

**CONTRACT NO. 12700**

**PROFESSIONAL SERVICES AGREEMENT**

**BETWEEN**

**CHICAGO HOUSING AUTHORITY**

**AND**

**MERCER (US) INC.**

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**EXHIBITS**

<b>EXHIBIT I</b>	<b>STATEMENT OF WORK</b>
<b>EXHIBIT II</b>	<b>ILLINOIS EQUAL EMPLOYMENT OPPORTUNITY CLAUSE</b>
<b>EXHIBIT III</b>	<b>INSURANCE REQUIREMENTS</b>
<b>EXHIBIT IV</b>	<b>MBE/WBE/DBE COMPLIANCE SCHEDULES</b>

**AGREEMENT**

**THIS PROFESSIONAL SERVICES AGREEMENT** (hereinafter, “Agreement”) is entered into effective as of July 15, 2021 (the “Effective Date”) by and between the **CHICAGO HOUSING AUTHORITY** (the “CHA”), a municipal corporation organized under the Illinois Housing Authority Act 310 ILCS 10/1 et seq., with offices at 60 E. Van Buren St., Chicago, Illinois 60605 and Mercer (US) Inc. (the “Contractor”), a limited liability company with offices at 155 N. Wacker Drive, Suite 1500, Chicago, Illinois 60606. CHA and Contractor are referred to herein individually as a “party” and collectively as the “parties.”

**RECITALS**

**WHEREAS**, the CHA is engaged in the development and operation of safe, decent and sanitary housing throughout the City of Chicago for low income families in accordance with the United States Housing Act of 1937, 42 U.S.C. §1437 et seq.; regulations promulgated by the United States Department of Housing and Urban Development (“HUD”), and the Illinois Housing Authorities Act. 310 ILCS 10/1 et seq., as amended, and other applicable laws, regulations and ordinances;

**WHEREAS**, on April 22, 2021, the CHA released Request for Quote No. 3033 (2021) to solicit quotes from qualified consultants experienced in compensation structure, analysis and comparison to assist in reviewing and evaluating CHA’s compensation practices and program;

**WHEREAS**, Contractor is a global business entity of Marsh & McLennan, an international professional services firm, and helps organizations in engaging, managing and rewarding employees by designing executive remuneration programs, improving human resource effectiveness and improving employee strategies;

**WHEREAS**, CHA and Contractor desire to enter into this Agreement for the provision of services, as fully set forth herein.

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

**ARTICLE 1. INCORPORATION OF RECITALS**

Section 1.01 Incorporation of Recitals

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

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

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

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

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

#### **B. Deliverables**

In performing the Services, the Contractor shall prepare and/or provide the deliverables as set forth in Exhibit I (collectively "Deliverables"). The CHA reserves the right to reject Deliverables that do not comply with the requirements of this Agreement, including, without limitation, Section 2.02 (Performance Standards) and Exhibit I. The CHA will notify the Contractor in writing of any deficiencies the CHA may identify involving a Deliverable.

Partial or incomplete Deliverables may be accepted for review only when required for a specific purpose and when consented to in advance by the CHA. Such Deliverables may not be considered as satisfying the requirements of this Agreement and partial or incomplete Deliverables shall in no way relieve the Contractor of its commitments hereunder.

The CHA will provide all necessary and reasonably requested information, direction and cooperation to enable Contractor to provide the Services. Contractor shall use all information and data supplied by the CHA or on its behalf without independently verifying the accuracy, completeness or timeliness of it. Contractor will not be responsible for any delays or liability arising from missing, delayed, incomplete, inaccurate or outdated information and data, or if the CHA does not provide adequate access to its employees, agents or other representatives necessary for Contractor to perform the Services.

### **Section 2.02 Performance Standards**

The Contractor shall perform all Services required under this Agreement with the degree of skill, care and diligence normally shown by an entity performing services of a scope, purpose and magnitude comparable with the nature of the Services to be provided under this Agreement. Furthermore, the Contractor shall perform or cause to be performed all Services required by the Agreement in accordance with the terms and conditions of this Agreement, in accordance with any federal, state and local laws, statutes, applicable to this Agreement. The Contractor must at all times act in the best interests of the CHA in connection with the Services consistent with the professional obligations assumed by it in entering into this Agreement and will assure timely and rendering and completion of its Services in compliance with the terms of this Agreement, including but not limited to Deliverables. Specifically, all services shall be performed in accordance with applicable professional due care standards, and in accordance with the terms and conditions of this Agreement.

The Contractor must assure that all Services which require the exercise of professional skills or judgment must be accomplished by professionals qualified and competent in the applicable discipline and appropriately licensed, if required by law. The Contractor covenants with the CHA to furnish its best professional expertise and judgment in furthering the CHA's interests. The Contractor shall at all times use its commercially reasonable best efforts to assure quality, timeliness, efficiency and creativity in rendering and completing the Services. The Contractor agrees that performance of the Services in a manner compliant with the terms of this Agreement shall include quick response to the CHA's needs. Accordingly, the Contractor shall return all telephone calls and respond to all electronic mail on a timely basis within two (2) business days.

