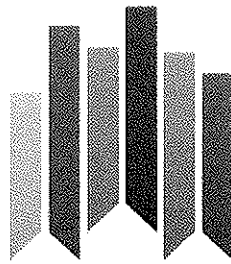


**CONTRACT NO. 12122**

**PROFESSIONAL CONSULTING SERVICES**

**BETWEEN**

**THE CHICAGO HOUSING AUTHORITY**



**CHA**

CHICAGO HOUSING  
AUTHORITY

**AND**

**GLOBETROTTERS ENGINEERING CORPORATION**

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**Contract No. 12122**

**This PROFESSIONAL CONSULTING SERVICES AGREEMENT** (The "Agreement") is made as of the 27th day of October, 2017 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 GLOBETROTTERS ENGINEERING CORPORATION (the "Consultant"), an Illinois corporation with offices located at 300 S. Wacker Drive, Suite 400, Chicago, IL 60606.

**RECITALS**

**WHEREAS**, the Owner issued Request for Proposals ("RFP") Event No. 2207 on or about May 17, 2017 soliciting elevator consultants to submit proposals for assessment and design services for CHA's Elevator Modernization Program.

**WHEREAS**, the Consultant submitted its proposal on or about June 16, 2017 and further represents it is qualified, ready, willing and able to provide the services required by the Owner on the terms and conditions as set forth herein; and,

**WHEREAS**, the Owner and the Consultant desire to enter into this Agreement to provide the services as set forth herein and on September 19, 2017, Owner's Board of Commissioners authorized the CHA to enter into this Agreement by Resolution No. 2017-CHA-95.

**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 Services"** - The services enumerated in Article B(8) hereof.

**"Agreement"** - This Agreement for Professional Consulting Services, including all exhibits attached hereto; all amendments, modifications and revisions made in accordance with the terms hereof;

**"Applicable Laws"** - All applicable Federal, State and local laws, codes, ordinances and regulations related to the Scope of Work set forth in this Agreement, including, but not limited to, the Chicago Building Code, as amended, the Illinois Accessibility Code, as amended, the Uniform Federal Accessibility Standards ("UFAS"), as amended, the Americans with Disabilities Act of 1990 ("ADA"), as amended, Section 504 of the Rehabilitation Act of 1973, as amended and as implemented by 24 CFR Part 8 and the Fair Housing Act Design Manual ("504"), the design and construction requirements of HUD, the Environmental Protection Agency and the Occupational Safety and Health Administration.

**"Application for Payment"** - The Consultant's application for Progress Payments, as defined in Article C hereof.

**“Architect of Record” or “AOR”** - The architect that is engaged to represent the Owner with respect to all aspects of the performance of design, engineering and administration of the Project, licensed to practice architecture in Illinois and engaged by the Consultant as either a principal or full time employee to perform architectural, engineering, design, contract administration, or other services related to the Work required under the Construction Documents, Contract Documents, and this Agreement.

**“Basic Fee”** - The fee for Basic Services the CHA pays to the Consultant.

**“Basic Services”** - The services to be performed by the Consultant 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 for Construction Contracts, Special Conditions, Technical Specifications, Plans and Specifications, and any other documents distributed to Bidders by the Owner with the foregoing documents. A Bid Package may also be used to refer to a Request for Proposals or Request for Services for construction.

**“Bidding and Contract Documents”** - The documents prepared by the Consultant for purposes of bidding out and contracting for the Work, as defined herein.

**“Business Day”** - Monday through Friday, excluding Federal or State holidays.

**“Certificate of Acceptance”** - 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 Consultant to the Owner establishing the Date of Substantial Completion of the project.

**“Construction Contract”** - The agreement entered into between the Owner and a general contractor regarding the Project based on Construction Documents prepared by the Consultant.

**“Construction Contract Documents”** - Those documents which constitute the Construction Contract as set forth therein. The Construction Contract Documents, which form the contract between the Owner and a general contractor for a construction project include the Construction Contract, the “Amendment(s) to Special Conditions”, the “Special Conditions of the Contract for Construction” (the “Special Conditions”), “HUD General Conditions for Construction (HUD form 5370-A)” approved modifications, amendments and change orders to the Construction Contract, and the “Work Schedule” as defined in paragraph 6 of the HUD General Conditions for Construction, as amended from time to time pursuant to such paragraph 6, the “Instructions to Bidders (form HUD-5369)”, applicable wage rate determinations from either the U.S. Department of Labor or HUD, the Performance and Payment Bond or Bonds or other assurances of completion, the “Technical Specifications” and “Plans and Specifications” for the Construction Contract, if any, the General Contractor’s Compliance Affidavit, Contractor’s Affidavit, or any other affidavits, certifications or representations the Contractor is required to execute under the Construction Contract, and the General Contractor’s MBE/WBE/DBE and Section 3 Utilization Plans.

**“Construction Cost Estimate”** - The total estimated cost (to the Owner) of all elements of the completed Project designed or specified by the Consultant, including, without limitation, all costs pursuant to the Construction Contract and all costs as described in Exhibit F. A Construction Cost Estimate may also be referred to as an Independent Cost Estimate (“ICE”).

**“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 Consultant for the Project(s), as described in Exhibit F.

**"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 drawings and other materials relating to, or contemplated by the Services performed by the Consultant or by any engineer, professional or professional consultants to, or engaged by the Consultant in connection with the Project.

**"Consultant"** - 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 for the Project. Any reference to specific architectural, engineering, or related disciplines herein shall be construed as services directed and provided by the Consultant whether they are self-performed or performed by the Consultant's sub-consultants.

**"Contracting Officer"** - The Owner's Chief Executive Officer or his designee, the Chief Procurement Officer.

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

**"Date of Substantial Completion"** - The date certified by the Consultant when the Work or a designated portion thereof is sufficiently complete, in accordance with the Construction 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 Consultant during the Design Development Phase as set forth in Article B(2)(III) hereof.

**"Engineer"** - The person or entity engaged by the Owner or by the Consultant as either an employee or sub-consultant, and is a Registered Professional Civil, MEP or Structural Engineer licensed in Illinois.

**"Engineer of Record" or "EOR"** - The engineer that is engaged to represent the Owner with respect to all aspects of the performance of design, engineering and administration of the Project.

**"Expedite"** - The act of investigating, completing and processing project permits quickly and efficiently while representing the Owner's interest at all levels of the process, and while working with municipalities, neighborhood committees and other regulatory agencies in the interest of getting the Project under construction and on schedule. Expediting a Project includes the coordination of Construction Documents, applications and fees in preparation for submission to jurisdictional review agencies; following up with review agencies and the coordination with the Owner regarding the status of approvals or the need for revisions, responses and re-submittals; and representing the Owner at meetings relating to approvals, rezoning, variances, and neighborhood committees.

