....	7
(b) Approval.....	7
(c) Seal.....	7
2. A/E Basic Services .....	7
(a) Generally.....	7
(b) Best Efforts; Experienced Staff.....	7
(c) Compliance with Applicable Laws.....	8
(d) Designing within Funding Limitations.....	8
(e) Attendance at Meetings.....	8
(f) Categories of Professional Services.....	9
(g) Sub-consultants to the A/E.....	9
3. Phases and Descriptions of Basic Services .....	9
(a) Schematic Design/Preliminary Study Phase .....	9-12
(b) Design Development Phase .....	12-14
(c) Construction Document and Bidding and Contract Document Phase .....	14-16
(d) Bidding and Award Phase .....	16-17
(e) Construction, Completion and Acceptance Phase .....	17-20
(f) Close-Out Phase.....	20-21
(g) Post Completion/Warranty Phase.....	21
4. Deliverables.....	22
(a) Generally.....	22
(b) Owner's Acceptance.....	22
(c) Format of Architect/Engineer Deliverables.....	22-23
(d) Format of Construction Document Deliverables.....	23-25
(e) Accounting Statements.....	25
5. Time of Performance .....	25
6. Performance Standards .....	25
7. The A/E Additional Services.....	26
(a) Description of Additional Services .....	26
(b) Written Addendum or Contract Amendment .....	26

<b>ARTICLE C: COMPENSATION AND PAYMENT.....</b>	<b>26</b>
1. Fixed Fee Basic Services.....	26
(a) Fixed Fee for Basic Services.....	26
(b) Schedule of Payment for Basic Services.....	26-27
2. Reimbursable Expenses.....	27
(a) Travel Costs .....	27
(b) Long-Distance Telephone Costs.....	27
(c) Delivery Costs .....	28
(d) Reproduction Costs.....	28
(e) Specialty Consultants .....	28
3. Additional Reimbursable Expenses.....	28
4. Payment for Additional Services.....	28
5. Invoicing and Payments.....	28
(a) Invoices.....	28
(b) Time of Payment.....	28-29
(c) Support of Applications for Payment.....	29
6. Availability of Funds/Non-Appropriation.....	29
<b>ARTICLE D: OWNER’S RESPONSIBILITIES .....</b>	<b>29</b>
1. Information .....	29
2. Notice of Defects.....	29
3. Owner’s Project Administrator.....	29
4. Duties to Furnish .....	30
(a) Survey and Property Restrictions.....	30
(b) Existing Conditions.....	30
(c) Waivers .....	30
(d) Minimum Wage Rates.....	30
(e) Tests .....	30
(f) Bidding and Contract Document Terms .....	30
<b>ARTICLE E: CONTRACT ADMINISTRATION .....</b>	<b>30</b>
1. Prohibition against Assignment.....	30
2. Ownership of Documents.....	30
3. Confidentiality.....	31
4. Substitutions.....	31
(a) Identification of Key Employees.....	31
(b) Notice to the Owner; Approval.....	31
5. Suspension .....	31
6. Subcontracts.....	31
7. Disputes .....	31-32

8.	Termination for Default; Cure; Termination for Convenience; Right of Offset ...	32
	(a) Termination for Default.....	32-33
	(b) Cure; Owner's Election; Remedies Cumulative.....	33-34
	(c) Termination for Convenience.....	34
	(d) Choice of Termination.....	34
	(e) Right to Offset.....	34
9.	A/E Termination Claim.....	35
	(a) Right of Termination.....	35
	(b) Termination Claim.....	35
	(c) The A/E Responsibility upon Termination.....	35
10.	Insurance.....	36
	(a) Coverage Generally.....	36
	(b) Period of Coverage.....	36
	(c) Insurance Carriers.....	36
	(d) Required Insurance Coverage.....	36-37
	(e) Certificates of Insurance.....	37
	(f) Renewals.....	38
	(g) Insurance on Claims Made Basis and Tail Coverage.....	38
	(h) Owner's Insurance.....	38
	(i) Subcontractor's or Consultant's Insurance.....	38
	(j) Limitation of Liability.....	38
11.	Indemnification .....	38
	(a) Indemnification.....	38-39
	(b) Hold Harmless.....	39
	(c) Owner's Defense.....	39
12.	Retention of Rights .....	39

## **ARTICLE F: ADDITIONAL REQUIREMENTS ..... 39**

1.	Contract Adjustments.....	39-40
2.	Additional Services .....	40
3.	Restrictive Plans and Specifications.....	40
4.	Design Certification .....	40
5.	Retention and Inspection of Records.....	40
6.	Copyrights and Rights in Data.....	40
7.	Conflicts of Interest.....	40-41
8.	Interest of Members of Congress.....	41
9.	Limitation of Payments to Influence Certain Federal Transactions.....	41
10.	Employment, Training and Contracting Opportunities for Low Income Persons, Section 3, HUD Act of 1968.....	41-44
11.	MBE/WBE/DBE Requirements. ....	44-45
12.	Clean Air and Water (Applicable to Contracts in Excess of \$100,000).....	45
13.	Energy Efficiency.....	45
14.	Prevailing Wages .....	45

15.	Non-Applicability of Fair Housing Requirements in Indian Housing Authority Contracts.....	45
16.	Prohibition Against Liens .....	45
17.	Non-Discrimination .....	45-46
18.	CHA Inspector General.....	46

#### **ARTICLE G: GENERAL CONDITIONS..... 46**

1.	Drug-Free Workplace.....	46
2.	Independent Contractor.....	46
3.	Entire Agreement.....	46
4.	Governing Law.....	46-47
5.	Severability .....	47
6.	Interpretation.....	47
7.	Communication and Notices.....	47
	(a) Communication between the Parties.....	47
	(b) Notices.....	47-48
8.	Authority.....	48
	(a) Owner's Authority.....	48
	(b) A/E Authority.....	48
9.	Attorneys' Fees.....	48

#### **EXHIBITS:**

- A. Description of the Site(s)
- B. Schedule of Performance
- C. A/E MBE/WBE/DBE Utilization Plan and  
A/E Section 3 Utilization Plan
- D. A/E Construction Cost Estimates
- E. A/E Independent Cost Estimate
- F. Illinois Equal Opportunity Clause

**THIS PROFESSIONAL ARCHITECTURE/ENGINEERING SERVICES AGREEMENT** (the "Agreement") is made as of the Fourth day of April, 2014 between the Chicago Housing Authority ("Owner" or "CHA"), an Illinois municipal corporation with offices located at 60 E. Van Buren St., Chicago, Illinois 60605, and Holabird & Root LLC (the "Architect/Engineer or "A/E"), a Limited Liability Company, with offices located at 140 South Dearborn Street, Chicago, Illinois 60603, for the modernization and rehabilitation of the property specifically described in Exhibit A attached hereto and incorporated herein by this reference, and commonly referred to as Fannie Emanuel Apartments, 3916 West Washington Blvd. in the City of Chicago, County of Cook, State of Illinois (the "Site").

**NOW, THEREFORE**, in consideration of the mutual agreements, promises and covenants contained herein, the parties hereto, intending to be legally bound, agree as follows:

**DEFINITIONS OF CERTAIN TERMS AND PHRASES**

Unless the context expressly otherwise requires, the terms and phrases defined in this Definitions Section will, for all purposes of this Agreement, have the respective meanings set forth below:

"Additional Reimbursable Expenses" - The expenses incurred by the A/E in accordance with, and pursuant to, Section C(3) hereof.

"Additional Services" - The services enumerated in Section B(7) hereof.

"Agreement" - This Agreement for Professional Architecture/Engineering Services, including all exhibits attached hereto, and all amendments, modifications and revisions made in accordance with its terms.

"Application for Payment" - The A/E application for Progress Payments, as defined in Section C(5) hereof.

"Architect/Engineer or A/E" The person, firm, or entity identified to perform the Services described in this Agreement and engaged to act on the CHA's behalf with respect to all aspects of the performance of the design, engineering and construction administration of the Project. Any reference to specific architectural, engineering, or related disciplines herein shall be construed as services directed and provided by the A/E whether they are self-performed or performed by the A/E's sub-consultants.

"Basic Fee" The fee for Basic Services the CHA pays to the A/E pursuant to this Agreement.

"Basic Services" - The services to be performed by the A/E pursuant to this Agreement other than Additional Services.

"Bid Package" - All the documents distributed to potential bidders, including, but not limited to,

the Invitation for Bids, Form of Contract, General Conditions, Special Conditions, Technical Specifications, Plans and Specifications, Updated Cost Estimates and any other documents distributed to Bidders by the Owner with the foregoing documents.

"Bidding and Contract Documents" - The documents prepared by the A/E for purposes of bidding out and contracting for the Work, as defined herein.

"Capital Improvement Program or CIP" The CHA's overall program to provide the complete renovation or rehabilitation of its assets during the Plan for Transformation and Plan Forward; a subsection of which are activities conducted under the Modernization Program.

"Certificate of Completion" - The certificate issued by the Owner to the Contractor upon completion of final inspection of the Work and approval thereof at the conclusion of the Close-out Phase.

"Certificate of Substantial Completion" – A certificate issued by the A/E to the Owner establishing the Date of Substantial Completion of the Project.

"CHA's Representative" The construction management ("CM") firm, person, or entity engaged by the CHA, under a separate contract with the CHA, to plan, coordinate, and oversee design and construction management activities, including the activities of the A/E.

"Construction Contract" - The agreement entered into between the Owner and a general contractor regarding the Project based on Construction Documents prepared by the A/E.

"Construction Cost Estimate" The total estimated cost (to the CHA) of all elements of the completed Project designed or specified by the A/E, including, without limitation, all costs pursuant to the Construction Contract, and allowances for overhead, labor and material costs, but excluding acquisition costs of the Site and the A/E's compensation. The Construction Cost Estimate may be prepared by the A/E, CHA's Representative, if applicable, or by an independent construction cost estimating firm.

"Construction Cost Estimate Summary" - The final level of cost summation which shall be included with every detailed estimate of cost using an itemized Work Breakdown Structure ("WBS") prepared according to the Construction Specifications Institute ("CSI") format that is submitted by the A/E for given Project(s), as described in Exhibit D.

"Construction Documents" - All of the Plans and Specifications, addenda, change orders and modifications, and all other prints, models, drawings, designs, computations, sketches, test data, photographs, renderings, plans, shop and accepted proposal drawings, Portable Document Files ("PDF") and other materials relating to, or contemplated by, the Services performed by the A/E or by any engineer, professional or professional consultants to, or engaged by the A/E in connection with the Project.

"Contract Documents" - Those documents which constitute the Construction Contract as set forth therein.

"Contracting Officer" - The Owner's Chief Executive Officer or its designee, the Director of Procurements and Contracts.

"Contractor" - The person or entity designated as the general construction contractor in the Construction Contract.

"Date of Substantial Completion" - The date certified by the A/E when the Work or a designated portion thereof is sufficiently complete, in accordance with the Contract Documents, so that the Owner may occupy the Improvements or designated portion thereof for the use for which it is or they are intended.

"Design Development Documents" - Documents prepared by the A/E during the Design Development Phase as set forth in Subparagraph B(3)(b)(2) hereof.

"Engineer" - The person or entity engaged by the A/E as either an employee or sub-consultant, and is a Registered Professional Engineer or Structural Engineer licensed in Illinois.

"Fixed Fee" - The fixed fee for Basic Services, as set forth in Paragraph C(1)(a) hereof.

"General Conditions" - The General Conditions of the Contract for Construction, HUD Form 5370, attached to the Construction Contract.

"HUD" - The U.S. Department of Housing and Urban Development, including the Secretary, or any other person designated to act on its behalf in connection with the administration of this Agreement.

"Independent Cost Estimate or ICE" The cost/price estimate of a general contractor's work for the Project. The ICE will be the basis for comparing costs or prices provided by the Contractor.

"Improvements" - The buildings and all other site improvements on the Site.

"Maximum Construction Contract Cost" - The cost referred to in Paragraph B(2)(d) hereof.

"Owner" - The Chicago Housing Authority, an Illinois municipal corporation or a mixed finance ownership entity or any other person designated, in writing to act on its behalf but only to the extent so designated, in connection with the administration of this Agreement.

"Modernization Program" The CHA's program to provide regular maintenance and repairs to its assets rehabilitated during the Plan for Transformation and Plan Forward, and all other CHA assets, as required.

"Plans and Specifications" - All working drawings and specifications, including, but not limited to, elevations, sections and details, schedules, and notes, setting forth in detail and prescribing all work to be done for the Project including the Work, General Conditions, special conditions, materials, workmanship, finishes and equipment required for the architectural, structural, life safety, mechanical, electrical, and plumbing systems, parking and landscaping and on-site amenities and facilities, and all addenda thereto and modifications thereof, and as referenced in the General



Conditions.