### Section 2.03 Key Personnel

Mr. Ken Simek, Partner, Ms. Karen Hutcheson, Partner, Ms. Sherrie Webster Brown, Principal, Ms. Paula Norkus, Benefits Leader, and other consultants as needed to complete the assignment shall collectively be responsible for supervising Contractor's personnel and directing the Services to be performed during the term of the Agreement. The Contractor retains the right to substitute key personnel with reasonable cause by giving written notice to the CHA, provided that the CHA shall have the right to approve such staff changes and said approval shall not be unreasonably withheld.

### Section 2.04 M/W/DBE Participation and Requirements

- A. **M/W/DBE Compliance.** Manager agrees to comply with the CHA's Minority, Women Disadvantaged Business Enterprise ("M/W/DBE") requirements in accordance with Manager's M/W/DBE Compliance Schedules, which are attached hereto as Exhibit IV and incorporated by reference herein, and otherwise comply with the CHA's M/W/DBE Policy (set forth in the RFP).
- B. **Documenting and Reporting.** Manager and its subcontractors shall provide all required compliance data with respect to Manager's M/W/DBE efforts to the CHA via CHA's electronic system available at <https://cha.diversitycompliance.com/>. Manager 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. **Manager shall also be responsible for ensuring that all subcontractors have completed all requested items with complete and accurate information and that their contact information is current.**

### Section 2.05 Non-Discrimination

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

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

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

- A. Contractor acknowledges that all Deliverables in any form prepared by Contractor specifically and exclusively for the CHA hereunder (hereinafter, “Work Product” or “CHA Documents”) will belong solely to the CHA and the Contractor will retain no rights therein. The Work Product is conclusively deemed by the parties as “works made for hire” within the meaning and purview of Section 101 of the United States Copyright Act, 17 U.S.C. §101 et seq. (hereinafter, “the Act”), and the CHA will be the copyright owner thereof and of all aspects, elements and components thereof in which copyright can subsist.

Notwithstanding anything to the contrary set forth in this Agreement, Contractor will retain all copyright, patent and other intellectual property rights in the methodologies, methods of analysis, ideas, concepts, know-how, models, tools, techniques, skills, knowledge and experience owned or possessed by Contractor before the commencement of, or developed or acquired by Contractor during or after, the performance of the Services, including without limitation, all systems, software, specifications, documentation and other materials created, owned or licensed and used by Contractor or its Affiliates or subcontractors in the course of providing the Services (the “Intellectual Property”), and Contractor shall not be restricted in any way with respect thereto.

To the extent any Work Product incorporates any Intellectual Property, Contractor grants to the CHA, a royalty-free, irrevocable, worldwide (subject to applicable export restrictions), non-transferable, nonexclusive license to use such Intellectual Property solely for the purposes of utilizing the Work Product internally in accordance with the terms of this Agreement.

In addition, Contractor agrees that it will not do anything contrary to the CHA’s ownership in the Work Product or which might impair the value of such ownership. Contractor agrees to reasonably cooperate with the CHA in executing all documentation reasonably requested by the CHA to enable the CHA to perfect its right in and to the Work Product.

Unless Contractor provides its prior written consent, the CHA will not use, in a manner other than as mutually contemplated when Contractor was first retained by the CHA to perform the applicable Services, or disclose to any third party, any Work Product or Intellectual Property or other material supplied by Contractor

under this Agreement, and the CHA shall be responsible for, and Contractor shall have no liability with respect to, modifications made by any person other than Contractor to the Work Product, Intellectual Property or other work product provided to the CHA by Contractor.

- B. All Work Product and CHA Documents provided to, or prepared or assembled by the Contractor in connection with the performance of the Contractor's Services under this Agreement shall be the property of the CHA. The Contractor shall establish precautions against the destruction of all such CHA Documents and shall be responsible for any loss or damage to the CHA Documents while in the Contractor's possession or use and the Contractor shall be responsible for restoring such CHA Documents at its sole expense. Except as provided above, if any CHA Documents destroyed while in the Contractor's possession are not restorable, the Contractor shall be responsible for any loss suffered by the CHA on account of such loss or damage.
- C. The Contractor shall deliver or cause to be delivered all Work Product and/or CHA Documents, including, but not limited to, all Deliverables prepared for the CHA under the Agreement, to the CHA promptly in accordance with the time limits prescribed in the Agreement, or if no time limit is specified, then upon reasonable demand thereof or upon termination or completion of the Contractor's Services or expiration of the Agreement hereunder. In the event of the failure by Contractor to make such delivery, then and in that event, the Contractor shall pay to the CHA any damages the CHA may sustain by reason thereof. The Contractor shall maintain all CHA Documents not previously delivered to the CHA for a period of five (5) years after final payment made in connection with the Agreement.
- D. The Contractor shall maintain its books, records, documents, and other materials related to the performance of the Agreement for a period of five (5) years following the expiration or termination of the Agreement and after final payment has been made and all other pending matters are closed, and adopt accounting procedures and practices sufficient to reflect properly all costs of whatever nature claimed to have been incurred or anticipated to be incurred for or in connection with the performance of the Contractor's Services under the Agreement. The Contractor shall maintain its accounting system, books and records in a manner that complies with generally accepted accounting principles ("GAAP"), consistently applied throughout.
- E. The provisions of Section 2.06 shall survive the expiration or termination of the Agreement.
- F. The Contractor shall flow down the provisions of this Section 2.06 titled "Ownership of Work Product, Documents, Records and Reports" to its subcontractors at every tier.