**"Field Manager"** - The person whose major responsibility is overseeing all field activity for the construction activities on behalf of the Owner. This person reports to the Project Manager and will oversee the construction activities related to a Construction Contract to ensure Contractor's compliance with the Construction Contract Documents.

**"Firm Fixed Fee"** - The firm fixed fee for Services required under this Agreement.

**"General Conditions for the Contract for Construction"** - The General Conditions of the Contract for Construction, HUD Form 5370-A, attached to each Construction Contract. Consultant shall read and understand Consultant's responsibilities as given in the General Conditions for the Contract for Construction.

**"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 (see Exhibit F for required information).

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

**"Maximum Construction Contract Cost"** - The cost referred to in Article B(6)(E) hereof.

**"Notice to Proceed" or "NTP"** - Written notice from CHA's Contracting Officer authorizing the Consultant to start work on the Project.

**"Owner"** - The Chicago Housing Authority, an Illinois municipal corporation, any of its affiliates or instrumentalities, 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.

**"Owner's Representative"** - The person, or entity engaged by the CHA, to plan, coordinate, and oversee design and construction activities, including the activities of the Consultant.

**"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 materials, workmanship, finishes and equipment required for the architectural, structural, life safety, mechanical, electrical, and plumbing systems, parking, landscaping and on-site amenities and facilities, and all addenda thereto and modifications thereof, and as referenced in the General Conditions for Construction Contracts.

**"Progress Payment"** - A payment to the Consultant, as defined in Article C(3)

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

**"Project Architect"** - The person or entity licensed to practice architecture in Illinois and engaged by the Consultant as either a principal or full time 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.

**"Project Manager"** - The person or persons assigned to manage the Project for the CHA. The Consultant will report directly to the Project Manager for the Project.

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

**"Reimbursable Expenses"** - The expenses incurred by the Consultant included in the amount of compensation set forth in Article C(1) hereof, and more fully described in Article B(3)(C). Reimbursable Expenses are for certain actual expenses incurred by the Consultant in connection with the Project. All Reimbursable Expenses must be separated by the Owner's individual building designation for the Project, and all costs must be identified by cost type (as set forth below). Unless cost accounting is completed in this manner, the Consultant will not be reimbursed for Reimbursable Expenses.

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

**“Services”** - The Basic Services and all Additional Services to be performed by the Consultant pursuant to this Agreement.

**“Special Conditions”** - The Special Conditions of the Construction Contract between the Owner and the Contractor, supplementing the General Conditions of the Contract for Construction (HUD form 5370-A).

**“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 Consultant.

**“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 the Project, using a hierarchical structure illustrating all superior and subordinate tasks.

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

The Consultant agrees to provide assessment and design services for CHA’s Elevator Modernization Program at various CHA owned locations (the “Sites”) more particularly described in Exhibit A attached hereto and incorporated herein by reference. Consultant shall perform all work in accordance with 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, the Fair Housing Act Design Manual, and the design and construction requirements of HUD.

## **ARTICLE B: REQUIRED SERVICES**

Consultant shall perform the following technical services as Basic Services, which shall include, but are not limited to the following tasks:

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

#### **A. AOR/EOR; Project Architect/Project Engineer**

The Consultant shall serve as the “Architect of Record”/ “Engineer of Record” for the Project and shall designate a licensed Illinois architect / licensed Illinois engineer to serve as the Project Architect/Project Engineer. The Project Architect/Project Engineer shall be a principal or full time employee of the Consultant, 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 Consultant shall certify that all work was performed under the direct supervision



of the Project Architect/Project Engineer and that it conforms to Applicable Laws. All Services requiring professional architectural/engineering judgment shall be performed by the Project Architect/Project Engineer.

B. Approval

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

C. Seal

The AOR/EOR or Project Architect/Project Engineer shall affix his seal and signature to drawings and Plans and Specifications produced under this Agreement when required by law.

**2. Phases and Descriptions of Basic Services**

A. Assessment Phase (if required)

I. Site Visits

The Consultant shall visit each Site and complete a thorough and detailed inspection of the elevators as indicated in Exhibit A. Consultant shall conduct forensic inspections and testing of the elevators and its related equipment as necessary to reveal unknown conditions. Based on the findings of the assessment, the modernization scope for each elevator is to be classified as critical or non-critical. Critical is defined as the elevator having a remaining useful life of less than 5 years. Owner shall provide to Consultant for review previous assessments for the properties indicated on Exhibit A as requiring no assessment. Notwithstanding the indicated required assessments, Consultant shall make an independent assessment of the accuracy of the information provided by the Owner concerning the condition of the elevators, including information concerning prior assessments.

II. Assessment Report

The Consultant shall provide a comprehensive Elevator Assessment Report regarding observations and findings in the format of Exhibit B, Elevator

Assessment Report Template. The Elevator Assessment Report shall include, but is not limited to, the condition or status of:

- a. Elevator recall;
- b. Hoist ropes;
- c. Controllers and motors;
- d. Interior cab renovation/replacement;
- e. Exterior door replacement;
- f. Stand-by power connectivity;
- g. Status of compliance with current City of Chicago Code requirements, including any current code violations;
- h. Appropriate elevator machine room work (cooling, ventilation);
- i. Penthouse elevator equipment, micro processing equipment, cooling system equipment;
- j. Elevator pit size, ladder location, sump pump, etc.
- k. Mechanical, electrical, fire protection, CCTV, security and plumbing requirements; and
- l. Existence of hazardous material and abatement requirements.

### III. Design Development Phase

- a. Based on the results of the assessment, Consultant shall prepare Design Development Documents for the comprehensive modernization of all elevators.
- b. Verify and confirm elevators and their associated mechanical and electrical work is in compliance with the current City of Chicago building code.
- c. Evaluate and consider alternative drives such as gearless traction elevators and machine room less (MRL) drive systems.
- d. Design upgraded mechanical and electrical systems including their integration throughout the building.
- e. Design and develop a new fire protection, fire alarm/communications panel, and CCTV system for the elevators.
- f. Design must include Logic Control Software – software to control the sequencing of operation and algorithms to balance passenger demand, car availability and speed of elevator cabs.
- g. Design and develop any adequate structural systems as required to support any of the aforementioned work.
- h. Recommend replacement of all interior elevator finishes as necessary.
- i. Prepare an Independent Cost Estimate (ICE) at the 100% completion of the Design Development Phase.
- j. Review documents with the CHA at 100% completion of the Design Development Phase.

IV. Construction Documents Phase

- a. Based on the approved Design Development Documents, prepare clear and concise Construction Documents for the comprehensive modernization of all elevators. Include a phasing plan of the work.
- b. Prepare a performance based master specification.
- c. Prepare an Independent Cost Estimate at 60%, 90% and 100% completion of the Construction Documents Phase.
- d. Prepare a proposed construction schedule.
- e. Prepare a recommended list of contractors for bidding by the CHA.
- f. Review documents with the CHA at 60%, 90% and 100% completion of the Construction Documents Phase.