"Progress Payment" - A payment to the A/E, as defined in Paragraph C(1)(b).

"Project" - All architectural and engineering services described in this Agreement related to the Work the Contractor will perform at the Site pursuant to the terms of the Construction Contract.

"Project Architect" - The person or entity licensed to practice architecture in Illinois and engaged by the A/E as either an employee or sub-consultant to perform architectural, engineering, design, contract administration, or other services related to the Work required under the Construction Documents, Contract Documents, and this Agreement.

"Record Drawings" - Reproducible prints of Plans and Specifications updated to show significant changes in the Work made during construction, including the locations of underground utilities and appurtenances referenced to permanent surface improvements, and wiring, piping and duct work located in walls and floors and above ceilings, and actual field dimensions of the Work as installed based on marked-up prints, drawings and other data furnished by the Contractor to the A/E.

"Reimbursable Expenses" - The expenses incurred by the A/E in accordance with, and pursuant to, Section C(2) hereof.

"Schematic Design/Preliminary Study Documents" - Documents prepared by the A/E during the Schematic Design Phase as set forth in Subparagraph B(3)(a)(4) hereof.

"Scope of Work" - A clear, concise description of the work to be performed pursuant to this Agreement (including, but not limited to, the A/E's architect/engineer design data and criteria, construction drawings, technical specifications, engineer's reports, and all Owner provided information).

"Services" - The Basic Services and all Additional Services to be performed by the A/E pursuant to this Agreement.

"Site Plan" - The plan of the Site and the Improvements located thereon to be prepared by the A/E pursuant to Article A hereof.

"Special Conditions" The Special Conditions of the Construction Contract between the CHA and the Contractor.

"Substantial Completion" - The milestone attained when the status of the Work, or a designated portion thereof, is sufficiently complete, in accordance with the Contract Documents, so that the Owner may occupy the Work or designated portion thereof for the use for which it is intended, and as certified by the A/E.

"Total Contract Price" - The sum of the Fixed Fee as set forth in Paragraph C(1)(a) hereof and Reimbursable Expenses in accordance with, and pursuant to, Section C(2) hereof.

"Work" - All labor, materials, and services required to be performed by the Contractor to construct the Improvements in accordance with the Construction Contract, generally, and the Plans and Specifications, in particular.

"Work Breakdown Structure" or "WBS " - A fundamental technique for defining and organizing the total scope of a Project, using a hierarchical structure illustrating all superior and subordinate tasks.

## **ARTICLE A: SCOPE OF WORK**

The A/E agrees to provide complete architectural and engineering and related services in connection with the Project as are usually and customarily performed, rendered or done by architects or engineers preliminary to, and in connection with, the preparation of plans, designs and specifications and the construction associated with the rehabilitation and renovation of residential buildings and the site development.

### **Description of the Property:**

The Fannie Emanuel Apartments (formerly known as Parkview Apartments) is a twenty (20) story residential structure located at 3916 West Washington Boulevard that sets on approximately 2 ½ acres on Chicago's West side.

The building was constructed circa 1963 and is comprised of a reinforced concrete frame and concrete block and face brick masonry cavity exterior walls. Presently, the building has been vacant for the last few years.

The building was designed by the architectural firm of Loewenberg and Loewenberg and is generally comprised of a Reception Area, Management Offices, Multi-Purpose Rooms, Maintenance Rooms and a live-in Janitor's Apartment, on the Ground Floor, ten (10) one (1) bedroom dwelling units on each of the Second thru the Nineteenth floors and a Twentieth Floor multi-purpose floor that has two (2) separate Multi-purpose Rooms and a large Sundeck with a southerly view.

The building also has two (2) internal stairwells located at opposite ends of the building as well as two (2) centrally located elevators that serve each floor.

### **Existing Conditions – 3916 W. Washington Blvd:**

#### **(A) Systems:**

Heating: The building's heating system is comprised of three (3) hot water heating boilers, two (2) heat exchangers, water heaters, storage tanks and associated other devices that were installed in 2009 as part of an Energy Performance Contract (EPC). It should be noted that although the primary components of the heating system have been replaced, the arterial system of distribution pipes were not.

#### **(B) Electrical:**

Upgrades were made to the electrical systems in early 2000. Those improvements include the installation of new switchgear to operate in conjunction with a natural gas emergency generator. Insofar as the distribution system is concerned, a thorough inspection of the wiring and buss distribution system should be made prior to the commitment of any electrical work.

Description of the Construction. The Owner shall contract separately with a Contractor to perform the construction work required for the construction, rehabilitation and modernization activities required at the Property pursuant to the Owner's Capital Improvement Plan and Plan Forward . The Services at the Property shall include, but shall not be limited to the following types of work.

Exterior Work. Exterior work may include, but may not be limited to, the following: replacement or repair of concrete, masonry, roofing, drainage, windows, sheet metal, and new entry doors with hardware, stoops, and steps at the high-rise style building.

Interior Work. Interior work may include, but may not be limited to, the complete renovation of all interior dwelling units and common areas, including carpentry repairs, door and hardware replacement at all entries, bedrooms, bathrooms and closets (where existing closets have no doors, install new wood bi-fold doors); replacement of all metal bi-fold doors with wood bi-fold doors; repair and/or replacement of all interior finishes; install vinyl composite floor tile; new bathroom fixtures and accessories; new kitchen and bath casework; new range, range hood and power supply; new refrigerators (note: the CHA may, at its option, purchase and install kitchen appliances under a separate contract); new window treatments; and repair or installation of attic insulation, furnaces, diffusers, kitchen and bath exhaust fans, temperature controls, hot water heaters, designated plumbing fixtures, electrical devices, and lighting fixtures. All designated Sensory and Mobility units shall meet Uniform Federal Accessibility Standards (UFSA) and all other applicable ADA/504 requirements for HUD certification.

Environmental Work. Environmental work may include, but may not be limited to, the following: remove all asbestos containing materials; remove or completely encapsulate any existing lead-based paint; perform all testing, perform all required regulatory monitoring and oversight of the environmental work, and produce all reports and certifications required to substantiate compliance with all applicable regulatory requirements for environmental work.

Systems Work. Systems work may include, but may not be limited to, the following: all heating systems, all domestic, sanitary, and storm water systems, the plumbing supply and return piping, and trash collection and disposal systems; and assure that each dwelling unit is wired for telephone service connections in the kitchen/living room area and one (1) bedroom, and cable television service connection in the living room.

Site Work. Site work may include, but may not be limited to, the following: the paving, walkways, site fencing, landscaping, code compliance, designated assessable routes parking lots and public ways, refuse areas, masonry screen walls, and site drainage and retention, within the Property.

Other. Other work required may include, but may not be limited to, code compliance of all aspects of each apartment unit, any and all activities required to obtain LEED certification for the Project, and the operational function of all building systems the repair, installation and/or procurement of such items or systems that may be required.

## **ARTICLE B: REQUIRED SERVICES**

### **1. Architect of Record; Project Architect.**

(a) AOR; Project Architect. The A/E shall serve as the "Architect of Record" for the Project and shall designate a licensed Illinois architect to serve as the Project Architect. The Project Architect shall be a principal or full time employee of the A/E, and shall be approved by the Owner to supervise the performance of all Services, including the preparation of all Plans and Specifications, all Construction Documents, and all Bidding and Contract Documents. The A/E shall certify that all work was performed under the direct supervision of the Project Architect and that it conforms to the Chicago Building Code, as amended, the Illinois Accessibility Code, as amended, all applicable Federal, State and local building codes, as amended, including, but not limited to, the Uniform Federal Accessibility Standards, the Americans with Disabilities Act of 1990, as amended, Section 504 of the Rehabilitation Act of 1973, as amended and as implemented in 24 CFR Part 8 and the Fair Housing Act Design Manual, and the design and construction requirements of HUD. All Services requiring professional architectural judgment shall be performed by the Project Architect.

(b) Approval. The Project Architect shall be approved by the Owner and, once approved by the Owner, the Project Architect shall not be removed from his/her position without the express written consent of the Owner unless the Project Architect leaves the employ of the A/E. If the Project Architect does leave the employ of the A/E, then the A/E shall promptly submit the name of a replacement Project Architect to the Owner for approval.

(c) Seal. The AOR or Project Architect shall affix his seal and signature to drawings and Plans and Specifications produced under this Agreement when required by law.

### **2. A/E Basic Services.**

(a) Generally. The A/E shall provide complete architectural and engineering services in connection with the Project as are usually and customarily performed, rendered or done by architects and/or engineers preliminary to and in connection with the preparation of plans, designs and specifications and the construction associated with the capital improvement of residential buildings, including, but not limited to, all such work and services as described in this Agreement. The A/E shall also provide such plans and designs as are necessary to illustrate the scale, function and cost effectiveness of and relationship between and among, Project components, including but not limited to, parking, traffic, life safety, and interior and exterior lighting.

(b) Best Efforts; Experienced Staff. The A/E covenants with the Owner to furnish its best skill and judgment and to cooperate with the Owner and the Owner's duly authorized representatives/agents in furthering the interests of the Owner. It agrees to furnish efficient

business administration and to use its best efforts to furnish at all times adequate materials and other items necessary for the proper execution and completion of the Services in the best way and in the most expeditious and economical manner, consistent with the interests of the Owner. The A/E represents that its staff is trained, experienced and expert in architecture and engineering, it has received all necessary licenses and certificates, and that it is fully familiar, and will comply, with all Applicable Laws, as defined below.

(c) Compliance with Applicable Laws. The A/E shall perform its Services to conform to all applicable Federal, State and local laws, codes, ordinances and regulations except as modified by any waivers which may be obtained with the approval of the Owner, including, but not limited to, those promulgated by HUD, the Environmental Protection Agency and the Occupational Safety and Health Administration (collectively, "Applicable Laws"). The A/E shall certify that the Contract Documents will conform to all Applicable Laws in effect when the applicable Construction Documents are submitted for a building permit. The A/E shall prepare all Construction Documents required for approval by all governmental agencies having jurisdiction over the Project. The A/E shall make all changes in the Bidding and Contract Documents necessary to obtain governmental approval without additional compensation or reimbursement, except if, subsequent to the date the Owner issues a notice to proceed for the Work, revisions are made to applicable codes or non-federal regulations requiring changes to the Plans and Specifications that result in additional cost, then the A/E shall be entitled to additional compensation at a fair and equitable rate to be agreed upon by the Owner and the A/E. The A/E, however, is obligated to notify the Owner of all significant code or regulatory changes within sixty (60) days of their effective date, and such notification shall be required in order for the A/E to be entitled to any additional compensation or reimbursement.

(d) Designing within Funding Limitations. The A/E shall perform the Services required under this Agreement in such a manner so as to cause an award of a Construction Contract(s) that does not exceed (1) a n amount to be provided by the Owner in writing. This fixed limit shall be called the "Maximum Construction Contract Cost." The amount may only be increased by written notice from the Owner. If a change to the Work results in an increase in the Maximum Construction Contract Cost, an amendment to this Agreement will be required. Should bids for the Construction Contract(s) exceed the Maximum Construction Contract Cost, the Owner has the right to require the A/E to perform redesigns, rebids and other services necessary to cause an award of the Construction Contract within the Maximum Construction Contract Cost without additional compensation or reimbursement. In addition, the A/E and the Owner may mutually agree to decrease the Maximum Construction Contract Cost, but only by signing a written amendment to this Agreement.

(e) Attendance at Meetings. In addition, as part of the Basic Services set forth herein, on behalf of the A/E and together with the Owner, the Project Architect shall attend, participate in and produce handouts and presentation materials, slide presentations or "Power Point" presentations at all design conferences with the Owner, all meetings of the Owner's Board of Commissioners when requested by the Owner, all meetings with HUD when requested by the Owner, and all Construction Contract negotiations when requested by the Owner. At present, the Owner estimates the meeting schedule to be as follows:

- Ten (10) Owner requested meetings;

- Two (2) meetings with accessibility advocacy groups (in addition to any required meetings with the Mayor's Office of People with Disabilities in the due course of establishing the Project program and construction requirements); and
- Two (2) meetings with the City of Chicago's Department of Construction and Permits' (DCAP) review consultant to obtain building permits

(f) Categories of Professional Services. Unless revised in a written addendum or amendment to this Agreement, in connection with the Project, the A/E shall provide the Owner with the basic professional services, including, but not limited to, the following:

- Architecture
- Site Planning
- Structural Engineering
- Critical Façade Inspection
- Mechanical Engineering
- Electrical Engineering
- Civil Engineering
- Landscape Architecture
- RAD Physical Conditions Assessment
- Physical Needs Assessment
- Cost Estimating
- Price and Cost Analysis
- Permit Coordination
- Construction Contract Administration
- Interior Space Planning and Interior Architecture
- Plumbing Engineering
- Fire Protection Engineering
- Environmental Engineering
- Land Surveying
- Elevator Design and Rehabilitation
- Security Design
- Forensic Architectural and Engineering Services, Studies, Investigations and Reports
- Property Inspection to meet Due Diligence requirements and to Satisfy Housing Quality Inspections

(g) Sub-consultants to the A/E. Sub-consultants retained by the A/E shall be subject to the same professional standards and requirements as the A/E. The A/E shall not retain or change any sub-consultants without the prior written consent of the Owner.