#### Section 2.07 Audit Requirement

Subject to reasonable limitations, the CHA retains an irrevocable right to independently or, through a third party, audit the Contractor's books and records pertaining to this Agreement and



disallow any inappropriate billings upon written notice to the Contractor. In the event of a disallowance, the Contractor shall refund the amount disallowed to the CHA.

#### Section 2.08 Confidentiality

The Contractor agrees that all Deliverables, reports, documents or other information prepared or assembled by, or received or encountered by the Contractor, its employees, agents and subcontractors pursuant to this Agreement are to remain confidential (“Confidential Information”). Further, the Contractor agrees that such Confidential Information shall not be made available to any individual or organization other than the CHA or courts of competent jurisdiction or administrative agencies pursuant to a subpoena, without the prior written approval of the CHA. In the event the Contractor is presented with a *subpoena* regarding such Confidential Information, which may be in the Contractor’s possession by reason of this Agreement, the Contractor must immediately give notice to the CHA’s Chief Executive Officer and General Counsel with the understanding that the CHA will have the opportunity to contest such process by any means available to it before the Confidential Information is submitted to a court or other third party. The Contractor, however, is not obligated to withhold the delivery of such Confidential Information beyond the time ordered by the court or administrative agency, unless the subpoena or request is quashed or the time to produce is otherwise extended. The Contractor agrees that Section 2.08 of the Agreement shall survive the termination of the Agreement.

Subject to applicable law, including public disclosure law to which the CHA may be subject, the CHA shall not disclose confidential or proprietary information of Contractor to any third party.

Contractor may use any information that it collects and uses in connection with the Services, together with information from its other clients, for data analytics purposes, including to create insights, reports and other analytics to improve the quality of and market Contractor’s advice, products and services. The output of such analytics will not identify particular clients or individuals. Notwithstanding the foregoing, the CHA’s name may not appear in any list of participating organizations for reports containing such analytical trend data.

#### Section 2.09 Subcontracts and Assignments

Contractor shall not subcontract, delegate or otherwise transfer all or any part of its obligations under this Agreement or any part hereof without the prior written approval of the CHA. Further, the Contractor shall also not assign, in whole or in part, any funds or claims due or which may become due under this Agreement without the prior written approval of the CHA.

#### Section 2.10 Religious Activities

In connection with the Services to be provided under this Agreement, the Contractor agrees:

- A. That it shall not discriminate against any person on the basis of religion and shall not limit employment or give preference in employment to persons on the basis of religion; and
- B. That it shall not discriminate when rendering the Services hereunder against any

person on the basis of religion and shall not limit such Services or give preference to persons on the basis of religion.

Section 2.11 Drug-Free Workplace

The Contractor shall establish procedures and policies to promote a “Drug-Free Workplace.” Further, the Contractor shall notify all employees of its policy for maintaining a “Drug-Free Workplace,” and the penalties that may be imposed for drug abuse violations occurring in the workplace. Further, the Contractor shall notify the CHA if any of its employees are convicted of a criminal drug offense in the workplace no later than ten (10) days after such conviction.

Section 2.12 Force Majeure

Neither party shall be deemed in default of this Agreement for any delay or failure to fulfill any obligation hereunder, so long as and to the extent to which any delay or failure in the fulfillment of such obligation is prevented, frustrated, hindered or delayed as a consequence of circumstances of Force Majeure. In the event of any such excused delay, the time for performance of such obligations (and corresponding payment obligation) shall be extended for a period equal to the time lost by reason of the delay. A party claiming the benefit of this provision shall, as soon as reasonably practicable after the occurrence of any such event, (a) provide written notice to the other party of the nature and extent of any such Force Majeure condition; and (b) use commercially reasonable efforts to remove any such causes and resume performance under this Agreement as soon as reasonably practicable.

Section 2.13 CHA Inspector General

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

**ARTICLE 3. TERM OF AGREEMENT**

Section 3.01 Term of Agreement

The term of this Agreement is for the period of the July 15, 2021 through January 15, 2022 (the “Term”) or until the Agreement is terminated in accordance with its terms, whichever occurs first.

**ARTICLE 4. COMPENSATION AND PAYMENT**

Section 4.01 Compensation

The total amount available to be paid to the Contractor for the satisfactory (as the CHA shall determine in the CHA’s sole discretion) provision of the Services shall be an amount not-to- exceed Two-Hundred Thousand and 00/100 Dollars (\$200,000.00), for the term of the Agreement. Reasonable expenses may be billed to the CHA upon prior written approval. All out of state travel must also be pre-approved by the CHA.