V. Construction Bidding and Administration Phase

- a. Respond to Requests for Information (RFIs) including the development of drawings and clarifications to be issued to potential bidders as necessary.
- b. Assist in the preparation of any addenda prior to bid submission date.
- c. Attend pre-bid conference(s), bid openings, and pre-award conferences.
- d. Assist in the analysis of all bids including the analysis of CSI Division costs and construction schedules.
- e. Revise drawings and/or scope as necessary to achieve construction goals and budget.

VI. Construction Administration Phase

- a. Participate in pre-construction conference(s) as requested by CHA.
- b. Attend dispute resolution conferences when requested by CHA.
- c. Attend various Project meetings regarding progress of the Work as requested by CHA.
- d. Review and approve Contractor's shop drawings and other submittals for conformance to the requirements of the Construction Contract.
- e. Procure and oversee any necessary physical condition testing by qualified parties as necessary and as directed by CHA.
- f. Conduct weekly site visits in order to monitor the quality and progress of the Contract work.
- g. Submit a weekly written field report of work in progress and overall construction status.
- h. Review, approve and certify all Contractor's periodic (and final) requests for payment within 10 days of receipt.
- i. Convene weekly job site meetings and record all actions taken and decisions arrived at during such meetings in the form of written minutes.
- j. Revise drawings to correct errors, clarify intent or to accommodate change orders.

- k. Revise drawing to obtain building permits and to achieve all other requirements dictated by any governmental authority or agency having jurisdiction over the Project.
- l. Recommend solutions to special problems or special conditions encountered during the course of construction.
- m. Notify CHA of any defects or deficiencies discovered in the Work within five (5) calendar days of discovery.
- n. Notify CHA in writing of any matter of dispute with the Contractor within five (5) calendar days of notice of such dispute.
- o. Prepare a set of Record Drawings within thirty (30) calendar days after the Date of Substantial Completion.
- p. Attend all pay request and construction meetings.
- q. Promptly respond to all RFIs within five (5) days of receipt and prepare bulletins for Contractor pricing of any potential change orders.
- r. Prepare Independent Cost Estimate (ICE) and submit with accompanying Bulletin within five calendar days of the issuance of any Bulletin.
- s. Negotiate and prepare ICEs for all change orders.
- t. Review, audit and comment on monthly construction progress and budget status reports from received from CHA.
- u. Photo-document and log work in progress.
- v. Review all potential change orders, disputes or matters in question regarding the Contract work and deliver written opinions within ten (10) days regarding the same.
- w. Issue a Certificate of Substantial Completion when the Contract work has been reviewed and found to be sufficiently complete and ready for Owner occupancy.
- x. Prepare a written punch-list for all deficient and incomplete contract work items per the requirements of the Construction Contract.
- y. Prepare a written certificate stating that all punch-list items have been satisfactorily completed.
- z. If all of the above requirements have been satisfied, the CHA will then issue a formal, written statement accepting the work in place.

## VII. Close-Out Phase

- a. Receive and certify that the Contractor's (bound) operation and maintenance manuals comply with the requirements of the Construction Contract.
- b. Verify that all required equipment warranties and test reports meet the design requirements and that they are included in the Contractor's bound operating and maintenance manuals.
- c. Receive and certify that the written warranties of workmanship and system operation provided by the Contractor and their sub-contractors (or any other vendor material guarantees) are complete and in compliance with the Construction Contract requirements.

- d. Receive and certify that the Contractor has secured all inspection sign-offs on the permits covering the Work.
- e. Prepare and submit three (3) sets of electronic and hard copy Record Drawings within thirty (30) days after the commencement of the Close-out Phase.
- f. Comply with all other terms and conditions of the CHA's printed close-out instructions as contained in the Construction Contract.
- g. The Close-out Phase will conclude upon the CHA's acceptance of all manuals, warranties, guarantees, other close-out materials and issuance of the Certificate of Completion.

#### VIII. Post Completion/Warranty Phase

- a. Consult with the CHA and make recommendations regarding all equipment and warranties.
- b. Perform an inspection of the Work including materials, systems and equipment no sooner than the ninth month and no later than the end of the tenth month after formal completion of the Construction Contract and submit a written report to CHA regarding the same.
- c. Advise and assist CHA in construction matters for a period of twelve (12) months after completion of the Project.

### 3. **Deliverables**

#### A. Generally

In connection with its performance of the Services, the Consultant 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 in writing. The Consultant 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 herein (hereinafter, collectively "Deliverables"). The Owner reserves the right to reject any or all Deliverables which, in the reasonable judgment of the Owner or Owner's Representative, are incomplete or do not meet the required standard of performance. The Owner will notify the Consultant in writing of any deficiencies the Owner identifies with respect to a Deliverable within thirty (30) days of receipt of such Deliverable, and the Consultant shall have a period of not more than thirty (30) days to correct any deficiency so noticed by the Owner.

#### B. Deliverables Required by Phase

- I. Assessment Phase (if required): Documents (electronic and printed) at 100% completion of the Assessment Phase.

- II. Design Development Phase: Documents (electronic and printed) at 100% completion of the Design Development Phase.
- III. Construction Documents Phase: Documents (electronic and printed) at 60%, 90% and 100% completion of the Construction Documents Phase. A building permit review set will be issued at 90% completion.
- IV. Construction Bidding and Administration Phase: Documents (electronic and printed) at Issue for Bid.
- V. Construction Administration Phase: Documents (electronic and printed) at Issue for Construction.
- VI. Close-Out Phase: Documents (electronic and printed) within thirty days once the Close-out Phase begins.

C. Reimbursables

- I. Printing costs for required documents per project phase.
- II. Messengering and transport costs required to transmit any project related information.

Consultant and Owner may agree in an addendum or amendment to this Agreement to include certain other expenses not enumerated above as Reimbursable Expenses.

D. Owner's Acceptance

The Owner may, in its sole and absolute discretion, accept a partial or incomplete Deliverable from the Consultant 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.

E. Format of Deliverables

- I. The Deliverables may include reports, spread sheets, schedules, sketches, photographs, presentations and illustrations 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.
- II. The Consultant shall provide the Deliverables in electronic and "hard-copy" formats as follows:
  - A. Documents
    1. Electronic
      - Native file (i.e. word, excel etc.)
      - pdf
    2. Hard-Copy: Quantity to be determined by the CHA Project

- Manager.
- B. AutoCAD Drawings:
1. Electronic
    - dwf
    - pdf
  2. Hard-Copy: Quantity to be determined by the CHA Project Manager.
- III. Before the Deliverables are provided in electronic format, the Consultant must perform the following procedures:
- a. Remove all extraneous graphics outside the border area and set active parameters to standard setting or those in the seed file.
  - b. Assure all reference files are attached without device or directory specifications.
  - c. 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)).
  - d. Include all files, graphic and non-graphic required for the Project.
  - e. Assure that none of the files are device and directory dependent.
  - f. Document all non-standard fonts.
  - g. 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.
  - h. Upon request, the Consultant shall supply the Owner with a copy of the actual software used for virus checking and removal.
- IV. The Consultant shall maintain firm capability to collaborate with the CHA, the CHA's other consultants, and the Contractor electronically via e-Builder®, which has been previously selected by the CHA for project management. The Consultant 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 CHA, its consultants and the Contractor during all phases of the Project via e-Builder®.

