

**CONTRACT NO. 12793**

**SUPPLEMENTAL AGREEMENT**

**BETWEEN**

**THE CHICAGO HOUSING AUTHORITY**

**AND**

**OTIS ELEVATOR COMPANY**

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**CONTRACT NO. 12793**

This **SUPPLEMENTAL AGREEMENT FOR ELEVATOR MAINTENANCE AND MODERNIZATION SERVICES** (“Agreement”) is made as of this 1st day of October, 2022 (the "Effective Date") between the **CHICAGO HOUSING AUTHORITY**, a municipal corporation of the City of Chicago, State of Illinois (hereinafter, the "CHA"), with offices located at 60 E. Van Buren St., Chicago, Illinois 60605 and **OTIS ELEVATOR COMPANY** (hereinafter, the “Contractor”) a New Jersey corporation authorized to conduct business in the state of Illinois.

**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; and

**WHEREAS**, the CHA desires the services of a contractor to provide elevator maintenance and modernization services;

**WHEREAS**, the University of California (“UC”) issued a Request for Proposals (“RFP”) for Elevator, Escalator, Chairlift and Platform Lift Maintenance and Repair and related services on behalf of itself, OMNIA Partners and other government agencies and non-profits on or about April 24, 2019, pursuant to which UC awarded to Contractor, and UC and Contractor entered into, Purchasing Agreement #2019.001563 for Elevator Maintenance and Related Services, with a term from October 1, 2019 through September 30, 2024 (the “Master Services Agreement”).

**WHEREAS**, the Master Services Agreement was procured pursuant to an open and competitive solicitation, and contemplates participation rights for any state, county, local government, school district, higher education institution, other government agency, or nonprofit organization to purchase products and services at prices indicated in the Master Services Agreement upon registering and becoming a member of OMNIA; and,

**WHEREAS**, the CHA desires to participate in the Master Services Agreement in reliance upon the other public agencies participation rights available and in effect under the Master Services Agreement, and said participation rights have been authorized and approved by UC in the Master Services Agreement; and,

**WHEREAS**, the Master Services Agreement is attached hereto as Exhibit I and is hereby incorporated by reference as if fully and originally set forth herein, except as to provisions specifically modified in this Supplemental Agreement;

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

## **ARTICLE I INCORPORATION OF RECITALS**

### **1.1 Incorporation of Recitals**

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

### **1.2 Incorporation and Modifications to the Master Services Agreement**

For the purposes of this Supplemental Agreement and without otherwise affecting the terms, conditions or duration of the Master Services Agreement, or the rights and obligations of the respective parties to that certain Master Services Agreement, the CHA and Contractor agree that the general terms and provisions of the Master Services Agreement are incorporated by reference as if fully set forth herein, except for those provisions which are specifically modified and/or superseded by the terms and conditions below. This Supplemental Agreement shall have no effect (adverse or otherwise) upon the validity, duration or operation of the Master Services Agreement. Furthermore, to fully effectuate the independent performance, operation and administration of this Supplemental Agreement as a wholly separate agreement from the Master Services Agreement, this Supplemental Agreement shall be construed by the CHA and the Contractor, and by any court, tribunal or other entity charged with enforcement or interpretation of this Supplemental Agreement, harmoniously with the Master Services Agreement to the fullest extent practicable. In the event of clear and irreconcilable conflict of a substantial and material nature between the terms of this Supplemental Agreement and the Master Services Agreement, the terms and conditions of this Supplemental Agreement shall prevail and have precedence over the terms of the Master Services Agreement.

All rights and duties generally applicable to or reserved to UC under the Master Services Agreement shall likewise be vested in the CHA for purposes of this Supplemental Agreement. Furthermore, all rights and duties generally applicable to or reserved to the Contractor under the Master Services Agreement shall likewise be vested in the Contractor for purposes of this Supplemental Agreement. Additionally, with respect to any material clause or provision set forth in the Master Services Agreement which has an analogous or equivalent term or provision under law or regulation that would apply to the parties to this Supplemental Agreement, the equivalent law or provision shall be given full reasonable effect, without intending any material conflict or contradiction with the equivalent or comparable term, condition, law or regulation referenced in the Master Services Agreement.