The Contractor agrees not to perform, and waives any and all claims of payment for, work, costs or expenses which would result in billings beyond this amount and in no event shall the CHA be responsible for any work, costs or expenses incurred in the performance of the Services other than those set forth herein without a prior written amendment to this Agreement authorizing said additional work, costs and/or expenses. The Contractor recognizes an affirmative duty to monitor its performance and billings to ensure that the Services are completed within the respective and applicable amount(s) of the Compensation for each Services component. No compensation or reimbursement will be paid to the Contractor for amounts incurred prior to the Effective Date of the Agreement.

#### Section 4.02 Payment

The Contractor shall submit an invoice on the 10<sup>th</sup> day of each month for the previous month during the Term of this Agreement. Each invoice shall contain back-up information as required by the CHA, including but not limited to, a brief description of the services provided during the invoice period, along with supporting detail as well as any reasonable requests for other supporting information.

The CHA shall not be required to give approval or make payments pursuant to a submitted invoice unless the information required to be included with the invoice, or that has been specifically requested by the CHA, and all the reporting requirements and Deliverables as set forth in this Agreement, or other reasonable and written requests by CHA for additional information, have been met.

CHA will make commercially reasonable efforts to make payment for services rendered under this Agreement within thirty (30) days after receipt and approval of each invoice submitted. If any invoice remains unpaid for longer than ninety (90) days from the date of the invoice, Contractor may suspend the provision of the Services until payment is received. All invoices shall be subject to review and approval by the CHA. If the CHA objects to all or any portion of any invoice, it shall notify the Contractor of its objection in writing and both parties shall make every effort to settle the disputed portion of the invoice. Notwithstanding the foregoing, the CHA may, at its option, pay the undisputed portion of any invoice without being deemed to have accepted the disputed portion.

### **ARTICLE 5. DISPUTES**

#### Section 5.01 Disputes

In the event of a dispute between the CHA and the Contractor involving this Agreement, both parties will attempt to negotiate a resolution.

## **ARTICLE 6. RISK MANAGEMENT**

### **Section 6.01 Insurance**

The Contractor agrees to comply with and meet or exceed all of CHA's insurance requirements that are set forth in Exhibit III, which is attached hereto and incorporated by reference herein as if fully set forth herein.

### **Section 6.02 Indemnification**

The Contractor agrees to protect, defend, indemnify, keep save, and hold the CHA, its officers, officials, and employees free and harmless from and against any and all liabilities, losses, penalties, damages, settlements, environmental liability, costs, charges, professional fees, including reasonable attorney fees, or other expenses or liabilities to the extent directly arising out of or relating to any and all third party claims, liens, demands, obligations, actions, suits, judgments or settlements, proceedings or causes of action of every kind, nature and character (collectively, "Claims") to the extent arising directly out of breaches of this Agreement and/or the negligent acts and omissions of the Contractor, its agents, employees, and subcontractors, including but not limited to, the enforcement of this indemnification provision. Without limiting the foregoing, any and all such Claims, relating to personal injury, death, damage to property, defects in material or workmanship, actual or alleged infringement of any patent, trademark, copyright or any other tangible or intangible personal or property right, or any actual or alleged violation of any applicable statute, ordinance, order, rule or regulation, or decree of any court, shall be included in the indemnity hereunder. The Contractor further agrees to investigate, handle, respond to, provide defense for and defend all suits for any and all Claims at its sole expense and agrees to bear all the costs and expenses related thereto, even if the Claims are considered groundless, false or fraudulent. The CHA shall provide prompt notice of any Claim for which the CHA may seek indemnification, and the CHA shall reasonably cooperate with Contractor in connection with any such Claim.

To the extent permissible by law, Contractor waives any limits on Contractor's liability that it would otherwise have by virtue of the Workers Compensation Act or any other law or judicial decision (specifically Kotecki v. Cyclops Welding Corporation, 146 Ill.2d 155 (1991)).

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

### **Section 6.03 Limitation of Liability**

The aggregate liability of Contractor, its affiliates and any officer, director or employee of Contractor and its affiliates ("Contractor Parties") to the CHA, its affiliates (including HUD), its officers, directors or employees or those of its affiliates and any third party (including any benefit plan, its fiduciaries or any plan sponsor) for any and all Losses arising out of or relating to this Agreement and the provision of any Services at any time by any of the Contractor Parties shall not exceed the greater of one times the compensation for the Services giving rise to such

Loss and \$100,000. Contractor shall have no liability for the acts or omissions of any third party (other than its subcontractors).

In no event shall either party or its affiliates be liable in connection with this Agreement or the Services to the other party, its affiliates or any third party for any loss of profit or incidental, consequential, special, indirect, punitive or similar damages. The provisions of this Section 6.03 shall apply to the fullest extent permitted by law.

For purposes of this Agreement “Loss” means damages, claims, liabilities, losses, awards, judgments, penalties, third party claims, interest, costs and expenses, including reasonable attorneys' fees, whether arising under any legal theory including, but not limited to claims sounding in tort (such as for negligence, misrepresentation or otherwise), contract (whether express or implied), by statute, or otherwise, claims seeking any kind of damages and claims seeking to apply any standard of liability such as negligence, statutory violation or otherwise. For the avoidance of doubt, multiple claims arising out of or based upon the same act, error or omission, or series of continuous, interrelated or repeated acts, errors or omissions shall be considered a single Loss.