The Consultant shall maintain adequate Information Technology systems to support the utilization of e-Builder as the CHA's web-based project management system.

#### **4. Accounting Statements**

The Consultant shall submit separate statements for costs incurred on the Project for each separate building within the Site, if applicable, (noting each CHA building designation number).

#### **5. Time of Performance**

#### A. Project Schedule

The Consultant schedule for preparing, delivering and obtaining the Owner's approval for Basic Services is set forth on Exhibit C, "Schedule of Performance" attached hereto and incorporated herein. 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 Contractor's failure to comply with that schedule, or otherwise, and shall provide written notice of such schedule changes to the Consultant. The Consultant shall not be entitled to additional compensation for any such schedule revisions. CHA, at its option, may elect to suspend any services required hereunder until such time as CHA is ready to commence construction. In the event that such services are suspended for a period in excess of thirty (30) days, Consultant shall advise CHA if further assessment of the Project and/or updates are required to any of the Construction Documents, due to the passage of time.

#### B. Critical Buildings

The ten critical CHA buildings and their regions are as follows. Completion of Work for these buildings shall have priority and are to be addressed first.

- I. William Castleman, 4945 N. Sheridan (D)
- II. Lincoln Perry Annex, 243 E. 32nd Street (E)
- III. Lincoln Perry, 3245 S. Prairie (E)
- IV. Caroline Hedger, 6400 N. Sheridan (A)
- V. Judge Fisher, 5821 N. Broadway (D)
- VI. Judge Slater Annex, 740 E. 43rd Street (C)
- VII. Judge Slater, 4218 S. Cottage Grove (C)
- VIII. Vivian Gordon-Harsh, 4227 S. Oakenwald (E)
- IX. Robert Lawrence, 655 W. 65th Street (C)
- X. Ella Flagg-Young, 4645 N. Sheridan (D)

### 6. **Performance Standards**

#### A. Standard of Care

The Consultant 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 Consultant shall at all times assure quality, timeliness, efficiency and creativity in rendering and completing the Services.

The Consultant shall, without additional compensation, prepare addenda and bulletins required to correct or clarify errors, omissions or ambiguities. The CHA reserves the right to recover, from the Consultant, damages incurred by the CHA



resulting from errors or omissions in the Construction Documents prepared by the Consultant.

B. Time is of the Essence

The Consultant 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 Consultant 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.

C. Experienced Staff

The Consultant shall furnish its skill and judgment and cooperate with the CHA and the CHA's duly authorized representatives/agents in achieving Project objectives. The Consultant shall furnish efficient business administration and endeavor to furnish at all times adequate materials and other items necessary for the proper execution and completion of the Services in an expeditious and economical manner, consistent with the interests of the CHA. The Consultant shall provide staff that is trained, experienced and expert in elevator design and engineering, shall have all necessary licenses and certificates, and shall be fully familiar, and shall comply, with all Applicable Laws. The Contractor shall self-perform a minimum of 50% of the services required.

D. Compliance with Applicable Laws

The Consultant shall perform its Services to conform to all applicable Federal, State and local laws codes, ordinances and regulations, including, but not limited to, those promulgated by HUD, the Environmental Protection Agency and the Occupational Safety and Health Administration, except as modified by any waivers which may be obtained with the approval of the CHA. The Consultant shall certify that the Contract Documents will conform to all Applicable Laws in effect when the Construction Documents are submitted for a building permit. The Consultant shall prepare all Construction Documents required for approval by all governmental agencies having jurisdiction over the Project. The Consultant 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 CHA issues a Notice to Proceed for the Work to be undertaken by the general contractor hired by the CHA, revisions are made to applicable codes or non-federal regulations requiring changes to the Plans and Specifications that result in additional cost, then the Consultant shall be entitled to additional compensation at a fair and equitable rate to be agreed upon by the CHA and the Consultant. The Consultant, however, is obligated to notify the CHA of all significant code or regulatory changes within sixty (60) calendar days of their

effective date, and such notification shall be required in order for the Consultant to be entitled to any additional compensation or reimbursement.

E. Designing within Funding Limitations.

The Consultant shall perform the Services required under the Agreement in such a manner so as to cause the award of the Construction Contract not to exceed an amount to be provided by the CHA in writing prior to the commencement of the Consultant's services for the Project. This fixed limit shall be called the "Maximum Construction Contract Cost." The amount may only be increased by written notice from the CHA. If a change to the Work results in an increase in the Maximum Construction Contract Cost, a modification to the Agreement between the CHA and Consultant will be required. Should the overall bids for the Construction Contract exceed the Maximum Construction Contract Cost, the CHA has the right to require the Consultant to perform without additional compensation or reimbursement, redesigns, rebids and other services necessary to cause an award of the Construction Contract(s) within the Maximum Construction Contract Cost. In addition, the Consultant and the CHA may mutually agree to decrease the Maximum Construction Contract Cost, but only by signing a written amendment to this Agreement.

**7. Attendance at Meetings**

In addition, as part of the Basic Services, on behalf of the Consultant and together with the CHA, the Project Architect/Project Engineer shall, when requested by the CHA, attend, participate in and produce handouts and presentation materials, slide presentations or "PowerPoint™" presentations at design conferences with the CHA, meetings of the CHA's Board of Commissioners, meetings with HUD, and all Construction Contract negotiations.

**8. The Consultant's Additional Services**

A. Description of Additional Services

Additional Services are all those services provided by the Consultant on the Project that are not defined as Basic Services herein. Additional Services include, among other things:

- I. 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 Consultant and not due to any errors, omissions, or failures on the part of the Consultant to carry out obligations otherwise set out in this Agreement, or not otherwise required of the

Consultant under other provisions of this Agreement; or

- II. An increase in the duration of the Construction Administration Phase due to an extension of the anticipated construction schedule more than sixty (60) days, due to causes beyond the control of the Consultant and not due to any errors, omissions, or failures on the part of the Consultant; and

B. Claims for Additional Costs

In the event that Additional Services are discovered to be necessary or are requested by the Owner, the Consultant must submit a proposal on a form approved by the Owner for the Additional Services within seven (7) calendar days of said discovery or request. Upon receipt of written approval, the Consultant shall proceed to complete the Additional Services. Without said written approval, the Consultant shall not be allowed any additional costs. In any event, the Consultant may not make any claims against CHA for equitable adjustments, additional costs, direct or indirect, or fees after completion of the Project.