## **ARTICLE II CONTRACTOR'S DUTIES AND RESPONSIBILITIES**

### **2.1 Scope of Services**

The Scope of Services that the Contractor may be requested to provide under this Agreement are elevator maintenance and modernization services as outlined in the RFP, which is incorporated by reference into the Master Services Agreement. The services to be provided shall be more particularly described in specific, individual Project Proposals issued pursuant hereto. All work

undertaken pursuant to the Project Proposals shall be subject to the terms and conditions of this Supplemental Agreement and the exhibits attached hereto.

## **2.2 Section 3 and MBE/WBE 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 the regulations implementing Section 3 at 24 C.F.R. Part 75 – Economic Opportunities for Low- and Very Low-Income Persons. 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. The parties to this contract agree to comply with HUD’s regulations in 24 C.F.R Part 75 and to any supplemental CHA requirements regarding employment and training opportunities for Section 3 Workers, Targeted Section 3 Workers, and Section 3 Business Concerns. 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 75 regulations or CHA policies.

### **1. Definitions**

A “Section 3 Worker” under 24 C.F.R. Part 75 is any worker who currently or within the past five years fits at least one of the following categories:

- a. the worker’s income for the previous or annualized calendar year is below the income limit established by HUD;
- b. the worker is employed by a Section 3 Business Concern; or
- c. the worker is a YouthBuild participant.

A “Targeted Section 3 Worker” under 24 C.F.R. Part 75 is:

- a. A worker who is employed by a Section 3 Business Concern; or
- b. A worker who currently fits or when hired fit at least one of the following categories, as documented within the past five years:
  - i. A resident of public housing or Section 8-assisted housing;
  - ii. A resident of other public housing projects or Section 8 assisted housing managed by CHA;
  - iii. Youthbuild participants

A “Section 3 Business Concern” under 24 C.F.R. Part 75 is a business concern that is:

- a. 51 percent or more owned by section 3 residents; or

- b. Where over 75% of the labor hours performed for the business over the prior three-month period are performed by Section 3 Workers; or
- c. A business at least 51% owned and controlled by current public housing residents or residents who currently live in Section 8-assisted housing.

## 2. Section 3 Compliance Goals

Contractors and their subcontractors may demonstrate compliance by making their best efforts to provide employment and training opportunities to Section 3 Workers and Targeted Section 3 Workers, and by making their best efforts to award contracts and subcontracts to business concerns that provide economic opportunities to Section 3 Workers. 24 C.F.R. Part 75 requires contractors to report the total number of labor hours worked by Section 3 Workers and Targeted Section 3 Workers.

Contractors and Subcontractors shall make their best efforts to provide employment and training opportunities in the following order of priority.

- a. To residents of the public housing project for which the assistance is expended;
- b. To residents of other public housing projects managed by CHA or residents of Section 8-assisted housing managed by CHA;
- c. To participants in YouthBuild Programs; and
- d. To low- and very low-income persons residing in the Chicago Metropolitan Area.

Contractors and Subcontractors shall make their best efforts to award contracts and subcontracts in the following order of priority.

- a. To Section 3 Business Concerns that provide economic opportunities for residents of the public housing project for which the assistance is expended;
- b. To Section 3 Business Concerns that provide economic opportunities for residents of other public housing projects managed by CHA or residents of Section 8-assisted housing managed by CHA;
- c. To YouthBuild Programs; and
- d. To Section 3 Businesses providing economic opportunities to Section 3 Workers residing in the Chicago Metropolitan Area.

## 3. Other Economic Opportunities

In addition to the reporting requirements of 24 C.F.R Part 75, Contractor agrees to work with CHA to provide Other Economic Opportunities for the benefit of CHA residents and Section 3 Businesses. Contractor agrees to work with CHA's Department of Procurement and Contracts to develop programs in furthering CHA's participation goals for Section 3 Residents and Section 3 Businesses.

#### 4. Documenting and Reporting

Contractor agrees to comply with the above Section 3 requirements in accordance with the Contractor's Section 3 Business Utilization Plan, which is attached hereto as Exhibit II.