**3. Phases and Descriptions of Basic Services.** The A/E shall provide as Basic Services all work described in this Section B(3) and all such other professional services necessarily implied from and incident to, or normally provided for the design of projects with a similar scope of work.

(a) Schematic Design/Preliminary Study Phase.

(1) Commencement of Phase. After receipt of a Notice to Proceed from the Owner, the A/E shall prepare and deliver Schematic Design/Preliminary Study

Documents to the Owner in accordance with the Schedule attached hereto and incorporated herein as Exhibit B.

(2) Elements. The Schematic Design/Preliminary Study Documents shall consist of a presentation of the complete concept of the Project, including all major elements of the Improvements and the Site design(s), planned to promote economy both in construction and in administration and to comply with current program and cost limitations. The A/E shall revise these documents consistent with the requirements and criteria established by the Owner to secure the Owner's written approval.

(3) Accuracy of Information. The A/E shall make an independent assessment of the accuracy of the information provided by the Owner concerning existing conditions.

(4) Required Documents. In this Phase, the A/E shall prepare all reasonably required documents, including, but not limited to, the following:

- Building Assessment
- Site plan(s)
- Survey
- Environmental report
- Soils report (if required)
- Schedule of building types, unit (including ADA) distribution and bedroom count
- Scaled plans of all buildings, and typical dwelling units
- Wall sections and elevations
- Specifications outline
- Preliminary construction cost estimates and Construction Cost Estimate Summary (as described in Exhibit D)
- Project specific analysis of codes, ordinances and regulations
- Two-dimensional line drawings

(5) Required Activities. In this Phase, the A/E shall undertake all reasonably required activities, including, but not limited to, the following:

- Perform and develop a comprehensive Building Assessment, which shall include, but not limited to, the analysis of the following: the building's envelope, mechanical, engineering, and plumbing, security, landscaping/site, and ADA facilities. The developed Building Assessment shall be submitted to the Owner for review and comment.
- Inspect and assess the Site, including all Improvements, both on the exterior and the interior, and immediately notify the Owner in writing of the discovery of any suspected asbestos or lead based paint hazards or other recognized environmental conditions on the Site.
- Perform feasibility planning, programming and other related studies.
- Develop a listing of standard products, apartment features, construction and finish materials and building rehabilitation materials.

- Prepare three (3) draft “presentation boards” to present preliminary standard materials and three (3) final “presentation boards” to illustrate final approved standard materials.
- Prepare graphics, presentation materials, illustrations and display materials as needed to describe various planning activities.
- Attend meetings with working group committees that will be established by the Owner, to represent the local community needs and interests.
- Evaluate the Owner’s criteria and general requirements, Site data and other relevant information and prepare complete Schematic Design Documents for the Improvements and other amenities to the Site, including plans, sections, elevations, topography, outline specifications, and a general description of the Project, together with allowances for the cost of elements not designed.
- Review alternative approaches with the Owner for the design and construction of the Project.
- Review the Construction Cost Estimate prepared by the Owner’s Representative, if applicable, for each portion of the Project on a line item basis, and when required, prepare Construction Cost Estimates in accordance with the provisions included in Exhibit D.
- Make such changes and revisions in the Schematic Design Documents and provide such drawings, reproductions and supporting data necessary to meet the requirements of the Owner.
- Provide the required documents described in this Section based on the mutually-agreed upon program, schedule, and budget for the cost of the Work, which shall establish the conceptual design of the Project illustrating the scale and relationship of the Project components.

(6) Documents to Comport with Owner-Provided Information. The Schematic Design/Preliminary Study Documents shall be consistent with the following requirements and the following documents which have been or may be furnished to the A/E by the Owner:

- Project funding limitations set forth in Paragraph B(2)(d) of this Agreement
- Description of features of, and facilities in, the Improvements required by the Owner
- Any applicable Building Assessments
- A survey of the Site (if survey provided by the CHA)
- A soils report (if report provided by the CHA)
- An environmental report with a delineation of wetlands (if report provided by the CHA)



- Any report or other such work product as may be produced by any engineer, professional or professional consultant as may be retained by the CHA or at the CHA's direction as described in this agreement between the CHA and the A/E
- Project funding limitations set forth in the agreement between the CHA and the A/E
- Description of features of, and facilities in, the Improvements required by the CHA.

The determination of the sufficiency of the information contained in the items set forth above and the interpretation of the surveys and reports set forth above shall be the responsibility of the A/E.

(7) Documents for Review. In this Phase, the A/E shall provide the Owner with copies of the Schematic Design/Preliminary Study Documents for review.

(8) Conclusion of Phase. The Schematic Design/Preliminary Study Phase will conclude upon the A/E's receipt of the Owner's written approval of the Schematic Design/Preliminary Study Documents.

(b) Design Development Phase.

(1) Commencement of Phase. After receipt of written approval of the Schematic Design/Preliminary Study Documents, the A/E shall prepare and submit the Design Development Documents to the Owner in accordance with the Schedule attached hereto and incorporated herein as Exhibit B. The A/E shall revise the Design Development Documents consistent with the requirements and criteria established by the Owner to secure the Owner's written approval, and limit any and all ambiguous, vague, or incomplete design information that might cause needless additional cost to the Owner that may be discovered through the bidding process.

(2) Required Documents. In this Phase, the A/E shall prepare all reasonably required documents, including, but not limited to, the following:

- Drawings sufficient to fix and illustrate Project scope and character in all essential design elements
- Specifications outline
- Construction Cost Estimates (as described in Exhibit D) and analyses
- Recommendations for phasing of construction Site plan(s)
- Landscape plan
- Floor plans
- Elevations
- Building and wall sections
- Updated the-dimensional line drawings and/or perspective drawings, as required to illustrate the design intent
- Engineering drawings
- Color renderings

(3) Required Activities. In this Phase, the A/E shall undertake all reasonably required activities, including, but not limited to, the following:

- Make recommendations to the Owner for alternative approaches to design and construction.
- Participate in meetings with the Owner as requested to complete the Design Development Phase.
- Inspect and assess the Site, including all Improvements, both on the exterior and the interior, for further coordination and development of the Design Development Documents for materials, building systems, unique on-site conditions and phasing of the work.
- Perform feasibility planning, programming and other related studies.
- Define the list of standard products, apartment features, construction and finish materials, and building rehabilitation materials.
- Ensure coordination with all applicable agencies for code requirements.
- Prepare three (3) draft “presentation boards” to present Design Development Phase standard products and three (3) final “presentation boards” to illustrate final approved standard materials.
- Prepare graphics, presentation materials, illustrations and display materials as needed to describe Design Development Phase activities.
- Attend meetings with working group committees that will be established by the Owner, to represent the local community’s needs and interests.
- Confirm the Owner’s criteria and general requirements, Site data and other relevant information and prepare complete Schematic Design Documents for the Improvements and other amenities to the Site, including plans, sections, elevations, topography, outline specifications, and a general description of the Project, together with allowances for the cost of elements not designed.
- Review alternative approaches with the Owner for the materials, methods, phases and construction of the Project.
- Make such changes and revisions in the Design Development Documents and provide such drawings, reproductions and supporting data as necessary to meet the requirements of the Owner.
- Prepare Construction Cost Estimates in accordance with the provisions included in Exhibit D.
- Provide the required documents described in this Section based on the mutually-agreed upon program, schedule, and budget for the cost of the Work, which

shall establish the conceptual design of the Project illustrating the scale and relationship of the Project components.

(4) Design Standards. In this Phase, the A/E shall design the Project to meet all of the design standards set forth in the Agreement and in accordance with the criteria set forth in the following:

- Public Housing Development Handbook. HUD 7417 Rev-1 CHG-12 (December 21, 1992), as amended
- The Public Housing Modernization Standards Handbook. HUD 7485.2 CHG-2 (March 29, 1993), as amended
- HUD Lead Based Paint Poisoning Prevention, codified at 24 CFR 35; 24 CFR 965, Subpart H; 24 CFR 968.9(e); and as modified by various HUD circulars
- Uniform Federal Accessibility Standards codified at 24 CFR 40

(5) Review of Drawings. In this Phase, the A/E shall provide the Owner with three (3) copies of the Design Development Documents for review at each of the following stages of completion: 50%, 75%, and 100% completion.

(6) Conclusion of Phase. The Design Development Phase will conclude upon the Owner's written approval and acceptance of the Design Development Documents.

(c) Construction Document and Bidding and Contract Document Phase.

(1) Commencement of Phase. After receipt of the Owner's written approval of the Design Development Documents, the A/E shall prepare and submit the Construction Documents to the Owner in accordance with the Schedule attached hereto and incorporated herein as Exhibit B.

(2) Document Preparation. After consultation with the Owner and the Owner's attorney, if requested by the Owner, the A/E shall also prepare and assemble all Bidding and Contract Documents consistent with the requirements and criteria established by the Owner to secure the Owner's written approval and submit them to the Owner in accordance with the Schedule attached hereto and incorporated herein as Exhibit B.

(3) Document Revisions. The A/E shall revise these Construction Documents and Bidding and Contract Documents consistent with the requirements and criteria established by the Owner to secure the Owner's written approval.

(4) Elements. The Construction Documents shall include all documents listed in the Definition Section of this Agreement, together with details of all work to be performed; all material; workmanship; equipment required for the architectural, structural, mechanical, electrical and site work; survey maps furnished by the Owner and approved by A/E; and direct reproduction of any logs and subsurface soil investigations.

(5) Required Documents. The Bidding and Contract Documents shall include but shall not be limited to:

- Invitation for Bids
- Form of Contract
- Special Conditions
- General Conditions
- Technical Specifications
- Plans and Drawings
- Updated Construction Cost Estimate and Construction Cost Estimate Summary (as described in Exhibit D)

(6) Required Activities. In this Phase, the A/E shall undertake all reasonably required activities, including, but not limited to, the following:

- Present to the Owner final and recommended approaches for all aspects of construction, materials, methods for the work with associated cost and schedule.
- Participate in meetings with the Owner as requested to complete the Construction Documents Phase.
- Ensure all existing Site conditions have been verified and that the Construction Documents include all Improvements, both on the exterior and the interior, for the implementation of the Construction Documents.
- Identify all standard products, apartment features, construction and finish materials, building rehabilitation materials and coordination between required disciplines.
- Prepare three (3) draft “presentation boards” to present Construction Document and Bidding and Contract Document Phase standard products and three (3) final “presentation boards” to illustrate final approved standard materials.
- Prepare graphics, presentation materials, illustrations and display materials as needed to describe Construction Documents Phase activities.
- Compliance with all applicable agencies for code and regulatory compliance in the Construction Documents.
- Coordinate, implement and expedite all Construction Documents submissions for permit(s) to all required agencies, departments and bureaus. This should include, but is not limited to preparing all required applications, coordinating all required meetings and monitoring the progress of the permit(s) with the respective agencies, departments and bureaus. Also included should be all modifications to the Construction Documents to comply with all codes and requirements

- Submit Construction Documents for permits, and modify Construction Documents to comply with required City and code requirements.
- Attend meetings with working group committees that will be established by the Owner, to represent the local community's needs and interests.
- Ensure all the Owner's criteria and general requirements, Site data and other relevant information including applicable codes are addressed in the Construction Documents for the Improvements and other amenities to the Site, including plans, sections, elevations, topography, specifications, and description of the Project, together with allowances for the cost of elements not designed.
- Ensure all changes and revisions from previous phases are addressed and reconciled, and provide such drawings, reproductions and supporting data necessary to meet the requirements of the Owner and applicable governing agencies.
- Prepare Construction Cost Estimates in accordance with the provisions included in Exhibit D. Owner shall have the right to require A/E to have Construction Costs Estimate also be prepared by an independent third party.
- Provide the required documents described in this Section based on the mutually-agreed upon program, schedule, and budget for the cost of the Work, which shall establish the conceptual design of the Project illustrating the scale and relationship of the Project components.
- Design credits documentation for desired LEED Certification status.

(7) Compliance with Requirements. The Plans and Specifications shall comply with all requirements and conditions of any approvals, certificates or permits given by any and all governmental authorities and agencies having jurisdiction over the design, construction, existence or use of the Project. The Plans and Specifications shall require that no materials incorporated into the Work shall contain asbestos-containing materials. Asbestos-containing materials shall mean materials containing one percent (1%) or more of asbestos by weight.