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

Section 7.01 Events of Default Defined

Each of the following shall constitute an event of default:

- A. Any material misrepresentation, whether negligent or willful and whether in the inducement or in the performance, made by Contractor to the CHA.
- B. The Contractor’s failure to perform any of its obligations under this Agreement including, but not limited to, the following:
  - 1. Failure to perform the Services with sufficient personnel or with sufficient material to ensure the performance of the Services or due to a reason or circumstance within the Contractor’s control;
  - 2. Failure to meet any of the performance standards set forth in this Agreement;
  - 3. Failure to perform the Services in a manner reasonably satisfactory to the CHA, or inability to perform the Services satisfactorily as a result of insolvency, filing for bankruptcy or assignment for the benefit of creditors;
  - 4. Failure to promptly re-perform within a reasonable time Services or Deliverables that were rejected as erroneous or unsatisfactory;
  - 5. Discontinuance of the Services for reasons or circumstances not beyond the Contractor’s control;

6. Failure to comply with a material term of this Agreement, including, but not limited to, the provisions concerning compliance with insurance and nondiscrimination; and
  7. Any other acts specifically and expressly stated in this Agreement as constituting an event of default.
- C. Any change in majority ownership or majority control of the Contractor without the prior written approval of the CHA, which written approval shall not be unreasonably withheld.
  - D. The Contractor's default under any other agreement it may presently have or may enter into with the CHA during this Agreement.

#### Section 7.02 Remedies

The occurrence of any event of default which the Contractor fails to cure within thirty (30) calendar days after receipt of written notice given in accordance with the terms of this Agreement and specifying the event of default or, if such event of default cannot be reasonably cured within thirty (30) calendar days after notice, or if the Contractor has failed to commence and continue diligent efforts to cure such default within thirty (30) days, the CHA may, at its sole option, declare the Contractor in default. Whether to declare the Contractor in default is within the sole discretion of the CHA and neither that decision nor the factual basis for it is subject to review or challenge under the disputes provision of this Agreement. Written notification of the default, and any intention of the CHA to terminate the Agreement, shall be provided to the Contractor and such decision shall be final and effective upon the Contractor's receipt of such notice pursuant to Article 10. Upon the giving of such notice, the CHA may invoke any or all of the following remedies:

- A. The right to terminate this Agreement as to any or all of the Services yet to be performed effective at a time specified by the CHA.
- B. The right to pursue any and all remedies, legal and/or equitable, available to the CHA.
- C. The right to withhold all or any part of Contractor's compensation hereunder with respect to Services not completed in accordance with the terms hereof prior to the termination of this Agreement.
- D. The right to deem Contractor non-responsible in future contracts to be awarded by the CHA.

If the CHA considers it to be in its best interests, it may elect not to declare default or to terminate the Agreement hereunder. The parties acknowledge that this provision is solely for the benefit of the CHA and that if the CHA permits Contractor to continue to provide the Services despite one or more events of default, the Contractor shall in no way be relieved of any of its responsibilities, duties or obligations under this Agreement nor shall the CHA waive or relinquish any of its rights.

The remedies under the terms of this Agreement are not intended to be exclusive of any other remedies provided, but each and every such remedy shall be cumulative and shall be in addition to any other remedies, existing now or hereafter, at law, in equity or by statute. No delay or failure to exercise any right or power accruing upon any event of default or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient.

#### Section 7.03 Termination for Convenience

The CHA may terminate this Agreement, or all or any portion of the Services to be performed under it, at any time by written notice from the CHA to Contractor when the Agreement may be deemed to be no longer in the best interests of the CHA. If the CHA elects to terminate the Agreement in full, all Services to be performed hereunder shall cease effective ten (10) calendar days after the date written notice has been provided. The Contractor shall continue to render the services until the effective date of termination. No cost incurred by the Contractor after the effective date of termination shall be allowed. Subject to performance within the requisite performance standards and audits of invoices as set forth above, the CHA shall pay to Contractor on a pro-rata basis, costs incurred for Services rendered through the date of termination. This Section 7.03 is not subject to Article 5 of this Agreement.

The Contractor shall flow down the provisions of Section 7.03 in all of its contracts with its subcontractors, if any.

#### Section 7.04 Suspension

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

#### Section 7.05 No Damages for Delay

The Contractor agrees that it shall make no claims against the CHA for damages, charges, interest, additional costs or fees incurred by reason of delays or suspension of work caused by the CHA in the performance of its obligations under this Agreement. The Contractor's sole and exclusive remedy for delays or suspension of work caused by the CHA is an extension of time equal to the duration of delay or suspension to allow the Contractor to perform its obligation under this Agreement.

#### Section 7.06 Right to Offset

To the extent permitted by applicable law:

- A. In connection with performance under the Agreement, the CHA may offset any incremental costs and other damages the CHA incurs in any and all of the following circumstances:

- i. If the CHA terminates the Agreement for default or any other reason resulting from the Contractor's performance or non-performance;
- ii. If the CHA exercises any of its remedies under Section 7.02 of the Agreement;
- iii. If the CHA has any credits due or has made any overpayments under the Agreement.