- a. Contractors shall report the total number of all labor hours worked by all employees performing the Services, which shall include a breakdown of labor hours worked by Section 3 Workers and Targeted Section 3 Workers. The Contractor and its subcontractors shall provide all required compliance data with respect to Contractor's Section 3 requirements to the CHA via CHA's electronic system available at <https://cha.diversitycompliance.com/>. The Contractor and its subcontractors shall be responsible for responding to any requests for data or information by the noted response due dates and shall check the electronic system on a regular basis to manage contact information and contract records. The Contractor shall also be responsible for ensuring that all subcontractors have completed all requested items with complete and accurate information and that their contact information is current.

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

- C. MBE/WBE Compliance. Contractor agrees to comply with the CHA's Minority and Women Business Enterprise ("MBE/WBE") requirements and otherwise comply with the CHA's MBE/WBE Policy, in accordance with Contractor's M/W/DBE Utilization Plan.

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

#### **2.3 General and Special Conditions for Construction Contracts (Modernization Projects)**

The HUD General Conditions for Construction Contracts (the "HUD General Conditions for Construction") are attached hereto as Exhibit III and are incorporated by reference as if fully set forth herein. The Contractor agrees to fully comply with the HUD General Conditions for Construction for the modernization projects. In the event of a conflict between the terms and conditions of the HUD General Conditions for Construction and the terms and conditions of the Agreement, the terms and conditions of the HUD General Conditions for Construction shall control. CHA's Special Conditions of the Contract for Construction (the "Special Conditions"), are attached hereto as Exhibit IV and are incorporated by reference as if fully set forth herein. The Special Conditions augment HUD's General Conditions for Construction, and shall be applicable to the modernization projects undertaken under this Agreement. To the greatest extent possible



this Agreement the HUD General Conditions for Construction, and the Special Conditions are intended to be construed harmoniously. In the event of a conflict between the terms and conditions of this Agreement or the Special Conditions and the HUD General Conditions for Construction, the HUD General Conditions for Construction shall control. In the event of a conflict between the terms and conditions of this Agreement and the Special Conditions, the terms and conditions of the Special Conditions shall control. Contractor shall include in any subcontracts those provisions from the HUD General Conditions for Construction and Special Conditions designated therein as provisions required to flow down to subcontractors.

#### **2.4 General Conditions for Non-Construction Contracts (Maintenance Work)**

The HUD General Conditions for Non-Construction Contracts (the "HUD General Conditions for Non-Construction") are attached hereto as Exhibit VIII and are incorporated by reference as if fully set forth herein. The Contractor agrees to fully comply with the HUD General Conditions for Non-Construction with respect to the maintenance work. In the event of a conflict between the terms and conditions of the HUD General Conditions for Non-Construction and the terms and conditions of the Agreement, the terms and conditions of the HUD General Conditions for Non-Construction shall control. Contractor shall include in any subcontracts those provisions from the HUD General Conditions for Non-Construction designated therein as provisions required to flow down to subcontractors.

#### **2.5 Drug-Free Workplace**

Contractor shall establish procedures and policies to promote a "Drug-Free Workplace." 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, 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.

#### **2.6 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. 11246, 30 Fed. Reg. 12,319 (1965), reprinted in 42 U.S.C. 2000 (e) note, as amended by Exec. Order No. 11375, 32 Fed. Reg. 14303 (1967) and by Exec. Order No. 12086, 43 Fed. Reg. 46501 (1978) and the Equal Opportunity Clause set forth in 41 CFR Part 60-1.4, which is incorporated by reference herein; 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 Illinois Equal Employment Opportunity Clause, Ill. Admin. Code Tit. 44 section 750 Appendix A, which is attached hereto as Exhibit IV and incorporated by reference herein; Public Works Employment Discrimination Act, 775 ILCS 10/0.01 et seq., as amended; Chicago Human Rights ordinance, s2-160-010 et seq., of the

Municipal Code of Chicago, as amended; and the Chicago Fair Housing Regulations, s5-8-010 et seq., of the Municipal Code of Chicago, as amended. In addition, Contractor must furnish such reports and information as requested by the Chicago Commission on Human Relations.