(8) Copies of Construction Documents. In this Phase, the A/E shall provide the Owner with a minimum of thirty (30) copies of Construction Documents and provide copies of Construction Documents to all parties, as required to obtain building and other permits. In this Phase the A/E shall provide the CHA with review sets of the Plans and Specifications.

(9) Conclusion of Phase. The Construction Document and Bidding and Contract Document Phase shall conclude upon the A/E's completion of the Construction Documents and the Bidding and Contract Documents and receipt of the Owner's written approval thereof.

(d) Bidding and Award Phase.

(1) Commencement of Phase. After receipt of the Owner's written approval of the Construction Documents and the Bidding and Contract Documents, the A/E shall assist the Owner in administering the bidding and award of the Construction Contract in accordance with the Schedule attached hereto and incorporated herein as Exhibit B.

(2) Required Activities. During this Phase, the A/E shall perform all reasonably required activities, including, but not limited to, the following:

- Respond to inquiries from potential bidders (if directed by the Owner)
- Help in the preparation of addendum for bid
- Prepare drawings in response to Requests for Information from Bidders
- Recommending award
- Attend pre-bid conference(s)
- Attend public bid openings
- Assist the Owner in analyzing the bids received, including reviewing Division costs, Quantity Takeoffs and CPM schedules
- Attend pre-award conference(s), surveys
- Alter drawings and specifications as often as required to award the Construction Contract within the Maximum Construction Contract Cost (Estimate)

(3) Conclusion of Phase. The Bidding and Award Phase will conclude upon the Owner's award of the Construction Contract to the Contractor.

(e) Construction, Completion and Acceptance Phase.

(1) Commencement of Phase. After the Owner has executed the Construction Contract, the A/E shall, in a prompt and timely manner and in accordance with the Schedule attached hereto and incorporated herein as Exhibit B, administer the Construction Contract and all Work required by the Construction Documents.

(2) Defects and Deficiencies. During this Phase, the A/E shall use its best efforts to protect the Owner against defects and deficiencies in the execution and performance of the Work.

(3) Required Activities. During this Phase, the A/E shall perform all reasonably required activities related to administration of the Construction Contract, including, but not limited to:

- Participate in pre-construction conference(s), when requested by the Owner.
- Attend dispute resolution conferences when requested by the Owner.

- Attend various meetings related to the Project and the progress of the Work when requested by the Owner.
- Review and approve the Contractor's shop drawings and other submittals for conformance to the requirements of the Construction Contract.
- Procure testing from qualified parties when required and as directed by the Owner.
- Assist in monitoring the progress of the Work per the critical path schedule submitted by the Contractor.
- Monitor the quality and progress of the Work by making a Site visit a minimum of twice per week.
- Furnish a written field report weekly, and as required by any Owner Entity.
- Require any sub-consultant providing services to the A/E to visit the Site at least twice weekly during the time that construction is occurring on the portion of the Work related to its discipline and report in writing to the A/E.
- Review, approve, certify and submit to the Owner the Contractor's periodic and final Requests for Payment within fifteen (15) days of receipt thereof.
- If required by the Owner, or as necessary, conduct job meetings not less than once per week and record all actions at such job meetings in written minutes to be provided to the Owner on a weekly basis.
- Make modifications to the Construction Documents to correct errors, clarify intent or accommodate change orders. Construction credits documentation and submittal for desired LEED Certification status.
- Make all modifications to the Construction Documents required to obtain buildings permits and all other required permits and authorizations from all governmental authorities and agencies having jurisdiction over the design, construction, existence or use of the Project.
- Make recommendations to the Owner for solutions to special problems or changes necessitated by conditions encountered in the course of construction.
- Notify the Owner in writing of any defects or deficiencies in the Work within five (5) calendar days of discovery thereof, regardless of method of discovery.
- Notify the Owner in writing of any matter of dispute with the Contractor within five (5) calendar days of receipt of any notice of such dispute, whether verbal or written.
- Negotiate, prepare cost or price analysis for, and counter- sign change orders (as directed by Owner). Cost or price analyses include, but are not limited to, independent cost estimates ("Independent Cost Estimates"). The Independent

Cost Estimates shall include sufficient detail that will assist the Owner in comparing the A/E's estimated costs to the Contractor's cost proposal. (An Independent Cost Estimate format approved by the Owner is attached hereto as Exhibit E).

- Prepare a set of Record Drawings within thirty (30) calendar days after the Date of Substantial Completion.
- Attend all monthly pay request and construction meetings.
- Promptly Respond to requests for information (RFIs) from the Contractor no later than three business days of receipt thereof and, if necessary, prepare bulletins for Contractor pricing of any potential change orders or change orders.
- Determine the validity of Contractor's RFI by identifying 'frivolous' or 'incidental' requests for which answers have been previously provided in drawings, sketches, notes, and/or technical specifications.
- Prepare Independent Cost Estimates within seven (7) calendar days of the creation of a bulletin as directed by the Owner.
- Negotiate, prepare the cost or price analysis for and counter-sign change orders
- Receive, review and audit monthly construction progress and budget status reports from the Owner or the Owner's Representative, and provide the Owner or the Owner's Representative with comments.
- Maintain photo documentation of weekly observations.
- Provide Third Party photo documentation web based service
- Prepare cost or price analysis for change orders
- Review all potential change orders, change orders, claims, disputes or matters in question regarding Work performed by the Contractor or its subcontractors and deliver written opinions regarding the same to the Owner within thirty (30) days after receipt of same.
- Issue a Certificate of Substantial Completion.
- Prepare a written punch list certificates of completion(after receipt of the Contractor's and the Owner's Representative's lists based upon the A/E's mock up punch list) and other necessary construction close out documents
- Prepare a written certificate stating that all punch list items have been satisfactorily completed.

(4) Conclusion of Phase. The Construction, Completion and Acceptance Phase will conclude upon the Owner's receipt and acceptance of the A/E certificate stating that all punch list items have been satisfactorily completed



and the Owner's delivery of written statement accepting the Work in place, and issuance of a Certificate of Substantial Completion.

(f) Close-Out Phase

(1) Commencement of Phase. After the completion of the Work and after the Owner's receipt and acceptance of the A/E's certificate stating that all punch list items have been satisfactory completed and the Owner's delivery of a written statement accepting the Work in place, the A/E shall, in prompt and timely manner and in accordance with the Schedule attached hereto and incorporated here in as Exhibit B, review the Work with the Contractor, the Owner's representative and the Owner and perform customary completion, acceptance and close-out activities related to the Work.

(2) Required Activities. The A/E shall perform customary close-out activities related to the Work, including, but not limited to, the following:

- Perform initial inspection of the Work and either prepare a certificate of preliminary acceptance or advise the Contractor of Work that must be completed. Repeat inspection as necessary to assure that the Work has been substantially completed.
- Review all Work following Contractor's completion of punch list and determine whether final acceptance is appropriate.
- Receive and certify that the Contractor's bound operating and maintenance manual comply with the Construction Contract requirements.
- Verify that all required equipment warranties and test reports are included in the Contractor's bound operating and maintenance manuals and meet design requirements.
- Provide building systems test and balance summary to include date of test, equipment, and results.
- Receive and certify that the written warranties of workmanship and system operation provided by the Contractor and its sub-contractors, together with any required vendor material guarantees, are complete and in compliance with the Construction Contract requirements.
- Receive and certify that the Contractor has secured all inspection sign-offs on the permits covering the Work.
- Assemble an album of annotated photograph records showing the progress of the Work through final acceptance, to be submitted in hard copy printed album and on CD/DVD in format acceptable to the Owner.

- Prepare a set of Record Drawings both electronic and hard copy within thirty (30) calendar days after the commencement of the Close-Out Phase.
- Comply with all other terms and conditions of the Owner's printed close-out instructions as contained in the Contractor's construction contract.

(3) Conclusion of Phase. The Close-Out Phase will conclude upon the Owner's receipt an acceptance of all manuals, warranties, guarantees and other close-out materials and issuance and execution of the Certificate of Completion.

(g) Post Completion/Warranty Phase.

(1) Commencement of Phase. After the Owner has received and accepted all manuals, warranties, guarantees and other close-out materials and has executed the Certificate of Completion, the A/E shall, in a prompt and timely manner and in accordance with the Schedule attached hereto and incorporated herein as Exhibit B, perform post-completion and warranty activities

(2) Required Activities. The A/E shall perform all post-completion and warranty activities as are usually and customarily performed, rendered or done by architects in connection with the construction, rehabilitation and completion of residential buildings, including, but not limited to, the following:

- Consult with and make recommendations to the Owner regarding construction and equipment warranties.
- Perform an inspection of construction work, material, systems and equipment no earlier than nine (9) months and no later than ten (10) months after completion of the Construction Contract and make a written report to the Owner.
- Upon receipt of a written request from the Owner, and following Owner approval of a proposal for Additional Services and execution of an amendment to this Agreement pursuant to the Additional Services section hereof, conduct additional warranty inspections and prepare reports regarding such inspections.
- Complete a warranty inspection report pursuant to HUD requirements in both hard copy and electronic formats.
- Advise and assist the Owner in construction matters for a period of eighteen (18) months after completion of the Project, provided, however, that such assistance is not to exceed forty (40) hours of service and one (1) non-warranty trip away from the place of business of the A/E.

(3) Conclusion of Phase. The Post Completion/Warranty Phase will conclude upon the later of the expiration of such eighteen (18) month period or conclusion of any Additional Services provided pursuant to any amendments entered into pursuant to Subparagraph B(3)(g)(2) above.

#### **4. Deliverables.**

(a) Generally. In connection with its performance of the Services, the A/E shall prepare and/or provide the Deliverables to the Owner at the time designated herein, or at such other time as the Owner shall designate. The A/E shall prepare certain Deliverables that include, but are not limited to, documents, data, studies, reports, findings or information in any form prepared or assembled either in hard copy, electronic media as required by Owner or in any other form and as further described in Paragraph B(4)(c) below (hereinafter, collectively "Deliverables"). The Owner reserves the right to reject any or all Deliverables which, in the reasonable judgment of the Owner or the Owner's Representative, are incomplete or do not meet the required standard of performance. The Owner will notify the A/E in writing of any deficiencies the Owner identifies with respect to a Deliverable within thirty (30) days of receipt of such Deliverable, and the A/E shall have a period of not more than thirty (30) days to correct any deficiency so noticed by the Owner.

(b) Owner's Acceptance. The Owner may, in its sole and absolute discretion, accept a partial or incomplete Deliverable from the A/E for review, but such acceptance shall not constitute a waiver of the Owner's right to insist upon completion and/or correction of such Deliverable.

#### **(c) Format of Architect/Engineer Deliverables.**

(1) The Deliverables may include reports, spread sheets, schedules, sketches, photographs, presentation and illustration boards with descriptive graphics as required, models, drawings, construction Plans and Specifications, construction administration records or reports, surveys, inspections, recommendations and due diligence documents, both electronic and hard copies.

(2) The A/E shall provide reports, studies, surveys, property inspections, recommendations and similar documents in written and bound format and all photographic documentation and graphics shall be in either digital or color photographic form, both electronic and hard copies.

(3) The A/E shall submit all reports in triplicate, with original quality graphics (either color or half-tone) capable of color Xerox-type reproduction.

(4) The A/E shall provide conceptual, schematic and construction drawings in Computer Aided Drawing and Drafting (CADD) and "hard-copy" formats as follows:

- Conceptual, schematic and construction drawings shall be provided in blue-line or black-line format for the Owner's review
- Documents issued for bid, construction, addenda, and Record Drawing purposes will be submitted with one full-size reproducible "hard-copy" on reproducible Mylar, bond or vellum and in electronic format directly readable and compatible with the Owner's CADD software (See Subparagraph B(4)(d)(2) below)

- Documents issued for the purpose of obtaining building permits, both originals and revised sets, will be delivered to the appropriate governmental authorities in required numbers, and to the Owner in sets of five (5)

(5) Deliverables such as reports, spread sheets, schedules, sketches, photographs, presentation and illustration boards with descriptive graphics as required, models and drawings will be provided in accordance with the schedule and delivery dates set by the Owner prior to the bidding phase.

(d) Format of Construction Documents Deliverables.