C. Written Addendum of Amendment

The Consultant 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 an amendment to the Agreement prior to the performance of such Additional Services. The Owner shall not be responsible for or obligated to pay the Consultant for any Additional Services provided by the Consultant unless such Additional Services are so authorized in writing in accordance with Article G(5). In any event the Consultant may not make any claims against the Owner for equitable adjustments; additional costs, direct or indirect; or fees after completion of the Services.

## **ARTICLE C: COMPENSATION AND PAYMENT**

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

A. Fixed Fee Amount for Basic Services

The Owner will pay the Consultant for Basic Services the Fixed Fee (stipulated sum) of **Three Million, Three Hundred Forty Five Thousand, One Hundred Eighty-Nine (\$3,345,189.00)**, inclusive of Reimbursable Expenses the ("Total Contract Price"), in accordance with Consultant's Best and Final Offer, which is attached hereto as Exhibit D. Such payment shall be compensation for all Basic Services required, performed, or accepted under this Agreement.

B. Schedule of Payment for Basic Services

For the Basic Services provided in accordance with the provisions herein, the Owner shall make Progress Payments. Progress Payments, as defined below, for this Agreement shall not exceed the maximum Total Contract Price. The Consultant's 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 Consultant 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:

Assessment and 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 Payments: will be made on a monthly basis and will be based on the percentage of design documents complete. The Consultant can bill the Owner for the percentage of the Design Fee indicated in the parentheses when the following documents are complete: Assessments (10%), Design Development Documents (40%), Construction Documents (40%) and Construction Bidding 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 Construction Contract value.

Project Closeout Fee Payment: will be a lump sum payment made when all Deliverables and documentation are received from the Consultant 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 amendment of this Agreement.

## **2. Payment for Additional Services**

The Owner will pay the Consultant for Additional Services agreed to in a proposal on a form approved by the Owner executed by the Owner's Contracting Officer or designee, and the Consultant pursuant to Article B(8)(B) above. Payment for all such Additional

Services shall be in an amount and upon the terms set out in such proposal and agreed upon by the parties. Each such proposal 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 proposal 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 a percentage of completion of services billed. Payment for Additional Services must be authorized by written amendment in accordance with Article G(5).

### **3. Invoicing and Payments**

#### **A. Invoices**

All payments to the 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 Consultant shall, by the fifth (5<sup>th</sup>) working day of each calendar month beginning with the second month after commencement of the Project, furnish to the Owner an itemized application for Progress Payment (herein referred to as an "Application for Payment") supported by such data substantiating the Consultant's right to payment as the Owner may require, through the last day of the preceding calendar month. The Application for Payment shall include, but shall not be 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, details of the Additional Services performed, if any, the name of the Consultant, 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 Consultant's proper submission of the Application for Payment, the Owner shall review the Application for Payment and, if the Consultant has performed the Services in conformance with the terms of the Agreement and provided all required documentation for the Application for Payment, make payment within sixty (60) 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:

- I. Lien waiver waiving any lien rights against the Project, the Work, Site and any monies payable to the Consultant for the entire amount covered by said Application for Payment.
- II. 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.
- III. Submittal letter, including, without limitation, a billing summary.
- IV. Sub-consultants' trailing and final lien waivers covering all payments received by any sub-consultants of the Consultant.
- V. Detail of any Reimbursable Expenses, with copies of actual receipts/invoices.
- VI. Such other documents in form, scope and substance as the Owner shall require

#### **4. 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 Consultant's 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 Consultant 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 setting forth the Owner's objectives and schedule. This shall include the Owner's giving notice of work to be performed by the Owner or others not included in the Construction Contract for the Project. The Owner shall also establish and update the Maximum Construction Contract Cost. The Consultant, however, shall be responsible for ascertaining and knowing 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 Consultant.

**3. Owner's Authorized Representative**

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

**4. Duties to Furnish**

The Owner shall provide the Consultant the items listed below in this Article D(4), as applicable.

**A. Survey and Property Restrictions**

The Owner may provide the Consultant with topographic, property line and utility information as and where required. The Owner may, at its election, require the Consultant to furnish any of these items as an Additional Service.

**B. Existing Conditions**

The Owner may provide the Consultant 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 Consultant's performance of its Services or the Contractor's performance of the Work.

**C. Waivers**

The Owner may provide the Consultant 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 Consultant with the schedule of minimum wage rates approved by the U.S. Secretary of Labor (if necessary for completion of Bidding and Contract documents).

**E. Tests**

When expressly agreed to in writing by both the Owner and the Consultant, the Owner shall provide the Consultant 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 Consultant with required text to be incorporated into the Bidding and Contract Documents.

**ARTICLE E: CONTRACT ADMINISTRATION**

**1. Prohibition against Assignment**

The Consultant 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 notice to and consent of the Owner. Such consent shall not be unreasonably withheld when such assignment is for financing the Consultant's performance.

**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 Services performed or upon Owner's request. The Consultant 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 Consultant 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 Consultant's written verification, such re-use will be at the sole risk of the Owner and without liability to the Consultant.

**3. Confidentiality**

The Consultant 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 Consultant agrees that such Confidential Information shall not be made available to any individual or organization other than the CHA, HUD, or courts of competent jurisdiction or administrative agencies, pursuant to a subpoena, without the prior written approval of the Owner. In the event the Consultant is presented with a subpoena regarding any such Confidential Information which may be in the Consultant's possession by reason of this Agreement, the Consultant must immediately give written notice to the CHA's Chief Executive Officer and Chief Legal Officer with the understanding that the CHA will have the opportunity to contest



such process by any means available to it before the Confidential Information is submitted to a court or other third party. The Consultant, 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 of Key Personnel**

##### **A. Identification of Key Employees and Sub-Consultants**

The Consultant's principals, key professional level employees and sub-consultants are identified in Exhibit H, which is attached hereto and incorporated by reference herein. The Consultant shall not substitute, replace, or change the level of participation in the performance of the Services of principals, professional level employees or sub-consultants without the prior written approval of the Owner, which approval shall not be unreasonably withheld, conditioned, or delayed.

##### **B. Notice to the CHA; Approval**

The Consultant's principals, personnel and sub-consultants identified in Exhibit H are considered to be essential to the delivery of the Services required under this Agreement. Prior to diverting, substituting, or changing the level of participation in the performance of the Services of any of the personnel or sub-consultants identified in Exhibit H, the Consultant shall give the Owner advance written notice of its intent to divert, substitute, or change the level of participation in the Services of such personnel or sub-consultants, 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 Consultant may substitute such essential personnel.