**2.7 Health and Safety**

Contractor expressly agrees to be solely responsible for the enforcement of all job site and project safety laws, rules, policies and programs applicable to its provision of the Work with respect to its officers, directors, employees, agents, representatives, invitees and subcontractors (collectively “Contractor’s Personnel”). Contractor shall have sole responsibility for compliance with all requirements of the Occupational Health and Safety Act (OSHA) regulations for construction with respect to Contractor’s Personnel, including such requirements pertaining to hazard notification, training, and required equipment and work protocols. In addition to any other applicable local, state, and federally required training, Contractor shall ensure that its employees receive training and specific instructions regarding hazards unique to the Services contemplated herein. Contractor agrees to comply with Chicago Housing Authority’s Covid-19 Safety Protocols, attached hereto as Exhibit VII.

Contractor shall defend, indemnify, and hold harmless the CHA from all actions and claims brought by Contractor’s Personnel as a result of the Contractor’s accidental, willful, or negligent violation of said safety laws, rules, policies and programs and for actions or claims pursuant to injury or death sustained by Contractor’s Personnel unless such injury or death was solely and exclusively caused by the CHA.

**2.8 Force Majeure**

Notwithstanding any other provision in this Agreement, neither party shall be liable or held responsible for any failure to perform or for delays in performing its obligations under the Agreement, including but not limited to, the scope of work set forth in a Project Proposal, that results from circumstances or causes beyond the party’s reasonable control, including without limitation, fire or casualty, acts of God, strikes or labor disputes, war or violence, or any law, order or requirement of any government agency or authority.

**2.9 Audit Requirement**

The CHA retains an irrevocable right to independently or, through a third party, audit the Contractor’s books and records pertaining to this Agreement and disallow any inappropriate billings upon written notice to the Contractor. In the event of a disallowance, the Contractor shall refund the amount disallowed to the CHA.

**2.10 Compliance with CHA Policies**

The Contractor shall comply with the applicable provisions of all CHA policies including, but not limited to:

- Ethics Policy

- Local Transportation & Mileage Reimbursement Policy
- CHA Travel Guidelines
- General Business Expense Policy
- Minimum Wage Policy
- Social Security Number Privacy and Protection Policy

## **2.11 Subcontracts and Assignments**

Unless otherwise provided for herein, the Contractor shall not subcontract, assign, delegate or otherwise transfer all or any part of its obligations under this Agreement or any part hereof without the prior written approval of the CHA. The absence of such prior written approval shall void the attempted subcontracting, assignment, delegation or transfer and shall have no legal effect on the services or this Agreement.

The Contractor shall not transfer or assign, in whole or in part, any funds or claims due or which may become due under this Agreement without the prior written approval of the CHA. Any attempted transfer or assignments of any contract funds, either in whole or in part, or any interest therein, which shall be due or to become due to the Contractor, without the prior written approval of CHA shall be void and of no legal effect. The CHA expressly reserves the right to assign or otherwise transfer all or any part of its rights or interests hereunder.

## **ARTICLE III TERM OF AGREEMENT**

### **3.1 Term of Agreement**

This Agreement shall commence on October 1, 2022, and shall continue and remain in effect through September 30, 2024 (the “Term”) or until the Agreement is terminated in accordance with its terms, whichever occurs first. At the Agreement’s expiration date, the Agreement’s terms and conditions shall continue to remain in effect with respect to any modernization project commenced by Contractor prior to the expiration of the contract term, and work not completed within the Term of the Agreement shall continue until the entire scope of work required for a modernization project has been completed in accordance with its respective terms and all Work has been accepted by the CHA.

### **3.2 Contract Extension Options**

The CHA, at its sole discretion, may extend this Agreement for three (3) additional one (1) year option periods, subject to approval of the CHA’s Board of Commissioners, if required, and exercise of the options available under the Master Services Agreement. Any extension shall be under the same terms and conditions as this original Agreement. The Agreement shall be modified to reflect the time extension in accordance with the provisions of Section 8.3 of this Agreement.

### **3.3 Time is of the Essence**

The Contractor will complete the scope of work pursuant to a Project Proposal within any time limits set forth therein. The Contractor acknowledges that sometimes deadlines for the scope of

work are dictated by the requirements of agencies or events outside the control of the CHA, that failure by the Contractor to meet these deadlines may result in economic or other losses to the CHA, and that in those circumstances, TIME IS OF THE ESSENCE.