(1) The A/E shall provide as part of the Services the following Deliverables which will be adequate to communicate the intent of the Construction, Completion and Acceptance Phase and which will help in obtaining reasonable bids and pricing for the Work:

- Three (3) one-half size review sets and one (1) full size review set of Project Plans and Specifications at the end of each design phase (Schematic Design/Preliminary Study Phase and Design Development Phase) of the Services.
- One (1) review copy of the draft Specifications at the end of each design phase (Schematic Design/Preliminary Study Phase and Design Development Phase).
- Three (3) one-half size plan review sets and three (3) copies of review Specifications at 50% and 90% completion of the Construction Documents Phase of the Services.
- Three (3) full size sets of Plans and Specifications at 100% completion for the Owner's written approval.
- CADD and three (3) full size "hard copy" sets of Plans and Specifications upon approval of 100% completion.
- Portable Document File ("PDF") versions of the "Statement of Probable Construction Cost", Construction Cost Estimate, Technical Specifications and Construction Drawings for use by the Department of Procurement and Contracts in the bid solicitation for a general contractor to perform the renovation work.
- Architect's "Statement of Probable Construction Cost" at the end of the Schematic Design/Preliminary Study Phase, Design Development Phase and Construction Document Phase of the Services. Such reports shall be organized by CSI (Construction Specifications Institute) format and be of appropriate and adequate detail for review and approval by the Owner.

- Any and all Construction Cost Estimates or “Statements of Probable Construction Cost” submitted by the A/E shall have all associated construction cost assembled, broken-down, and shown by way of labor, material, and equipment at their corresponding ‘unit of measure’. Owner reserves to request that A/E have such Costs estimates be done by an independent Third Party cost estimator.

(2) The A/E shall maintain firm capability to collaborate with the Owner, the Owner’s Representative, the Owner’s other consultants and the Contractor electronically via Meridian Project Systems™ Prolog Website® and Prolog Manager®. Prolog Website® and Prolog Manager® have been previously selected by the Owner for scheduling, cost control, document management and field management, including data collection. The A/E must maintain a minimum of two (2) employees at all times during business hours, assigned to the Project, who are able to collaborate with the Owner, its consultants and the Contractor during all phases of the Project via Prolog Website® and Prolog Manager®.

The A/E shall utilize Prolog Website® and Prolog Manager® for the following document control functions, including but not limited to:

- Prepare responses to RFIs posted by Contractors
- Prepare bulletins
- Prepare and respond to Hot List Items
- Prepare and respond to issues
- Review meeting minutes

In order to comply with the foregoing statement, the A/E shall maintain the following system requirements and capabilities:

- PROCESSOR – minimum: Intel Pentium III 600 MHz or equivalent processor; recommended: 1 GHz or faster
- MEMORY – minimum: 192 MB; recommended: 512 MB or higher.
- OPERATING SYSTEM – Microsoft Windows 2003 Server (with Service Pack 2), Microsoft Windows 2003 Server R2 (with Service Pack 2); Windows XP (Home and Professional – with Service Pack 2); Microsoft Windows Vista (all versions).
- BROWSER – minimum: Internet Explorer 6 (with Authenticode ® 2.0) (excluding Internet Explorer Macintosh Edition); recommended: Internet Explorer 7.x.
- INTERNET SERVICE PROVIDER AND CONNECTION – minimum: 56K dial-up; recommended: ISDN or Direct Subscriber Line (e.g. ADSL or Cable).
- Allow session cookies to pass and ActiveX controls to be downloaded.

In addition, the A/E may provide electronic files and media in formats directly readable and compatible with the Owner’s CADD software and information management

software. The following formats are acceptable:

- Auto CAD DWG or DXF for all graphics
- Microsoft WORD for text
- Microsoft Excel for data
- Other formats upon written approval of the Owner

**IMPORTANT: All electronic data/files must be submitted on CD-ROMs, USB Flash Drives.**

(3) Before files are placed on delivery media, the A/E must perform the following procedures:

- Remove all extraneous graphics outside the border area and set active parameters to standard setting or those in the seed file.
- Assure all reference files are attached without device or directory specifications.
- Compress and reduce all design files using the appropriate utilities (note: a digital media copy of the decompression utility will be provided with the deliverable if appropriate. (e.g. PKUNZIP).
- Include all files, graphic and non-graphic required for the Project.
- Assure that none of the files are device and directory dependent.
- Document all non-standard fonts.
- Check all transferred media, software and data for viruses with recognized, commercial quality anti-virus software and specify, in writing, the name and version of the anti-virus software.
- Upon request, the A/E shall supply the Owner with a copy of the actual software used for virus checking and removal.

(e) Accounting Statements. The A/E shall submit separate statements for costs incurred on the Project for each separate building within the Site (noting each building designation number).

5. Time of Performance. The A/E schedule for preparing, delivering and obtaining the Owner's approval for Basic Services is set forth on Exhibit B attached hereto and incorporated herein. This is a firm, fixed-price, fixed-service Agreement which requires all described Basic Services to be performed for the Total Contract Price. The Owner reserves the right to revise all or part of the schedule for completion of all or part of the activities due to the Owner's or the general contractor's failure to comply with that schedule, or otherwise, and shall provide written notice of such schedule changes to the A/E. The A/E shall not be entitled to additional compensation for any such schedule revisions.

6. **Performance Standards.** The A/E shall perform all Services required under this Agreement in accordance with industry standards in Chicago, Illinois and with the degree of knowledge, 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 A/E shall at all times use its best efforts to assure quality, timeliness, efficiency and creativity in rendering and completing the Services. The A/E agrees that performance of the Services in a satisfactory manner shall include timely response to the Owner's requests and understands that time is of the essence in this Agreement. Accordingly, the A/E shall return all telephone calls and respond to all electronic mail on a timely basis but in no event shall such response take more than one (1) business day.

7. **The A/E Additional Services.**

(a) **Description of Additional Services.** Additional Services are all those services provided by the A/E on the Project for the Owner that are not defined as Basic Services in Section B(2). Additional Services include, among other things, major revisions in the scope of work described and depicted in previously approved drawings, Plans, Specifications and other documents due to causes beyond the control of the A/E and not due to any errors, omissions, or failures on the part of the A/E to carry out obligations otherwise set out in this Agreement or not otherwise required of the A/E under other provisions of this Agreement.

(b) **Written Addendum or Contract Amendment.** The A/E shall perform all Additional Services requested by the Owner pursuant to this Agreement, provided that the parties shall agree to a description of such Additional Services and the terms of performance of said Additional Services in either a written addendum or amendment to this Agreement prior to the performance of such Additional Services. The Owner shall not be responsible for or obligated to pay the A/E for any Additional Services provided by the A/E pursuant to this Agreement unless such Additional Services are so authorized by written addendum or amendment to this Agreement. In any event the A/E may not make any claims against the Owner for equitable adjustments; additional costs, direct or indirect; or fees after completion of the Agreement.

**ARTICLE C: COMPENSATION AND PAYMENT**

1. **Fixed Fee for Basic Services.**

(a) **Fixed Fee for Basic Services.** The Owner will pay the A/E for Basic Services the Fixed Fee (stipulated sum) of \$1,024,580.00 plus Reimbursable Expenses identified in Section C(2) of no more than \$82,650.00 for a maximum Total Contract Price of \$1,107,230.00. Such payment shall be compensation for all Basic Services required, performed, or accepted under this Agreement.

(b) **Schedule of Payment for Basic Services.** The Owner shall make Progress Payments, as defined below, to the A/E until the Fixed Fee set forth above is fully paid. The A/E Services may be implemented in phases; therefore, the Owner shall make progress payments in accordance with the phasing of the design and construction of the Project. The amount of each

progress payment will be calculated as set forth below. The A/E will be paid each month for that portion of the Services that it has completed. For purposes of calculating such progress payments, the Services will be divided into four (4) main components, and the total payment (portion of the total Fixed Fee) attributable to the Services provided will be divided as follows:

Design Fee:	Sixty five percent (65%) of the Fixed Fee
Construction Administration Fee:	Twenty five percent (25%) of the Fixed Fee
Project Closeout Fee:	Nine percent (9%) of the Fixed Fee
Post Completion/Warranty Fee:	One percent (1%) of the Fixed Fee

The Owner shall make such progress payments as follows:

Design Fee Payment: will be made on a monthly basis and will be based on the percentage of design documents complete. The A/E can bill the Owner for the percentage of the Design Fee indicated in the parentheses when the following documents are complete: Schematic Design/Preliminary Study Documents (25%), Design Development Documents (25%), Construction Documents (40%) and Final Bidding and Contract Documents (10%).

Construction Administration Fee Payments: will be made on a monthly basis and will be based on the percentage of the Work completed. The percentage of the Work completed will be computed by the amount paid to date to the Contractor, divided by the total Contract value.

Project Closeout Fee Payments: will be a lump sum payment made when all Deliverables and documentation are received from the A/E and accepted by the Owner.

Post Completion Fee Payment: will be a lump sum payment made upon the later of the expiration of the eighteen (18) month post completion/warranty period or conclusion of any Additional Services provided pursuant to any amendments entered into pursuant to Subparagraph B(3)(g)(2) above.

**2. Reimbursable Expenses.** The Owner will pay the A/E for the Reimbursable Expenses listed below up to a maximum amount of 82,650.00 The sum of the Reimbursable Expenses and the Fixed Fee for Basic Services set forth in Section C(1)(a) equal the maximum Total Contract Price of \$1,107,230.00 Reimbursable Expenses are in addition to the Fixed Fee for Basic Services and are for certain actual expenses incurred by the A/E in connection with the Project as enumerated below. All Reimbursable Expenses must be by the Owner's individual building designations for the Project, and all costs must be identified by cost type (as set forth below), and building designation. Unless cost accounting is completed in this manner, the A/E will not be reimbursed for Reimbursable Expenses.

(a) Travel Costs. The reasonable cost of travel incurred by the A/E when the Owner requests that the A/E travel to a location more than forty five (45) miles from the Project Site, the A/E local Chicago office(s), or the Owner's office.

(b) Long Distance Telephone Costs. Long distance telephone calls and long distance telefax costs.



(c) Delivery Costs. Courier services and overnight mail.

(d) Reproduction Costs. The cost to reproduce and mail all drawings, Plans and Specifications, and Bidding and Contract Documents required to be produced, provided or delivered pursuant to this Agreement, excluding the cost to reproduce such documents for the A/E own use or the use of its sub-consultants.

(e) Specialty Consultants. The charges (hourly or otherwise) incurred for specialty consultants approved by the Owner in writing prior to the A/E engagement thereof.

3. Additional Reimbursable Expenses. The A/E and the Owner may agree in an addendum or amendment to this Agreement to include certain other expenses not enumerated above as Reimbursable Expenses ("Additional Reimbursable Expenses"). Such Additional Reimbursable Expenses shall not be limited by the maximum amount agreed to in Section C(2) above. The Owner and the A/E shall agree in writing upon a separate budget for these Additional Reimbursable Expenses.

4. Payment for Additional Services. The Owner will pay the A/E for Additional Services agreed to in an addendum or amendment to this Agreement executed by the Owner's Contracting Officer, or designee, and the A/E pursuant to Section B(7) above. Payment for all such Additional Services shall be in an amount and upon the terms set out in such amendment or addendum and agreed upon by the parties. Each such amendment or addendum shall provide for a fixed price or, where payment for such Additional Services is to be on an hourly basis or other unit pricing method, for a maximum amount. Each such amendment or addendum to this Agreement shall also provide for a method of payment, including, at a minimum, whether payment will be made in partial payments or in a lump sum and whether it will be based upon percentage of completion or services billed.

5. Invoicing and Payments.

(a) Invoices. All payments to the Prime Design Services Consultant, in the manner hereinafter provided, shall be based upon the percentage of the Services complete for the period in question (herein referred to as a "Progress Payment"). The A/E shall, by the fifth (5<sup>th</sup>) working day of each calendar month beginning with the second month after commencement of the Project pursuant to this Agreement, furnish to the Owner an itemized application for Progress Payment (herein referred to as an "Application for Payment") supported by such data substantiating the A/E right to payment as the Owner may require, through the last day of the preceding calendar month. The Application for Payment shall be supported by such data substantiating the A/E right to payment as the Owner may require, including, but not limited to, identification of the Phase of the Project, a description of the Basic Services performed and completed and the dates of completion, an itemization of the Reimbursable Expenses or Additional Reimbursable Expenses sought, details of the Additional Services performed, if any, the name of the payee, and the address to which payment should be sent. All invoices shall be submitted to the Owner's Accounts Payable Department, 60 E. Van Buren Street, 11<sup>th</sup> Floor, Chicago, Illinois 60605.

(b) Time of Payment. Upon the A/E proper submission of the Application for Payment, the Owner shall review the Application for Payment and, if the A/E has performed the

Services in conformance with the terms of the Agreement, make payment within thirty (30) days of the Owner's receipt and acceptance of the Application for Payment.