#### **5. Suspension**

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

#### **6. Subcontracts**

The Consultant 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 Consultant shall notify the Owner's Contracting Officer 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 Consultant 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 Consultant's 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 Consultant, 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 Consultant given in accordance with the notice provisions in Article G (9) below, without prejudice to any other rights or remedies of the Owner, terminate the Consultant's right to proceed with the Services or terminate this Agreement in its entirety, for default, if one or more of the following defaulting events (each, a "Defaulting Event") occurs:

- I. The Consultant makes any material misrepresentation, whether negligent or willful and whether in the inducement or in the performance, to the Owner;
- II. The Consultant files for, or is forced by creditors into a suit for, bankruptcy or any other action in insolvency;
- III. The Consultant makes a general assignment for the benefit of its creditors;
- IV. A trustee is appointed for the Consultant on account of its insolvency;
- V. The Consultant fails to maintain and/or renew insurance coverages and bonds required under this Agreement;
- VI. The Consultant fails to pay sub-consultants within ten (10) days after receipt of payment from the Owner for such expenses or invoices;
- VII. The Consultant suspends diligent prosecution of the Project or abandons the Project for ten (10) or more days;
- VIII. The Consultant does not prevent the imposition of liens on the Project, within the reasonable control of the Consultant;

- IX. The Consultant makes any material misrepresentation of the representations and certifications it is required to make pursuant to this Agreement, whether intentional or not;
- X. A loss time injury or death occurs in which an OSHA penalty is assessed under any circumstances caused by the Consultant or for which the Consultant is responsible;
- XI. The Consultant 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, Consultant's obligations pursuant to its Section 3 and M/W/DBE Utilization Plans, and all insurance and nondiscrimination requirements;
- XII. Kickbacks of employee wages, subcontractor, consultant or vendor payments or any other payment to the Consultant, or its respective principals, superintendents, or employees occur; or
- XIII. The Consultant or its sub-consultants fail to pay prevailing wages or Davis-Bacon wages (if applicable), inaccurately certify payrolls, or miscategorize an employee's job classification.
- XIV. The Consultant 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

- I. In the event the Owner delivers such notice of termination for default to the Consultant, the Consultant 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.
- II. 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 Consultant's exclusive remedy shall be those provided with respect to a termination for convenience.
- III. 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 Consultant and its 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 Consultant materials, 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 Consultant or any of its sub-consultants, is detrimental to the interests of the Owner.

- IV. If a Defaulting Event occurs, as enumerated in Article 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 Consultant to continue to provide the Services, despite one or more Defaulting Events, the Consultant 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.
- V. 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 Consultant in accordance with the notice provisions in Article G(9) below, without prejudice to any other rights or remedies of the Owner, terminate the Consultant's right to proceed with the Project for convenience if:

- I. A Defaulting Event occurs;
- II. The Consultant is terminated for default on any other contract with the Owner;
- III. The Consultant is debarred from any other Federal, State of Illinois, or City of Chicago procurement activity or contract during the term of this Agreement;
- IV. The Consultant or any of its principals owning more than five percent (5%) of the Consultant is charged with criminal conduct for which there may be a felony conviction;

- V. The Consultant fails to obtain in a timely manner, maintain, continuously renew, or lacks any license, permit or registration required from the City of Chicago, County of Cook, or the State of Illinois;
- VI. A strike, which was not provoked by the Consultant 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;
- VII. The Consultant fails to maintain a “drug free” workplace; or
- VIII. The Consultant fails to provide accurate and timely reports, to update the Owner on the progress of the Project, or to communicate with the Owner as requested;
- IX. 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 Consultant 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 Consultant for Services rendered pursuant to this Agreement.

9. **Consultant’s Termination Claims**

A. Right of Termination

The Owner may terminate this Agreement, in whole or in part, pursuant to the provisions in Article E(8) above. Any such termination shall be effected by delivery to the Consultant 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 for convenience pursuant to Article E(8)(C), the Consultant’s claim shall be limited to the sum of the following:

- I. Payment for Services, not theretofore paid, completed in compliance with this Agreement through the date of the Notice of Termination; and
- II. 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)(III) below.

In arriving at the amount due the Consultant under this Article E(9)(B), there shall be deducted (i) all unliquidated advances or other payments on account previously made to the Consultant, applicable to the terminated portion of this Agreement, if any; (ii) any claim which the Owner, directly or indirectly, may have against the Consultant 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 Consultant's Responsibility upon Termination

After receipt of a Notice of Termination, and except as otherwise directed by the Owner in the Notice of Termination, the Consultant shall:

- I. Stop work under this Agreement immediately upon receipt of the Notice of Termination;
- II. Place no further orders for materials or supplies or subcontract for materials, services, or facilities;
- III. 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;
- IV. Within five (5) days after Consultant's receipt of the Notice of Termination, 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 Consultant 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.
- V. Subject to Subparagraph E(9)(C)(IV) 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;
- VI. 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 Consultant's possession.

- VII. 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 or in such Notice of Termination.
- VIII. 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 Consultant or any of the Consultant's sub-consultants.

## 10. Insurance

### A. Coverage Generally

The Consultant 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 Consultant 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 Consultant 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 Consultant, its officers, officials, subcontractors, joint venture parties, partners, agents, licensees, invitees or employees. The Consultant shall maintain coverage for the duration of the Agreement. Any extended reporting period premium (tail coverage) shall be paid by the Consultant.

### C. Insurance Carriers

The insurance carriers used by the Consultant 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-VII".

### D. Required Insurance Coverage

The Consultant shall provide insurance to cover all operations under the Agreement, whether performed by the Consultant or by its sub-consultants, joint venture partners, agents, officers, or employees. Coverage shall include, but shall not be limited to, the following:

#### I. Workers Compensation and Occupational Disease Insurance

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

II. Commercial General Liability Insurance

Commercial General Liability Insurance will be written in an amount of not less than \$1,000,000 per occurrence with an Aggregate of not less than \$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 Consultant's agents, subcontractors, invitees and guests and their personal property, as well as injury to the Developer's and/or Owner's and General Contractor's respective officers, employees, agents, sub-consultants, invitees and guests, and their personal property. The Owner is to be endorsed as an additional insured on the Consultant's policy, and such insurance will be endorsed as primary and non-contributory with any other insurance available to the Owner.

III. Automobile Liability Insurance

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

IV. 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 claims made policy which is not renewed or replaced must have an extended reporting period (i.e. tail coverage) of two (2) years.

V. Excess Liability

If applicable, is to follow the form of all primary coverage requirements as outlined above in the amount of not less than \$2,000,000.



VI. Certificates of Insurance

Prior to the commencement of any work on the Project, the Consultant, and any and all approved sub-consultants of the Consultant, shall furnish the Owner's Department of Procurement and Contracts, 60 East Van Buren St., 13th 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, 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 Consultant's required insurance policies except professional liability and shall be properly and accurately shown on the Consultant's 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.