## **ARTICLE IV            COMPENSATION**

### **4.1    Amount of Compensation**

Compensation for Contractor's complete and satisfactory performance of and provision of the maintenance and modernization services pursuant to all accepted Project Proposals, shall, in the aggregate, not exceed Five Million and 00/100 Dollars (\$5,000,000.00) for the base term and three Option Years, if exercised pursuant to Article III, Section 3.2. CHA shall pay the Contractor in accordance with the accepted Project Proposals, subject to any subsequent modifications. No billings beyond the agreed upon fee or rates established in a Project Proposal shall be permitted without a prior written amendment authorizing said additional work and additional costs.

### **4.2    Availability of Funds/Non-Appropriation**

The funding for the Services described in this Agreement is subject to: (a) availability of federal funds from HUD; (b) the approval of funding by CHA's Board of Commissioners; and (c) the Contractor'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 CHA for payments to be made under this Agreement, the CHA will notify the Contractor of such occurrence and this Agreement shall terminate on the earlier of the last day of the fiscal period for which sufficient appropriation was made or whenever the funds appropriated for payment under this Agreement are exhausted.

### **4.3    Invoicing and Payment**

The Contractor shall submit an invoice within ten (10) business days after the end of each month during the term of this Agreement. Contractor shall invoice each Project or maintenance services agreement separately in accordance with procedures established in each accepted Project Proposal. Each invoice shall contain back-up information as required by the CHA, including but not limited to, the building locations where services were provided, and a brief description of the services provided during the invoice period. Invoices for modernization projects undertaken pursuant to this Agreement shall be submitted in accordance with the HUD General Conditions for Construction Projects and the Special Conditions, attached hereto. 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 has been submitted, and all the reporting requirements and other reasonable and written requests by CHA for additional information have been fulfilled. Invoices shall be directed to: Chicago Housing Authority, Accounts Payable, 60 E. Van Buren Street, 11<sup>th</sup> Floor, Chicago, Illinois 60605.

CHA will make commercially reasonable efforts to make payment for services rendered under this Agreement within thirty (30) days after receipt and approval of each invoice submitted. All

invoices shall be subject to review and approval by the CHA. If the CHA objects to all or any portion of an invoice, it shall notify the Contractor of its objection in writing and both parties shall make every effort to settle the disputed portion of the invoice. Notwithstanding the foregoing, the CHA may, at its option, pay the undisputed portion of any invoice without being deemed to have accepted the disputed portion. All disputes regarding invoices shall be handled in accordance with the "Disputes" clause of the applicable HUD General Conditions.

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

### **5.1      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, including misrepresentations of the representations and warranties or any certifications.
- B. The Contractor's failure to perform any of its obligations under this Agreement or an accepted Project Proposal, including, but not limited to, the following:
  - 1. Failure to perform the Services or work required with sufficient personnel or with sufficient material 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 or a Project Proposal;
  - 3. Failure to perform the Services or work in a manner reasonably satisfactory to the CHA, or inability to perform the Services or work 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 work that is rejected as erroneous or unsatisfactory;
  - 5. Discontinuance of the Services or work for reasons or circumstances not beyond the Contractor's control;
  - 6. Failure to execute, deliver, and/or furnish required bond and/or insurance certificates;
  - 7. Failure to maintain continuous insurance coverage, such failure to include lapses in coverage of one (1) day or more;
  - 8. Appointment of a receiver for the Contractor on account of its insolvency;