(c) Support of Applications for Payment. Each Application for Payment shall be supported by the following documentation on forms to be supplied by the Owner:

- Lien waiver waiving any lien rights against the Project, the Work, Site and any monies payable to the A/E for the entire amount covered by said Application for Payment
- Certificates, statements and affidavits showing that portion of the Services covered by said Application for Payment has been done and material delivered free of liens
- Submittal letter, including, without limitation, a billing summary and statement of account
- Sub-consultant's lien waivers covering all payments received by any sub-consultants of the A/E
- Such other documents in form, scope and substance as the Owner shall require

6. Availability of Funds/Non-Appropriation. The Funding for the Project described in this Agreement is subject to: (a) availability of federal funds from HUD; (b) the approval of funding by the Owner's Board of Commissioners; and (c) the A/E satisfactory performance of the Services. Furthermore, in the event that no funds or insufficient funds are appropriated and budgeted in any fiscal period of the Owner for payments to be made under this Agreement, then the Owner will notify the A/E 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 D: OWNER'S RESPONSIBILITIES**

1. Information. The Owner shall provide information regarding requirements for the Project, including a program that shall set forth the Owner's objectives and schedule. The Owner shall also establish and update the Maximum Construction Contract Cost and update the Schedule attached hereto as Exhibit B. This shall include the Owner's giving notice of work to be performed by the Owner or others and not included in the Construction Contract for the Project. The A/E, however, shall be responsible to ascertain and know Federal, State and local requirements and limitations placed on the Project.

2. Notice of Defects. If the Owner observes or otherwise becomes aware of any fault or defect in the Work or nonconformance of the Work with the Construction Contract, the Owner shall give prompt written notice of those faults, defects or nonconformance to the A/E.

3. Owner's Project Administrator. The Owner shall designate a Senior Project Administrator authorized to act on its behalf with respect to certain aspects of the Project and this Agreement, the Project and the Work. The Senior Project Administrator shall examine all documents submitted by the A/E and shall promptly render decisions about those documents so as to avoid unreasonable delays of the progress of the A/E work.

4. **Duties to Furnish.** The Owner will be, or may be, obligated to provide the A/E the items listed below in this Section D(4).

(a) **Survey and Property Restrictions.** The Owner may provide the A/E with topographic, property line and utility information as and where required. The Owner may, at its election, require the A/E to furnish any of these items as an Additional Service.

(b) **Existing Conditions.** The Owner may provide the A/E with any available "as built" or Record Drawings of the Improvements, architect surveys, test reports, and any other written information that it may have in its possession and that it might reasonably assume affects the A/E performance of its Services or the Contractor's performance of the Work.

(c) **Waivers.** The Owner may provide the A/E with any information it may have obtained regarding waivers of local codes, ordinances, regulations or standards affecting the design of the Project.

(d) **Minimum Wage Rates.** The Owner shall provide the A/E with the schedule of minimum wage rates approved by the U.S. Secretary of Labor for inclusion in the Bidding and Contract Documents.

(e) **Tests.** When expressly agreed to in writing by both the Owner and the A/E, the Owner shall provide the A/E with all necessary structural, mechanical, chemical or other laboratory tests, inspections and reports required to be performed by an independent testing agency for design of the Project.

(f) **Bidding and Contract Document Terms.** The Owner or its legal counsel may provide the A/E with required text to be incorporated into the Bidding and Contract Documents.

## **ARTICLE E: CONTRACT ADMINISTRATION**

1. **Prohibition against Assignment.** The A/E shall not assign this Agreement, in whole or in part, or its interest therein, nor subcontract its obligations to perform any of the Services required to be performed hereunder, without the prior written consent of the Owner. Such consent shall not be unreasonably withheld when such assignment is for financing the A/E performance. This contract may be assigned by CHA to an ownership entity.

2. **Ownership of Documents.** All Deliverables and other materials prepared pursuant to this Agreement are and shall be the property of the Owner from the time of their conception and shall be delivered to the Owner within fifteen (15) business days following the termination or completion of the A/E Services or Owners' request. The A/E shall have no claim for further employment or additional compensation as a result of the exercise by the Owner of its full rights of ownership of such documents. It is understood, however, that the A/E does not represent such documents to be suitable for re-use on any other project or for any other purpose. If the Owner re-uses the Deliverables or any other materials prepared pursuant to this Agreement without the A/E written verification, such re-use will be at the sole risk of the Owner and without liability to the A/E.

3. **Confidentiality.** The A/E agrees that all Deliverables and other documents and information prepared, assembled, received, reviewed or encountered by it pursuant to this Agreement ("Confidential Information") are to remain confidential and to be used solely for the purposes of meeting the objectives of this Agreement. The A/E agrees that such Confidential Information shall not be made available to any individual or organization other than the Owner, the Owner's Representative, HUD, or courts of competent jurisdiction or administrative agencies, pursuant to a subpoena, without the prior written approval of the Owner. In the event the A/E is presented with a subpoena regarding any such Confidential Information which may be in the A/E possession by reason of this Agreement, the A/E must immediately give written notice to the Owner's Chief Executive Officer and General Counsel with the understanding that the Owner 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 A/E, 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.

4. **Substitutions.**

(a) **Identification of Key Employees:** The A/E shall identify in writing principals and professional level employees and shall not substitute or replace principals or professional level employees without the prior written approval of the Owner, which approval shall not be unreasonably withheld, conditioned, or delayed.

(b) **Notice to the Owner; Approval:** The A/E personnel identified below are considered to be essential to the delivery of the Services required under this Agreement. Prior to diverting or substituting any of the personnel identified below, the A/E shall give the Owner advance written notice of its intent to divert or substitute such personnel, together with a justification of such decision, and proposed substitutions in sufficient detail to permit evaluation of the impact on the Services provided pursuant to this Agreement. Upon receipt of the Owner's written approval, the A/E may substitute such essential personnel.

Personnel: Greg Marinelli Project, Manager, Joyce Chou, Program Executive

5. **Suspension.** The Owner may give written notice to the A/E to suspend work on the Project, or any part thereof, at any time during the term of this Agreement. The Owner shall not be obligated to consider a claim for additional compensation if the A/E is given written notice to resume work within one hundred twenty (120) calendar days after receipt of the written notice of suspension. If the Owner does not deliver such written notice to resume work to the A/E within such time period, the A/E shall be entitled to an equitable adjustment in compensation but shall not be entitled to terminate this Agreement.

6. **Subcontracts.** The A/E will cause all applicable provisions of this Agreement to be inserted in all its subcontracts.

7. **Disputes.** In the event of a dispute arising under this Agreement, the A/E shall notify the Owner in writing within thirty (30) calendar days of the first knowledge or observation of the injury, damage, or incident that is the basis of such dispute and shall submit a detailed claim setting forth the nature of the dispute and the relief sought. The Owner shall respond to the claim in writing within thirty (30) calendar days of receipt thereof. The A/E shall continue to

perform all Services under this Agreement during resolution of any such dispute in accordance with the terms of this Agreement and the instructions of the Owner; provided, however, that such compliance shall not constitute a waiver of the A/E rights to make such a claim. Any dispute not resolved by this procedure may be determined by a court of competent jurisdiction or by agreement of the Owner and A/E, through other dispute resolution methods.

**8. Termination for Default; Cure; Termination for Convenience; Right of Offset**

(a) Termination for Default. The Owner may, upon written notice to the A/E, pursuant to the notice provisions in Section G(7) below, without prejudice to any other rights or remedies of the Owner, terminate this Agreement and the A/E right to proceed with the Project for default, if one or more of the following defaulting events (each, a "Defaulting Event") occurs:

- (1) The A/E makes any material misrepresentation, whether negligent or willful and whether in the inducement or in the performance, to the Owner;
- (2) The A/E files for, or is forced by creditors into a suit for, bankruptcy or any other action in insolvency;
- (3) The A/E makes a general assignment for the benefit of its creditors;
- (4) A trustee is appointed for the A/E on account of its insolvency;
- (5) The A/E fails to maintain and/or renew insurance coverages and bonds required under this Agreement;
- (6) The A/E fails to pay sub-consultants within ten (10) days after receipt of payment from the Owner for such expenses or invoices;
- (7) The A/E suspends diligent prosecution of the Project or abandons the Project for ten (10) or more days;
- (8) The A/E does not prevent the imposition of liens on the Site(s), within the reasonable control of the A/E;
- (9) The A/E makes any material misrepresentation of the representations and certifications it is required to make pursuant to this Agreement, whether intentional or not;
- (10) A loss time injury or death occurs in which an OSHA penalty is assessed;
- (11) The A/E violates or is in material breach of any provision of this Agreement, including, but not limited to, the provisions concerning compliance with Federal, State and local laws and regulations, including, but not limited to, HUD regulations and all insurance and nondiscrimination requirements;

(12) Kickbacks of employee wages, subcontractor, consultant or vendor payments or any other payment to the A/E, or its respective principals, superintendents, or employees occur; or

(13) The A/E or its sub-consultants fail to pay Davis-Bacon wages, inaccurately certify payrolls or miscategorize an employee's job classification.

(14) The A/E acts or fails or to act in a manner which is expressly stated in this Agreement as constituting a defaulting event and/or as giving the Owner the right to terminate this Agreement.

(b) Cure; Owner's Election; Remedies Cumulative.

(1) In the event the Owner delivers such notice of termination for default to the A/E, the A/E will have thirty (30) days to cure such default to the satisfaction of the Contracting Officer of the Owner. The determination of the Owner's Contracting Officer shall be final with respect to whether such cure was satisfactory and complete.

(2) In the event the Owner's determination regarding a termination for default is reversed or found to be a wrongful termination on appeal, in alternative dispute resolution, or in a court of law, the termination for default shall become a termination for convenience and the A/E exclusive remedy shall be those provided with respect to a termination for convenience.

(3) In the event the Owner terminates this Agreement for default, the Owner may take over the performance of the Project and execute it to completion, by contract or otherwise, and the A/E and its sureties and insurers shall be liable for any excess cost occasioned to the Owner. In any such case, the Owner may take possession of and use any of the A/E materials, appliances, equipment and/or drawings, Plans and Specifications, or other work product as may be necessary to properly complete the Project, if it is determined that delay in completion of the performance thereof, whether or not for reasons beyond the control of the A/E or any of its sub-consultants, is detrimental to the interests of the Owner.

(4) If a Defaulting Event occurs, as enumerated in Paragraph E(8)(a) above, if the Owner considers it to be in its best interest, it may elect not to declare a default of this Agreement or terminate this Agreement. The parties acknowledge that this provision is solely for the benefit of the Owner and that if the Owner permits the A/E to continue to provide the Services, despite one or more events of default, the A/E shall in no way be relieved of any of its responsibilities, duties or obligations under this Agreement nor shall the Owner waive or relinquish any of its rights hereunder.

(5) The Owner's right to terminate this Agreement is not intended to be exclusive of any other remedies provided, but each and every remedy shall be cumulative and shall be in addition to any other remedies, existing now or hereafter, at law, in equity or by statute. The Owner shall not be prohibited from pursuing such right to terminate

this Agreement, regardless of the Owner's delay in, or failure to exercise any right that accrues upon a Defaulting Event, or acquiescence therein, 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 Owner.

(c) Termination for Convenience. The Owner may, upon written notice to the A/E pursuant to the notice provisions in Section G(7) below, without prejudice to any other rights or remedies of the Owner, terminate the A/E right to proceed with the Project for convenience if:

- (1) A Defaulting Event occurs;
- (2) The A/E is terminated for default on any other contract with the Owner or the City of Chicago;
- (3) The A/E is debarred from any other Federal, State of Illinois, or City of Chicago procurement activity or contract during the term of this Agreement;
- (4) The A/E or any of its principals owning more than five percent (5%) of the A/E is charged with or arrested for criminal conduct for which there may be a felony conviction;
- (5) The A/E fails to obtain, in a timely manner, maintain, continuously renew, or lacks any license, permit or registration required from the City of Chicago or the State of Illinois;
- (6) A strike, which was not provoked by the A/E or its sub-consultants, gang warfare, civil insurrection or riot causes the Project to be suspended in whole or significant part for ten (10) days or more;
- (7) The A/E fails to maintain a "drug free" workplace; or
- (8) The A/E fails to provide accurate and timely reports, to update the Owner on the progress of the work on the Project, or to communicate with the Owner, as requested by the Owner;
- (9) Any other reason by which Owner no longer deems it in the Owner's best interest to continue with this Agreement.

(d) Choice of Termination Provisions. It is the Owner's exclusive right to determine use of the termination for default or termination for convenience provision of this Agreement.

(e) Right to Offset. In the event the A/E is in default under this Agreement, the Owner shall have the right to offset any amounts due to the Owner as the result of any such default against any amounts owed by the Owner to the A/E for Services rendered pursuant to this Agreement.