The CHA may offset these incremental costs and any other damages by use of any payment due for Services completed before the CHA terminated the Agreement or before the CHA exercised any remedies. The right to offset is in addition to and not a limitation of any other remedies available to the CHA.

## **ARTICLE 8. WARRANTIES, REPRESENTATIONS AND SPECIAL CONDITIONS**

### Section 8.01 Warranties, Representations and Covenants

In connection with the execution of this Agreement, the Contractor warrants and represents to CHA:

- A. That it is financially solvent; and that it and each of its employees or agents of any tier are competent to perform the Services required under this Agreement; and that Contractor is legally authorized to execute and perform or cause to be performed this Agreement under the terms and conditions stated herein.
- B. That no officer, agent or employee of the CHA is employed by the Contractor or has a financial interest directly or indirectly in this Agreement or the compensation to be paid hereunder, except as may be permitted in writing by the CHA, and that no payment, gratuity or offer of employment shall be made in connection with this Agreement by or on behalf of the Contractor to any employee of the CHA; and the Contractor further acknowledges that any agreement entered into, negotiated or performed in violation of any of the provisions set forth herein shall be voidable as to the CHA.
- C. That Contractor and its subcontractors, if any, are not in default at the time of the execution of this Agreement or deemed by the CHA's Deputy Chief Procurement Office of the Department of Procurement and Contracts to have, within the last five (5) years, been found to be in default on any contract awarded by the CHA.
- D. That, except only for those representations, statements, or promises expressly contained in this Agreement, and any exhibits attached hereto and incorporated by reference herein, no representation, statement or promise, oral or in writing, or of any kind whatsoever, by the CHA, its officials, officers, agents, or employees, has induced the Contractor to enter into this Agreement or has been relied upon by the Contractor.



- E. That the Contractor has carefully examined and analyzed the provisions and requirements of this Agreement and that it understands the nature of the Services required;
- F. That the Contractor acknowledges that the CHA, in its selection of the Contractor to perform the Services hereunder, materially relied upon the Contractor's Proposal, that the Proposal was accurate at the time it was made and that no material changes in it have been nor will be made without the express consent of the CHA;
- G. That except only for those representations, statements, or promises expressly contained in this Agreement, and any exhibits attached hereto and incorporated by reference herein, no representation, statement or promise, oral or in writing, or of any kind whatsoever, by the CHA, its officials, officers, agents, or employees, has induced Contractor to enter into this Agreement or has been relied upon by Contractor.
- H. That the Contractor and, to the best of its knowledge, its subcontractors are not in violation of the provisions of 18 U.S.C. § 666 (a)(2) and other Federal criminal laws applicable to public contracts funded with federal government funds, the Illinois Criminal Code, 720 ILCS 5/33E-1 et seq. (1989), as amended; and the CHA's Ethics Policy, as amended (see [http://www.thecha.org/pages/forms\\_documents/66.php](http://www.thecha.org/pages/forms_documents/66.php)) and during the Term of the Agreement will not violate the provisions of such laws and policies.
- I. That the Contractor has disclosed any and all relevant information to the CHA and the Contractor understands and agrees that any certification, affidavit or acknowledgment made under oath or failure to disclose in connection with this Agreement is made under penalty of perjury and, if false, is also cause for termination of this Agreement.
- J. That the Contractor is a duly organized and validly existing corporation under the laws of the State of Delaware and has and will continue to have at all times during the Term of this Agreement, all licenses necessary to render the Services required hereunder.
- K. That the Contractor has the power and authority to enter into and perform all of its obligations under this Agreement, and that this Agreement, when executed will constitute the duly authorized, valid and legally binding obligation of the Contractor.

#### Section 8.02 Joint and Several Liability

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

### Section 8.03 Business Documents

Upon request, the Contractor shall provide to the CHA evidence of its authority to conduct business in the State of Illinois, including without limitation, registrations of assumed names or limited partnerships and certifications of good standing with the Office of the Secretary of the State of Illinois.

### Section 8.04 Conflict of Interest

- A. No member of the governing body of the CHA or other units of government and no other officer, employee, or agent of the CHA or other unit of government who exercises any functions or responsibilities in connection with the Services to which this Agreement pertains, shall have any personal interest, direct, or indirect, in this Agreement. No member of or delegate to the Congress of the United States or the Illinois General Assembly or CHA employee shall be entitled to any share or part of this Agreement or to any financial benefit to arise from it.
- B. The Contractor covenants that it and its employees, or sub-contractors, presently have no interest and shall acquire no interest, direct or indirect, in this Agreement which would conflict in any manner or degree with the performance of the Services hereunder. The Contractor further covenants that during the performance of this Agreement, the Contractor shall not employ any person having such an interest. Contractor shall immediately notify CHA if Contractor's services for others either conflicts or may conflict with those Services that the Contractor is to render to the CHA under this Agreement.
- C. Additionally, pursuant to the conflict of interest requirements in OMB Circular A-102 and 24 C.F.R. §85.36(b)(3), no person who is an employee, agent, consultant, officer, or appointed official of the CHA and who exercises or has exercised any functions or responsibilities with respect to HUD assisted activities, or who is in a position to participate in a decision making process or gain inside information with regard to HUD activities, may obtain a financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds hereunder, either for himself or herself or for those whom he or she has family or business ties, during his or her tenure or for one year thereafter.
- D. Furthermore, the Contractor represents that it currently is and will remain in compliance with federal restrictions on lobbying set forth in Section 319 of the Department of the Interior and Related Agencies Appropriations Act for Fiscal year 1990, 31 U.S.C. Subsection 1352, and related rules and regulations set forth at 54 Fed. Reg. 52,309 ff. (1989), as amended.