MUST BE INCLUDED ON ALL CERTIFICATES:

- a. Certificate Holder: Chicago Housing Authority, 60 E. Van Buren, Chicago, IL 60605
- b. Solicitation number or Contract number and/or the title of the Project or Service

THE REQUIRED DOCUMENTATION MUST BE RECEIVED PRIOR TO THE Consultant COMMENCING WORK.

VII. Renewals

The Owner's Department of Risk Management must receive renewal certificates of insurance, or such similar evidence of coverage, prior to the expiration or renewal date of existing insurance coverage during the term of this Agreement or extensions thereof. 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.

VIII. 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 Consultant shall provide to the Owner, annually, a certified copy of the insurance policies obtained pursuant hereto. The Consultant 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 Consultant. Further, the Consultant shall provide the Owner with written notice not less than thirty (30) days prior to the occurrence of any of the following conditions:

- a. Aggregate erosion of coverage in advance of the retroactive date;
- b. Cancellation of the policy; and/or
- c. Non-renewal of the policy.

IX. Owner's Insurance

The Consultant 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 Consultant under this Agreement.

X. Subcontractor's or Consultant's Insurance

The Consultant shall require all approved sub-consultants to carry the insurance required herein, or the Consultant may provide the coverage for any or all of its approved sub-consultants. Evidence of such coverage must be submitted to the Owner as required above.

XI. 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 Consultant, its joint venture partners, parent companies, subsidiaries, affiliates, or sub-consultants.

XII. Noncompliance

At Owner's option, non-compliance with the insurance requirements of this Article E(10) will result in (1) all payments due the Consultant being withheld until the Consultant has complied with the Agreement; or (2) this Agreement may be terminated for default.

XIII. Other Insurance Requirements

Owner reserves the right to modify these requirements or increase limits based on changes to the Scope of Work. Modifications will be determined upon review by Owner's Risk Management Department.

When any pollution or environmental exposure is performed in connection with the Agreement, the applicable pollution liability insurance will be required. Pollution liability insurance covering any bodily injury or property damage liability, arising out of pollutants including hazardous materials such as asbestos, lead, contaminated soil, etc. including while in transit to a permanent disposal facility which may arise from activities under or incidental to the Agreement will be required.

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

### **A. Indemnification**

To the fullest extent permitted by law, the Consultant agrees to indemnify the Owner, its respective Commissioners, board members, officers, directors, agents, employees and vendors for any and all physical or non-physical injury to any person, including loss of human life and/or damage to property, arising from the Services performed or to be performed under this Agreement, including Additional Services, to the extent caused by Consultant's negligence, willful misconduct, errors or omissions. The Consultant's indemnification obligations arising hereunder 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 (collectively, "Claims"), including the enforcement of this indemnification provision. The indemnities contained herein shall survive the termination of the Agreement. The Consultant further agrees to investigate, handle, respond to, provide defense for and defend all suits for any and all Claims included in this indemnification provision 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 Consultant 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 from 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, to the extent caused by Consultant's negligence, willful misconduct, errors, or omissions.

C. Owner's Participation

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

D. Limitation

Nothing in this Article E (11) shall be deemed to obligate Consultant to indemnify Owner for Owner's own negligence or willful misconduct.

E. Indemnification Separate from Insurance

The Consultant expressly understands and agrees that the requirements set forth in this Article E (11) to protect, defend, indemnify, keep, save and hold the Owner free and harmless are separate from and not limited by the Consultant's responsibility to obtain, procure and maintain insurance pursuant to this 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 or of any cause of action arising out of the Consultant's performance or failure of performance under this Agreement, and the Consultant shall be and remain liable to the Owner in accordance with the applicable laws for all damages to the Owner caused by the Consultant's 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 Consultant 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 2 CFR 200.323.

2. **Cost Analysis for Additional Services**

The Owner shall perform a cost or price analysis, as required by 2 CFR 200.323, prior to the issuance of a contract modification/amendment for Additional Services. Such Additional Services shall be within the general Scope of Services of this Agreement. The Consultant 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 2 CFR 200.319(c)(1) and contract agreements between the Owner and HUD, the Consultant 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 a Consultant certification regarding the design of the Project, the Consultant shall provide such a certification to the Owner.

**5. Retention and Inspection of Records**

Pursuant to federal regulations at 2 CFR 200.333 and 2 CFR 200.336, the Consultant 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 Consultant 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 Consultant 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. However, Article 45 of the General Conditions to the Contract for Construction (HUD Form 5370-A), typically used by the Owner for all construction projects over \$150,000.00, requires that contractors pay all royalties and license fees. Accordingly, all Plans and Specifications prepared by the Consultant 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 at 2 CFR 200.318, 2 CFR 200.319, 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:

- A. The employee, officer or agent;
- B. Any member of his or her immediate family;
- C. His or her partner; and/or
- D. An organization that employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award.

Owner's officers, employees or agents may not solicit or accept gratuities, favors or anything of monetary value from the Consultant or the Consultant's 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 Consultant 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 Consultant, 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 Consultant, 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 Consultant, 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 Consultant, 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. **Section 3 and MBE/WBE/DBE Participation and Requirements**

A. Section 3 – Compliance

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

I. Section 3 - Clause

- a. 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.
- b. 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.
- c. The Consultant agrees to send to each labor organization or representative of workers with which the Consultant has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the

Consultant'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.

- d. The Consultant 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 Consultant will not subcontract with any subcontractor where the Consultant has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.
- e. The Consultant will certify that any vacant employment positions, including training positions, that are filled (1) after the Consultant 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 Consultant's obligations under 24 CFR Part 135.
- f. Non-compliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this Agreement for default, and debarment or suspension from future HUD assisted contracts.

## II. Section 3 Compliance Goals

- a. Consultant's 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:

- 1. 51 percent or more owned by section 3 residents; or
- 2. 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
- 3. 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.”

- b. The Consultant and its subcontractors 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 a contract 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.
- c. 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.
- d. Consultants 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).

### III. Documenting and Reporting

- a. Consultant agrees to comply with the above Section 3 requirements in accordance with the Consultant’s Section 3 Utilization Plan, which shall be prepared by the Consultant and agreed to by CHA. CHA shall not be required to agree to Consultant’s Utilization Plan until the Consultant meets its burden to establish that it will comply with 24 CFR Part 135 and otherwise comply with CHA’s Section 3 Policy ([http://www.thecha.org/pages/section\\_3/65.php](http://www.thecha.org/pages/section_3/65.php) or see the copy included in the solicitation) as may be required. Consultant’s Section 3 Utilization Plan is attached hereto as Exhibit E and is incorporated by reference herein.
- b. The Consultant and its subcontractors shall provide all required compliance data with respect to Consultant’s Section 3 requirements to the CHA via CHA’s electronic system available at <https://cha.diversitycompliance.com/>. The Consultant 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 Consultant 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.