**9. A/E Termination Claims.**

(a) Right of Termination. The Owner may terminate this Agreement, in whole or in part, pursuant to the provisions in Section E(8) above. Any such termination shall be effected by delivery to the A/E of a Notice of Termination specifying the extent to which performance of Services under this Agreement is terminated and the effective date of such termination.

(b) Termination Claim. Upon termination of this Agreement pursuant to Paragraph E(8)(c), the A/E claim shall be limited to the sum of the following:

- Payment for Services, not theretofore paid, completed in compliance with this Agreement through the date of the Notice of Termination; and
- The cost of settling or otherwise liquidating any claims arising out of the termination of any subcontracts or orders for materials and the costs of performing those actions required under Subparagraph E(9)(c)(3) below.

In arriving at the amount due the A/E under this Paragraph E(9)(b), there shall be deducted (i) all unliquidated advances or other payments on account previously made to the A/E, applicable to the terminated portion of this Agreement, if any; (ii) any claim which the Owner, directly or indirectly, may have against the A/E in connection with this Agreement, including, without limitation, claims arising as a result of any violation of any provision of this Agreement; and (iii) any other matter to be reconciled between the parties.

(c) The A/E Responsibility Upon Termination. After receipt of a Notice of Termination, and except as otherwise directed by the Owner in the Notice of Termination, the A/E shall:

(1) Stop work under this Agreement immediately upon receipt of the Notice of Termination;

(2) Place no further orders for materials or supplies or subcontract for materials, services, or facilities;

(3) Terminate all orders and subcontracts to the extent that they relate to the performance of the Services terminated by the Notice of Termination immediately upon receipt of the Notice of Termination within five (5) days after receipt of the Notice of Termination;

(4) Assign to the Owner, in the manner, at the times, and to the extent directed by the Owner, all of the rights, title, and interest of the A/E under the orders and subcontracts so terminated, in which case the Owner shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and/or subcontracts within five (5) days after receipt of the Notice of Termination;

(5) Subject to Subparagraph E(9)(c)(4) above, settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval of the Owner within ten (10) days after receipt of the Notice of Termination;



(6) Within five (5) days after receipt of the Notice of Termination, transfer title and deliver to the Owner, as directed by the Owner: (i) the completed or partially completed Plans and Specifications, as applicable; (ii) all information, reports, papers and other materials accumulated or generated in performing this Agreement, whether completed or in process; and (iii) all other Deliverables in the A/E possession.

(7) Complete performance of such portion of the Services as shall not have been terminated by the Notice of Termination within the time period specified on the Schedule attached hereto and incorporated herein as Exhibit B; and

(8) Take such action as may be necessary, or as the Owner may direct, for the protection and preservation of any of the Deliverables in the possession of the A/E or any of the A/E sub-consultants.

## **10. Insurance.**

(a) Coverage Generally. The A/E shall not commence any work related to the Project until it procures and provides evidence of all insurance required to be obtained under this Agreement. Further, the A/E will not permit any subcontractor to commence work on the Project until such subcontractor has complied with the insurance requirements set forth herein.

(b) Period of Coverage. The A/E agrees to procure and maintain at all times during the term of the Agreement the types of insurance specified below in order to protect the Owner from the acts, omissions and negligence of the A/E, its officers, officials, subcontractors, joint venturers, partners, agents, licensees, invitees or employees. The A/E shall maintain coverage for the duration of the Agreement. Any extended reporting period premium (tail coverage) shall be paid by the A/E.

(c) Insurance Carriers. The insurance carriers used by the A/E must be authorized to conduct business in the State of Illinois and shall have an A.M. BEST Rating of not less than an "A".

(d) Required Insurance Coverage. The A/E shall provide insurance to cover all operations under the Agreement, whether performed by the A/E or by its sub-consultants. Coverage shall include, but shall not be limited to, the following:

### **(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.

### **(2) Employer's Liability Insurance**

Employer's Liability Insurance, Coverage B, in an amount of not less than \$500,000/\$500,000/\$500,000.

### **(3) Commercial General Liability Insurance**

Commercial General Liability Insurance will be written on an occurrence (Primary) and Umbrella Liability (excess) basis, with limits of not less than One Million Dollars

(\$1,000,000) per occurrence with an Aggregate of not less than Two Million Dollars (\$2,000,000) (i.e. \$1,000,000/\$2,000,000). In addition to the stipulations outlined above, the insurance policy is to include coverage for Contractual Liability, Products-Completed Operations and Personal and Advertising Injury, and shall also cover injury to the A/E officers, employees, agents, sub-consultants, invitees and guests and their personal property. The Owner is to be endorsed as an additional insured on the A/E policy, and such insurance will be endorsed as primary and non-contributory with any other insurance available to the Owner.

(4) Automobile Liability Insurance

When any motor vehicles (owned, non-owned and hired) are used in connection with the Services to be performed, the A/E 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 Owner is to be endorsed as an additional insured on the A/E policy, and such insurance will be endorsed as primary and non-contributory with any other insurance available to the Owner.

(5) Professional Liability (Errors and Omissions)

Professional Liability insurance covering negligent acts, errors or omissions shall be maintained with limits of not less than Two Million Dollars (\$2,000,000) per occurrence. Coverage extensions shall include Blanket Contractual Liability. When policies are renewed or replaced, the policy retroactive date must coincide with, or precede, the start of Services under this Agreement. A claim made policy which is not renewed or replaced must have an extended reporting period (i.e. tail coverage) of two (2) years.

(6) Umbrella Liability

Umbrella Liability coverage is to follow the form of the primary insurance requirements outlined above and shall be provided in an amount not less than Two Million Dollars (\$2,000,000) in excess of all other coverages required.

(e) Certificates of Insurance. Prior to the commencement of any work on the Project, the A/E, and any and all approved sub-consultants of the A/E, shall furnish the Owner's Department of Procurement and Contracts, 60 East Van Buren St., 13<sup>th</sup> Fl., Chicago, Illinois 60605, original Certificates of Insurance or other satisfactory evidence (subject to approval of the Owner) that it, and its approved sub-consultants, have the required insurance coverage set forth above, and that said insurance coverage is effective as of, or before, the effective date of the Agreement. An ACORD form, properly completed, such a Certificate of Insurance and is adequate proof of insurance. The Owner, its respective Commissioners, board members, officers, directors, agents, employees, vendors, invitees, and visitors shall be named as additional insureds on all of the A/E required insurance policies except automobile and shall be properly and accurately shown on the A/E ACORD form. Such insurance shall be endorsed as primary and non-contributory with any other insurance available to the Owner, its respective Commissioners, board members, officers, directors, agents, employees, vendors, invitees and visitors. The Owner shall be named as loss payee on all property insurance.

THE REQUIRED DOCUMENTATION MUST BE RECEIVED PRIOR TO THE A/E COMMENCING WORK AT THE SITE.

(f) Renewals. The Owner's Department of Risk Management must receive renewal certificates of insurance, or such similar evidence of coverage, not less than thirty (30) days prior to expiration of existing insurance coverage. The receipt of any certificate does not constitute agreement by the Owner that the insurance requirements in this Agreement have been fully satisfied 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 Owner in the event that coverage will not be renewed or in the event coverage is substantially changed or canceled.

(g) Insurance on Claims Made Basis and Tail Coverage. 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 this Agreement, and the certificate of insurance shall state that the coverage is "claims made" and also the retroactive date. The A/E shall provide to the Owner, annually, a certified copy of the insurance policies obtained pursuant hereto. The A/E shall maintain continuous coverage for the duration of this Agreement, plus a period of two (2) years following the completion date of the Project (i.e. tail coverage). Any extended reporting period premiums shall be paid directly by the A/E. The A/E shall provide the Owner, annually, with a certified copy of the insurance policies obtain pursuant to this provision. Further, the A/E shall provide the Owner with written notice not less than thirty (30) days prior to the occurrence of any of the following conditions:

- (1) Aggregate erosion of coverage in advance of the retroactive date
- (2) Cancellation of the policy; and/or
- (3) Non-renewal of the policy.

(h) Owner's Insurance. The A/E expressly understands and agrees that any insurance or self-insurance programs maintained by the Owner shall apply in excess of and will not contribute with insurance provided by the A/E under this Agreement.

(i) Subcontractor's or Consultant's Insurance. The A/E shall require all approved sub-consultants to carry the insurance required herein, or the A/E may provide the coverage for any or all of is approved sub-consultants. Evidence of such coverage must be submitted to the Owner as required above.

(j) Limitation of Liability. It is expressly agreed that the insurance policies required pursuant to this Agreement do not act as limitations of liability of the A/E, its joint venturers, partners, parent companies, subsidiaries, affiliates, or sub-consultants.

#### **11. Indemnification; Owner's Defense; Hold Harmless.**

(a) Indemnification. The A/E agrees to indemnify the Owner, its respective Commissioners, board members, officers, directors, agents, employees, vendors, invitees and visitors for any and all physical or non-physical injury to any person, including loss of human life and/or damage to property arising directly or indirectly from or in connection with the

Services performed or to be performed under this Agreement, including Additional Services. The A/E indemnification obligations arising from the duties and responsibilities under this indemnification include, without limitation, any and all liabilities, losses, penalties, damages, settlements, environmental liability, costs, charges, professional fees (including reasonable costs of investigation, reasonable attorneys' fees and other legal expenses) 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 the performance of this Agreement and/or the acts and omissions of the A/E, its officers, officials, 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 of 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 A/E 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.

(b) Hold Harmless. The A/E shall be responsible for any and all physical or non-physical injury to any person, including loss of human life and/or damage to property arising directly or indirectly from, or in connection with, the Services, including Additional Services, performed or to be performed under this Agreement, and shall hold the Owner, its respective Commissioners, board members, officers, directors, agents, employees, vendors, invitees and visitors harmless from any and all loss or damage from such injury, damage or death.

(c) Owner's Defense. The Owner shall have the right, at its option and at the A/E expense, to participate in the defense of any suit, without relieving the A/E of any of its obligations under this indemnity provision. The A/E expressly understands and agrees that the requirements set forth in this indemnity to protect, defend, indemnify, keep, save and hold the Owner free and harmless are separate from and not limited by the A/E responsibility to obtain, procure and maintain insurance pursuant to this Agreement. Further, the indemnities contained herein shall survive the termination of the Agreement.

**12. Retention of Rights.** Neither the Owner's review, approval or acceptance of the Services required under this Agreement, nor the Owner's payment for such Services, shall be construed to operate as a waiver of any rights under this Agreement any cause of action arising out of the A/E performance or failure of performance under this Agreement, and the A/E shall be and remain liable to the Owner in accordance with the applicable law for all damages to the Owner caused by the A/E negligent performance of any of the Services furnished under this Agreement. This Agreement does not restrict or limit any rights or remedies otherwise afforded the Owner or the A/E by law.

## **ARTICLE F: ADDITIONAL REQUIREMENTS**

**1. Contract Adjustments.** Notwithstanding any other term or condition of this Agreement, any settlement or equitable adjustment due to termination, suspension or delays by the Owner

shall be negotiated based on the cost principles stated in the federal regulations at 48 CFR Subpart 31.2 and conform to the Contract pricing provisions of 24 CFR 85.36 (f).

2. **Additional Services.** The Owner shall perform a cost or price analysis, as required by federal regulations [24 CFR 85.36(f)], prior to the issuance of an amendment for Additional Services. Such Additional Services shall be within the general scope of services covered by this Agreement. The A/E shall provide supporting cost information in sufficient detail to permit the Owner to perform the required cost or price analysis.

3. **Restrictive Plans and Specifications.** In accordance with 24 CFR 85.36(c)(3)(i) and contract agreements between the Owner and HUD, the A/E shall not require the use of materials, products, or services that unduly restrict competition.

4. **Design Certification.** Where the Owner is required by federal regulations to provide HUD an A/E certification regarding the design of the Project [see 24 CFR 968.235], the A/E shall provide such a certification to the Owner.

5. **Retention and Inspection of Records.** Pursuant to federal regulations [24 CFR 85.36(i)(10) and (11)], the A/E shall grant the Owner, HUD, the Comptroller General of the United States, or any of their duly authorized representatives, access to any books, documents, papers, and records of the A/E which are directly pertinent to this Agreement for the purpose of making an audit, examination, excerpts, and transcriptions. All required records shall be retained for three (3) years after the Owner or the A/E and other sub-consultants, as applicable, make final payments and all other pending matters are closed.

6. **Copyrights and Rights in Data.** Currently HUD regulations pertaining to copyrights or rights in data do not apply to contracts with architects and engineers [see 24 CFR 85.36]. However, Article 45 of the General Conditions to the Contract for Construction (form HUD-5370), typically used by the Owner for all construction projects, requires that contractors pay all royalties and license fees. Accordingly, all Plans and Specifications prepared by the A/E pursuant to this Agreement must identify any applicable patents to enable the Contractor to fulfill the requirements of the Construction Contract and the General Conditions thereof.