### Section 8.05 Non-Liability of Public Officials

No official, employee or agent of the CHA shall be personally liable to the Contractor or the Contractor's successor in interest for: (i) any default or breach by the CHA under this Agreement, (ii) any fee due to the Contractor or the Contractor's successor in interest or (iii) any other obligation arising under this Agreement.

Section 8.06 Independent Contractor

The Contractor and the CHA recognize that Contractor is an independent contractor and not an employee, agent, partner, joint venturer, covenantor, or representative of the CHA and that CHA will not incur any liability as the result of Contractor's actions. Contractor and its employees, representatives, and agents shall at all times represent and disclose that they are independent contractors of the CHA and shall not represent to any third party that they are an employee, agent, covenantor, or representative of the CHA. The CHA shall not be obligated to withhold any funds from Contractor for tax or other governmental purposes, with respect to its employees, agents, representative or subcontractors. Contractor and its employees, representatives, and agents shall not be entitled to receive any employment benefits offered to employees of the CHA including workers' compensation insurance coverage.

**ARTICLE 9. GENERAL CONDITIONS**

Section 9.01 Entire Agreement

This Agreement and the Exhibits attached hereto shall constitute the entire agreement between the parties hereto relating to the subject matter hereof and no other warranties, inducements, considerations, covenant, conditions, promises or interpretations shall be implied between the parties that are not set forth herein. In the event of a conflict between the Agreement and any Exhibits that have been incorporated by reference, the terms of the Agreement shall control.

Section 9.02 Counterparts

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

Section 9.03 Amendments

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

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

#### Section 9.04 Compliance with All Laws and Regulations

- A. The Contractor shall at all times observe and comply with all applicable laws, ordinances, rules, regulation and executive orders of the federal, state and local government, now existing or hereinafter in effect, which may in any manner affect the performance of this Agreement, including but not limited to Section 6 of the Housing Act of 1937, 42 U.S.C. §1437, the Privacy Act of 1974, 5 U.S.C. §552(a), The Freedom of Information Act (“FOIA”), 5 U.S.C. §552, and Section 208 of the E-Government Act, and 24 CFR Part 5, all other applicable HUD regulations, the Uniform Administrative Requirements contained in 24 C.F.R. Section 85.1 *et seq.*, (1993), as amended; Title VI of the Civil Rights Act of 1967 (42 U.S.C. 2000d *et seq.*); Fair Housing Act (42 U.S.C. 3601-20 *et seq.*); Executive Order 11063, as amended by Executive Order 12259; Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*); Rehabilitation Act of 1973 (29 U.S.C. 794); Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-5); Contract Work Hours and Safety Standards Act (40 U.S.C. 327 *et seq.*); National Environmental Policy Act of 1969 (24 C.F.R. Part 58); Clean Air Act (42 U.S.C. § 7401/*et seq.*); Federal Water Pollution Control Act (33 U.S.C. §1251 *et seq.*), as amended; Executive Order 11246, as amended by Executive Orders 12086 and 11375; Executive Order 12372; Copeland “Anti-Kickback” Act (18 U.S.C. § 874 and 40 U.S.C. § 276); Byrd “Anti-Lobbying” Amendment (31 U.S.C. § 1352); and Debarment and Suspension (Executive Orders 12549 and 12689). Additionally, the Contractor shall comply with the applicable provisions of OMB Circulars A-133, A-102, A-122, A-110 and A-87, as amended, succeeded or revised; and the Mandatory Standards and Policies relating to energy efficiency which are contained in the State Energy Conservation Plan issued in compliance with Energy Policy and Conservation Act (Pub. L 94-163, 89 Stat. 871).
- B. The Contractor shall take such actions as may be necessary to comply promptly with any and all governmental orders imposed by any duly constituted government authority whether imposed by Federal, state, county or municipal authority.

#### Section 9.05 Deemed Inclusion

[Intentionally omitted].

#### Section 9.06 Severability

In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, but this Agreement shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the court making such determination is authorized and instructed to modify this Agreement so as to effect the original intent of the parties as closely as possible so that the transactions and agreements contemplated herein are consummated as originally contemplated to the fullest extent possible.

#### Section 9.07 Jurisdiction

This Agreement shall be governed as to performance and interpretation in accordance with

the laws of the State of Illinois. The Contractor hereby irrevocably submits itself to the original jurisdiction of those courts located within the County of Cook, State of Illinois, with regard to any controversy arising out of, relating to, or in any way concerning the execution or performance of this Agreement. The Contractor agrees that service of process on the Contractor may be made, at the option of the CHA, either by registered or certified mail addressed to the applicable office as provided for in this Agreement and to the office actually maintained by the Contractor, or by personal delivery on any managing partner, partners and principals of the Contractor. If the Contractor brings any action against the CHA concerning this Agreement, the action shall only be brought in those courts located within the County of Cook, State of Illinois.