9. Failure to pay subcontractors and/or suppliers within ten (10) days after receipt of payment from the CHA;
  10. Suspension of diligent prosecution of the work or abandonment of the work for ten (10) or more days;
  11. Failure to prevent the imposition of liens impacting a Project;
  12. A loss time injury or death occurs in which an OSHA penalty is assessed;
  13. Failure to provide accurate and timely work schedules and updates, and failure to complete the work in accordance with an approved Project schedule;
  14. Kickbacks of employee wages, subcontractor or vendor payments, or any other payment to the Contractor or subcontractor, or its respective principals, superintendents, or foremen occur;
  15. Failure of Contractor or its subcontractors to pay Davis-Bacon wages, if required, inaccurate certification of payrolls, or miscategorization of an employee's job classification;
  16. Termination for default on any other CHA or City of Chicago contract;
  17. Debarment from any other Federal, State of Illinois, or City of Chicago procurement activity or contract during the term of this Agreement;
  18. Failure to maintain any required license, permit, or registration required by the City of Chicago or state of Illinois;
  19. Failure to maintain agreed upon levels of MBE/WBE participation;
  20. Failure to comply with a material term of this Agreement or a Project Proposal, including, but not limited to, the provisions concerning compliance with HUD regulations, insurance and nondiscrimination; and
  21. Any other acts specifically and expressly stated in this Agreement as constituting an event of default.
- C. The Contractor's default under any other agreement it may presently have or may enter into with the CHA during the term of this Agreement. The Contractor acknowledges and agrees that in the event of a default under this Agreement the CHA may also declare a default under any such other agreements.

## 5.2 Remedies

Upon the occurrence of any event of default in the performance of a Project or the Services which the Contractor fails to cure within thirty (30) calendar days after receipt of written notice of the event of default given in accordance with the terms of this Agreement, or, if such event of default cannot be reasonably cured within thirty (30) calendar days after notice, the Contractor has failed to commence and continue diligent efforts to cure such default within thirty (30) days, the CHA may 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 provisions of the HUD General Conditions for Construction Contracts or HUD General Conditions for Non-Construction Contracts. 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. Upon the giving of such notice, the CHA may invoke any or all of the following remedies:

- A. The right to terminate this Agreement in its entirety or with respect to a specific Project as to any or all of the scope of work 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 any scope of work not completed in accordance with the terms hereof prior to the termination of this Agreement.
- D. The right to deem Contractor non-responsible in future contracts to be awarded by the CHA.
- E. The right to take over and complete the scope of work for a Project or any part thereof as agent for and at the cost of Contractor, either directly or through others. In any such case, the CHA may take possession of and use any of the Contractor's materials, appliances, or equipment on the work site that may be necessary to properly complete the work and Project if it is determined that not so doing will cause delay in completion of the performance thereof which is detrimental to the interests of the CHA.

If the CHA considers it to be in its best interests, it may elect not to declare default or to terminate this Agreement or a Project undertaken hereunder. The parties acknowledge that this provision is solely for the benefit of the CHA and that if the CHA permits the Contractor to continue to provide Services hereunder 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 shall impair any such right or power or be construed to be a waiver of any event of default by the CHA,

and every such right and power may be exercised from time to time and as often as may be deemed expedient.

In the event the CHA's decision to terminate this Agreement or any portion hereof for default is found to be wrongful, the termination for default shall become a termination for convenience and the Contractor's exclusive remedy shall be those provided Section 5.3.

### **5.3 Termination for Convenience**

Notwithstanding the foregoing, the CHA may terminate the Agreement, the Services or any portion of a Project for convenience at any time by giving notice, in writing, to the Contractor when the CHA may deem the Agreement to be no longer in the best interests of the CHA. Contractor shall continue to render the Services until the effective date of termination. No costs incurred by Contractor after the effective date of the termination shall be allowed.

In the event of a termination for convenience, the Contractor shall be entitled to the following amounts as a final payment under the contract or for a particular Project:

- A. Costs of work completed and accepted by the CHA;
- B. Costs of non-defective materials and supplies delivered to the Project sites and accepted by the CHA; and
- C. The reasonable cost of termination and settlement of subcontracts.

The CHA shall be entitled to deduct from this final payment any amounts prepaid to the Contractor and unused at the time of termination; liquidated damages, if any; and any claims for damages against the Contractor.

The Contractor shall be required to certify that the work completed to the time of termination has been performed in a professional manner, and that the work completed may be relied upon by the CHA, its designees and any subsequent contractor retained to complete a Project.

### **5.4 No Damages for Delay**

Contractor 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 Project, Work or Services performed under this Agreement. Contractor'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 Contractor to perform.

### **5.5 Right to Offset**

To the extent permitted by applicable law:



- A. In connection with performance under this Agreement and any assigned Project, 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 this Agreement or any Project 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 5.2 of this Agreement;
  - iii. If the CHA has any credits due or has made any overpayments under any Project.