7. **Conflicts of Interest.** Pursuant to federal regulations [24 CFR 85.36(b)] and agreements between the Owner and HUD, no employee, officer, or agent of the Owner (HUD grantee) shall participate in the selection of a contractor, or in the award or administration of a contract supported by Federal funds, if a conflict of interest, real or apparent, would be involved.

Such a conflict would arise when:

- (i) The employee, officer or agent,
- (ii) Any member of his or her immediate family,
- (iii) His or her partner,
- (iv) An organization that employs, or is about to employ, any of the above, or
- (v) An organization that has a financial or other interest in the firm selected for award.

Accordingly, the Owner's officers, employees or agents may not solicit or accept gratuities, favors or anything of monetary value from the A/E or the A/E sub-consultants, or parties to any other sub-agreements with such parties. The Owner may set minimum standards of conduct where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards of conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the Owner's officers, employees, or agents or by the A/E or its agents. The Owner may, within regulation, provide additional prohibitions relative to real, apparent, or potential conflicts of interest. Neither the Owner nor the A/E, nor any of their sub-consultants shall enter into any contract, subcontract, or agreement, in connection with the Project in which any member, officer, or employee of the Owner, the A/E, or any of their sub-consultants, or any member of the governing body of the locality in which the Owner was activated, or in any other public official of such locality or localities who exercises any responsibilities or functions with respect to the Project during his/her tenure or for one (1) year thereafter has any interest, direct or indirect. If any such present or former member, officer, or employee of the Owner, the A/E, or any of their sub-consultants, or any such governing body member or such other public official of such locality or localities involuntarily acquires or had acquired prior to the beginning of his/her tenure any such interest, and if such interest is immediately disclosed to the Owner and such disclosure is entered upon the minutes of the Owner, the Owner, with the prior approval of the Government, may waive the prohibition contained in this subsection; provided, however, that any such present member, officer, or employee of the Owner shall not participate in any action by the Owner relating to such contract, subcontract, or arrangement.

No member, officer, or employee of the Owner, no member of the governing body of the locality in which the Project is situated, no member of the governing body of the locality in which the Owner was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the Project, during his/her tenure or for one (1) year thereafter, shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

**8. Interest of Members of Congress.** Pursuant to the agreement between the Owner and HUD, no member of, or delegate to, the Congress of the United States of America and no Resident Commissioner shall be permitted to share any part of, or derive any benefit from, this Agreement.

**9. Limitation of Payments to Influence Certain Federal Transactions.** The Limitation on Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions Act, Section 1352 of Title 31 U.S.C., provides in part that no appropriated funds may be expended by the recipient of a federal contract, grant, loan, or cooperative agreement to pay any person, including the A/E, for influencing or attempting to influence an officer or employee of Congress in connection with any of the following covered federal actions: the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

**10. Employment, Training, and Contracting Opportunities for Low-Income Persons, Section 3 of the Housing and Urban Development Act of 1968.**

- (a) **Section 3 – Compliance:** The CHA has determined that the contract awarded under this solicitation is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u, (Section 3), and Title 24 of Subchapter B, Part 135 – Economic Opportunities for Low- and Very Low-Income Persons, 24 CFR 135.3. Section 3 Compliance requires that any contract or subcontract entered into for the benefit of public housing residents shall require that, to the greatest extent feasible, economic opportunity in the form of training, employment, contracting, and other economic opportunities arising from the expenditure of public housing assistance for housing rehabilitation and housing construction be directed to low- and very low-income persons.

1. Section 3 - Clause

- i. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- ii. The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.
- iii. The Contractor agrees to send to each labor organization or representative of workers with which the Contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- iv. The Contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The Contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.

- v. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the Contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135.
- vi. Non-compliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

## 2. Section 3 Compliance Goals

- i. Contractors and their subcontractors may demonstrate compliance by committing to employ section 3 residents and by subcontracting with section 3 business concerns in accordance with the requirements of 24 CFR Part 135.

### **A Section 3 Business concern is a business concern under HUD Regulations:**

- (a) 51 percent or more owned by section 3 residents; or
  - (b) Whose permanent, full-time employees include persons, at least 30 percent of whom are currently section 3 residents, or within three years of the date of first employment with the business concern were section 3 residents; or
  - (c) That provides evidence of a commitment to subcontract in excess of 25 percent of the dollar award of all subcontracts to be awarded to business concerns that meet the qualifications set forth in paragraphs (1) or (2) in this definition of "section 3 business concerns."
- 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).

### 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 C 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.

- 11. **MBE/WBE/DBE and Section 3 Requirements.** The A/E agrees to comply with the Owner’s Minority Business Enterprise/Women’s Business Enterprise Participation Policy (“MBE/WBE/DBE”) and Section 3 requirements in accordance with the A/E MBE/WBE/DBE

Utilization Plan and Section 3 Utilization Plan, which are attached hereto as Exhibit C and incorporated by reference as if fully set forth herein, and otherwise comply with the Owner's MBE/WBE/DBE Policy and Section 3 Policy as may be required. The Owner's MBE/WBE/DBE Policy and Section 3 Policy are hereby incorporated by reference as if fully set forth herein.

**12. Clean Air and Water.** Pursuant to federal regulations [24 CFR 85.36(i)(12)] and other federal law, the A/E shall comply with applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857h-4 transferred to 42 U.S.C. 7607, Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15), on all contracts, subcontracts, and sub-grants of amounts in excess of One Hundred Thousand and No/100 Dollars (\$100,000.00).

**13. Energy Efficiency.** Pursuant to Federal regulations [(24 C.F.R 85.36(i)(13)] and other federal law, except when working on an Indian Housing Authority Project on an Indian Reservation, the A/E shall comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163 codified at 42 U.S.C. 6321 et. seq.).

**14. Prevailing Wages.** In accordance with Section 12 of the U.S. Housing Act of 1937, as amended (42 U.S.C. 1437j), the A/E shall pay not less than the wages prevailing in the locality, as determined by or adopted (subsequent to a determination under applicable state or local law) by the Secretary of HUD, to all architects, technical engineers, draftsmen, and technicians.

**15. Non-Applicability of Fair Housing Requirements in Indian Housing Authority Contracts.** Certain fair housing requirements in federal regulations [24 CFR 905.115(b)] and Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d-2000d-4), which prohibit discrimination on the basis of race, color or national origin in federally assisted programs, and the Fair Housing Act, as amended (42 U.S.C. 3601-3620), which prohibits discrimination based on race, color, religion, sex, national origin, handicap, or familial status in the sale or rental of housing, do not apply to Indian Housing Authorities established by exercise of a Tribe's powers of self-government.

**16. Prohibition Against Liens.** The A/E is prohibited from placing a lien on the Owner's property, including, but not limited to, the Improvements and the Site. This prohibition shall be placed in all A/E subcontracts.

**17. Non-Discrimination**

Contractor shall comply with all federal, state and local non-discrimination laws, rules, regulations and ordinances including, but not limited to, The Civil Rights Act of 1964, 42 U.S.C. sec. 2000 et seq. (1989), as amended, and all regulations promulgated thereto. Contractor shall particularly remain in compliance at all times with: Exec. Order No. 11,246, 30 Fed. Reg. 12,319 (1965), reprinted in 42 U.S.C. 2000 (e) note, as amended by Exec. Order No. 11,375, 32 Fed. Reg. 14,303 (1967) and by Exec. Order No. 12,086, 43 Fed. Reg. 46,501 (1978); Age Discrimination Act, 42 U.S.C. sec. 6101-6106 (1989); Rehabilitation Act of 1973, 29 U.S.C. sec. 793-794 (1988); Fair Housing Amendments Act, 42 U.S.C. Sec. 3601 et seq., (1988); Americans

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

#### **18. 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 inform subcontractors of this provision and require agreement and compliance with the same.

### **ARTICLE G: GENERAL CONDITIONS**

- 1. Drug-Free Workplace.** The A/E shall establish procedures and policies to promote a "Drug-Free Workplace." The A/E 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. The A/E shall notify the Owner if any of its employees are convicted of a criminal drug offense in the workplace no later than ten (10) days after such conviction.
- 2. Independent Contractor.** The A/E shall perform the Services under this Agreement as an independent contractor to the Owner and not as a representative, employee, agent, or partner of the Owner.
- 3. Entire Agreement.** This Agreement, comprised of this Agreement and the Exhibits attached hereto and incorporated herein, shall constitute the entire agreement between the parties hereto, and all prior negotiations, representations and agreements between the parties and understandings of every name, nature and description have been merged into and superceded by this Agreement with respect to the subject matter hereof, and no other warranties, inducements, considerations, promises, or interpretations shall be implied or impressed upon this Agreement that are not expressly addressed herein.
- 4. Governing Law.** This Agreement shall be governed as to performance and interpretation in accordance with federal laws and the laws of the State of Illinois. All disputes which arise in connection with, or are related to, this Agreement or any claimed breach hereof, shall be resolved, if not sooner settled, by litigation only in the Circuit Court of Cook, County, Illinois, or the Federal Court in the Northern District of Illinois, and not elsewhere, subject only to the authority of the Court in question to order changes in venue. The A/E agrees that service of process on the A/E may be made, at the option of the Owner, either by registered or certified mail addressed to the applicable office as provided for in this Agreement, by registered or

certified mail addressed to the office actually maintained by the A/E or by personal delivery on any officer, director, or managing or general agent of the A/E.

5. **Severability.** If any provisions of this Agreement, or part thereof, 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 is in violation 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 to 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.

6. **Interpretation.** Any heading of this Agreement is for convenience of reference only and does 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.

7. **Communication and Notices.**

(a) **Communication between the Parties.** Except where formal notice is required to be delivered under the terms of this Agreement, all routine communication under the terms of this Agreement, including the transmission of all Deliverables required hereunder, shall be made through the Owner's Capital Construction Division. 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.

(b) **Notices.** Any and all notices, demands, requests, permissions, consents, approvals, and other communications that are required to be given or are given hereunder ("Notices") shall be in writing and shall be sent by (i) courier or messenger, (ii) U.S. certified or registered mail, postage prepaid, return receipt requested, or (iii) by a nationally recognized overnight mail carrier such as Federal Express for next business day delivery. Notice will be deemed effective (i) when received, if personally delivered by messenger or courier, (ii) three (3) business days after the date deposited in any post office regularly maintained by the United States Postal Service if sent by certified or registered mail, or (iii) one (1) business day after the date deposited with a nationally recognized overnight mail carrier.

Notices sent to the A/E shall be addressed to:

Holabird & Root LLC  
140 South Dearborn Street  
Chicago, Illinois 60603  
Attention: Greg Marinelli, Project Manager

Notices sent to the Owner shall be addressed to:

Chicago Housing Authority  
60 East Van Buren St., 13<sup>th</sup> Floor  
Chicago, Illinois 60605  
Attention: Director, Department of Procurement and Contracts

With a copy to:

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

**8. Authority.**

(a) Owner's Authority. The Owner has executed this Agreement, as amended with full authority 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, and the signature of each person signing on behalf of the Owner has been affixed with complete and full authority to commit the Owner to all terms and conditions of this Agreement.

(b) A/E Authority. The A/E has been duly authorized to execute this Agreement, by proper agreement of all required partners, if a partnership, or by a resolution of its Board of Directors, if a corporation, and the signature of each person signing on behalf of the A/E has been affixed with complete and full authority to commit the A/E to all terms and conditions of this Agreement.

**9. Attorneys' Fees.** Should either party employ an attorney or attorneys to enforce any of the provisions of this Agreement, or to protect its interest in any matter arising under this Agreement, or to recover damages for the breach hereof, the non-prevailing party in any final judgment agrees to pay to the other party all reasonable costs, charges and expenses, including reasonable attorneys' fees expended or incurred in connection therewith at both trial and appellate levels. The reasonableness of such costs and attorneys' fees shall be determined by the court and not the jury. With respect to any monetary claim, in order for the prevailing party to recover such attorneys' fees and costs, such party must be awarded at least fifty percent (50%) of the highest amount such party claimed at any time in such suit.

IN WITNESS WHEREOF, the Owner and the A/E have executed this Agreement as of the date first written above.

**CHICAGO HOUSING AUTHORITY**

By: Dionna Brookens  
Dionna Brookens  
Senior Director of Procurement

Approved as to form and legality  
CHICAGO HOUSING AUTHORITY  
Office of the General Counsel

By: Scott W. Ammarell  
Scott W. Ammarell  
Chief Legal Officer

**HOLABIRD & ROOT LLC**

By: Jim Miller  
JIM MILLER  
PRINCIPAL.