#### Section 9.08 Interpretation

Any headings of this Agreement are for convenience of reference only and do not define or limit the provisions thereof. Words of any gender shall be deemed and construed to include correlative words of the other genders. Words importing the singular number shall include the plural number and vice versa, unless the context shall otherwise indicate. All references to any exhibit or document shall be deemed to include all supplements and/or amendments to any such exhibits or documents entered into in accordance with the terms and conditions hereof and thereof. All references to any person or entity shall be deemed to include any person or entity succeeding to the rights, duties, and obligations of such persons or entities in accordance with the terms and conditions of this Agreement.

#### Section 9.09 Assigns

All of the terms and conditions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors, transferees and assigns.

#### Section 9.10 Cooperation

The Contractor agrees at all times to cooperate reasonably with the CHA and to act in the CHA's best interests. If this Agreement is terminated for any reason, or if it is to expire on its own terms, the Contractor shall make every effort to assure an orderly transition to another Contractor, the uninterrupted provision of Services during any transition period and shall otherwise comply with the reasonable requests and requirements of the CHA in connection with the termination or expiration of this Agreement.

#### Section 9.11 Waiver

Whenever under this Agreement the CHA, by a proper authority, expressly waives the Contractor's performance in any respect or expressly waives a requirement or condition to either the CHA's or the Contractor's performance, the waiver so granted, shall only apply to the particular instance and shall not be deemed a waiver forever or for subsequent instances of the performance, requirement or condition. No such waiver shall be construed as a modification of the Agreement regardless of the number of times the CHA may have waived the performance of a requirement or condition.

Section 9.12 Flow - Down Provisions

The Contractor shall flow down the following provisions of the Agreement to its contracts with subcontractors: Section 2.04, Section 2.05, Section 2.06, Section 2.07, Section 2.08, Section 2.09, Section 2.10, Section 2.11, Section 2.12, Section 2.13, Section 7.03, Section 7.03, Section 7.04, and Section 9.04 of the Agreement.

Section 9.13. No Third-Party Beneficiaries

Neither this Agreement nor the provision of the Services is intended to confer any right or benefit on any third party. The provision of Services under this Agreement cannot reasonably be relied upon by any third party.

Section 9.14. No Publicity

The CHA agrees not to refer to Contractor or attribute any information to Contractor in the press without Contractor's prior written consent. Contractor agrees not to refer to the CHA in the press or for promotional purposes without the CHA's prior written consent.

Section 9.15. Waiver of Jury Trial

EACH PARTY, TO THE FULLEST EXTENT PERMITTED BY LAW, KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ITS RIGHT TO A TRIAL BY JURY IN ANY ACTION OR OTHER LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY SERVICES PROVIDED BY CONTRACTOR OR ITS AFFILIATES. THE WAIVER APPLIES TO ANY ACTION OR LEGAL PROCEEDING, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE.

**ARTICLE 10. COMMUNICATION AND NOTICES**

Section 10.01 Communication Between the Parties

All verbal and written communication, including required reports and submissions between the Contractor and the CHA shall be through CHA's Chief Administrative Officer, 60 E. Van Buren St., Chicago, IL 60605 when required. No verbal communication between the parties shall change any of the terms and conditions of this Agreement. Nothing stated herein shall be construed as a waiver or modification of the requirements for notice or service of process of litigation, as set forth in the Illinois Code of Civil Procedure, the Federal Rules of Civil Procedure, the local rules of the Circuit Court of Cook County, and the local rules governing the U.S. District Court for the Northern District of Illinois.

Section 10.02 Notices

Any notices sent to the Contractor shall be sent by electronic mail, or mailed by certified mail, return receipt requested, postage prepaid to:

Mercer (US) Inc.  
155 N. Wacker Drive, Suite 1500

Chicago, Illinois 60606  
Attention: Mr. Ken Simek, Partner  
E-mail: [ken.simek@mercer.com](mailto:ken.simek@mercer.com)

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

Chicago Housing Authority  
60 E. Van Buren St., 10<sup>th</sup> Floor  
Chicago, Illinois 60605  
Attention: Chief Administrative Officer  
E-mail: [prios@thecha.org](mailto:prios@thecha.org)

Copy to: Chicago Housing Authority  
60 E. Van Buren St., 12<sup>th</sup> Floor  
Chicago, Illinois 60605  
Attention: Chief Legal Officer  
E-mail: [ccolston@thecha.org](mailto:ccolston@thecha.org)

**ARTICLE 11. AUTHORITY**

Section 11.01 CHA's Authority

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

Section 11.02 Contractor's Authority

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

*Signature Page Follows*

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

**CHICAGO HOUSING AUTHORITY**

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

**MERCER (US) INC.**

DocuSigned by:  
*Ken Simek*  
By: \_\_\_\_\_  
514FAC519D19439...  
Print Name Ken Simek  
  
Title Partner

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

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