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

**B. MBE/WBE/DBE Compliance**

Consultant agrees to comply with the CHA's Minority and Women Disadvantaged Business Enterprise ("MBE/WBE/DBE") requirements in accordance with the Consultant's Utilization Plan, which is attached hereto as Exhibit E and incorporated by reference herein, and otherwise comply with the CHA's MBE/WBE Policy (see [http://www.thecha.org/assets/1/22/Amendment to Special Conditions - M-WBE.pdf](http://www.thecha.org/assets/1/22/Amendment%20to%20Special%20Conditions%20-%20M-WBE.pdf)) or the copy included in the RFP).

Documenting and Reporting. The Consultant and its subcontractors shall provide all required data with respect to Consultant's MBE/WBE/DBE compliance to the CHA via CHA's electronic system available at <https://cha.diversitycompliance.com/>. The Contractor and its subcontractors shall be responsible for responding to any requests for data or information by the noted response due dates, and shall check the electronic system on a regular basis to manage contact information and contract records. The Consultant 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. Clean Air and Water**

Pursuant to federal regulations [2 CFR Part 200 Appendix II] and other federal law, the Consultant 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 subcontracts, and sub-grants of amounts in excess of One Hundred Thousand and 0/100 Dollars (\$100,000.00).

**12. Energy Efficiency**

Pursuant to Federal regulations and other federal law, except when working on an Indian Housing Authority Project on an Indian Reservation, the Consultant 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.).

**13. Prevailing Wages**

In accordance with Section 12 of the U.S. Housing Act of 1937, as amended (42 U.S.C. 1437j), the Consultant 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.

**14. CHA's Minimum Wage Requirement**

In accordance with CHA's Minimum Wage Requirements, the Consultant shall (i) pay its employees no less than Thirteen Dollars per hour (\$13.00/hr.) for work performed under this Agreement, and shall (ii) require any sub-consultants or subcontractors of the Consultant to pay its employees no less than Thirteen Dollars per hour (\$13.00/hr.) for work performed hereunder. CHA's Minimum Wage Requirements may be found on CHA's website at

[http://www.thecha.org/assets/1/6/CHA\\_Minimum\\_Wage\\_Requirement.pdf](http://www.thecha.org/assets/1/6/CHA_Minimum_Wage_Requirement.pdf).

Notwithstanding the foregoing, Federal wage determinations (either Davis-Bacon or HUD-Determined Wage Rates) shall preempt any conflicting State prevailing wage rate or the Minimum Wage Requirement when the State prevailing wage rate or the Minimum Wage Requirement is higher than the Federally-imposed wage rate (24 CFR 965.101).

**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 Consultant is prohibited from placing a lien on the Owner's property, including, but not limited to, the Improvements and the Sites. This prohibition shall be placed in all Consultant subcontracts.

**17. Non-Discrimination**

Consultant 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. Consultant 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, Ill. Admin. Code Tit. 44 section 750 Appendix A, which is attached hereto as Exhibit G 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, Consultant 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 Consultant and its subcontractors to cooperate with the CHA Inspector General in any investigation or hearing undertaken. All of the Consultant's subcontracts must inform subcontractors of this provision and require agreement and compliance with the same.

**19. No Damages for Delay**

Consultant agrees that it shall make no claims against the CHA for damages, charges, interest, additional costs or fees incurred by reason of suspension of work or delays caused by the CHA with respect to any Services performed under this Agreement. Consultant's sole and exclusive remedy for suspension of work or delays caused by the CHA is an extension of time equal to the duration of the suspension or delay to allow Consultant to perform.

**20. Business Documents and Contractor's Affidavit**

Consultant's Contractor's Affidavit, Contractor's Certifications and Representations of Offerors – Non-Construction Contracts (HUD Form 5369-C) and Equal Opportunity Certificate are attached hereto as Exhibit J and incorporated by reference as if fully set forth herein. The Contractor shall at all times comply with, and be in compliance with the Contractor's Affidavit, Contractor's Certifications and Representations of Offerors – Non-Construction Contracts (HUD Form 5369-C) and Equal Opportunity Certificate.

**21. General Conditions for Non-Construction Contracts**

HUD's General Conditions for Non-Construction Contracts (HUD form 5370-C (1/2014)) are attached hereto as Exhibit I and are incorporated by reference as if fully set forth herein. Consultant agrees to fully comply with the General Conditions for Non-Construction Contracts. In the event of a conflict between the terms and conditions of the General Conditions for Non-Construction Contracts and the terms and conditions of this Agreement, the terms and conditions of this Agreement shall control.

**ARTICLE G: GENERAL CONDITIONS**

**1. Drug-Free Workplace**

The Consultant shall establish procedures and policies to promote a "Drug-Free Workplace." The Consultant 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 Consultant 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 Consultant 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 superseded 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. **Counterparts**

This Agreement may be executed in several identical counterparts, each of which shall be deemed an original and constitute one Agreement binding on the parties hereto.

5. **Amendments**

No changes, amendments, modifications, or discharge of this Agreement or any part thereof, shall be valid unless in writing and signed by the authorized agent of the Consultant and by the CEO of the Owner or his/her respective designees. The CHA shall incur no liability for Additional Services without a written amendment pursuant to this Section.

Whenever in this Agreement the Consultant is required to obtain prior written approval, the effect of any approval which may be granted pursuant to the Consultant's request shall be prospective only from the later of the date approval was requested or the date on which the action for which the approval was sought is to begin. In no event may approval apply retroactively to a date before the approval was granted.

6. **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 Consultant agrees that service of process on the Consultant 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 Consultant or by personal delivery on any officer, director, or managing or general agent of the Consultant.

7. **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 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.

8. **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.

9. **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 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 Consultant shall be addressed to:

Consultant:

Michael J. McMurray, President  
Globetrotters Engineering Corporation  
300 S. Wacker Drive, Suite 400  
Chicago, IL 60606  
Phone: (312) 922-6400  
Email: marketing@gcc-group.com

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: Chief Procurement Officer

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: Chief Legal Officer

10. **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. Consultant Authority

The Consultant 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 Consultant has been affixed with complete and full authority to commit the Consultant to all terms and conditions of this Agreement.

*(Remainder of page intentionally left blank; signature page attached hereto)*

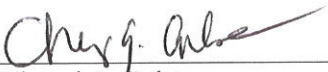


IN WITNESS WHEREOF, the Owner and the Consultant have executed this Agreement as of the date first written above.


**CHICAGO HOUSING AUTHORITY**

By:   
Dionna Brookens  
Chief Procurement Officer

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

By:   
Cheryl J. Colston  
Deputy Chief Legal Officer

**GLOBETROTTERS ENGINEERING CORPORATION**

By:   
Print Name: Michael S. McMurray  
Title: President