The CHA may offset these incremental costs and any other damages by use of any payment due for the work completed before the CHA terminated the Agreement or before the CHA exercised any remedies. If the amount offset is insufficient to cover those incremental costs and other damages, the Contractor shall be liable for and must promptly remit to the CHA the balance upon written demand for it. The right to offset is in addition to and not a limitation of any other remedies available to the CHA.

- B. Without breaching this Agreement, the CHA may set off a portion of the compensation due under a Project in an amount equal to the amount of any liquidated or unliquidated damages or claims that the CHA has against the Contractor arising out of any other Project between the CHA and the Contractor. If and when the CHA's claims against the Contractor are finally adjudicated in a court of competent jurisdiction or otherwise resolved, the CHA will reimburse the Contractor to the extent of the amount the CHA has offset against Contractor's compensation that is inconsistent with the determination or resolution.

## **ARTICLE VI RISK MANAGEMENT**

### **6.1 Insurance**

The Contractor agrees to comply with and meet or exceed the insurance requirements that are set forth in the Master Services Agreement or as otherwise specified for each Project.

### **6.2 Hold Harmless and Indemnification**

The Contractor agrees to protect, defend, indemnify, and hold the CHA, its officers, officials, employees and agents and contractors free and harmless from and against any and all liabilities, losses, penalties, damages, settlements, environmental liability, costs, charges, professional fees, including attorney fees, or other expenses or liabilities of every kind, nature and character arising out of or relating to any and all claims, liens, demands, obligations, actions, suits, judgments or settlements, proceedings or causes of action of every kind, nature and character (collectively, "Claims") in connection with or arising directly or indirectly out of this Agreement and/or the acts and omissions of the Contractor, its agents, employees, and subcontractors, including but not limited to, the enforcement of this indemnification provision. Without limiting the foregoing, any and all such Claims, relating to personal injury, death, damage to property, defects in material or

workmanship, actual or alleged infringement of any patent, trademark, copyright or any other tangible or intangible personal or property right, or any actual or alleged violation of any applicable statute, ordinance, order, rule or regulation, or decree of any court, shall be included in the indemnity hereunder. The Contractor further agrees to investigate, handle, respond to, provide defense for and defend all suits for any and all Claims at its sole expense and agrees to bear all the costs and expenses related thereto, even if the Claims are considered groundless, false or fraudulent.

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 Contractor'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.

Nothing contained in this paragraph shall be construed to obligate Contractor to indemnify the CHA for the CHA's own negligence or willful misconduct.

## **ARTICLE VII REPRESENTATIONS, WARRANTIES AND SPECIAL CONDITIONS**

### **7.1 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 HUD, and that no payment, gratuity or offer of employment shall be made in connection with this Agreement by or on behalf of the Contractor to any employee of the CHA; and the Contractor further acknowledges that any agreement entered into, negotiated or performed in violation of any of the provisions set forth herein shall be voidable as to the CHA.
- C. That Contractor and its subcontractors, if any, are not in default at the time of the execution of this Agreement, or deemed by the CHA's Director of Procurement and Contracts to have,

within the last five (5) years, been found to be in default on any contract awarded by the CHA.

- D. That, except only for those representations, statements, or promises expressly contained in this Agreement, and any exhibits attached hereto and incorporated by reference herein, no representation, statement or promise, oral or in writing, or of any kind whatsoever, by the CHA, its officials, officers, agents, or employees, has induced the Contractor to enter into this Agreement or has been relied upon by the Contractor.
- E. That the Contractor has carefully examined and analyzed the provisions and requirements of this Agreement and that it understands the nature of the Services required;
- F. That 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.
- G. That the Contractor and, to the best of its knowledge, its subcontractors, are not in violation of the provisions of 18 U.S.C. § 666 (a)(2) and other Federal criminal laws applicable to public contracts funded with federal government funds, the Illinois Criminal Code, 720 ILCS 5/33E 1 et seq. (1989), as amended; and the CHA's Ethics Policy, as amended, and during the term of the Agreement will not violate the provisions of such laws and policies.
- H. That the Contractor has disclosed any and all relevant information to the CHA and the Contractor understands and agrees that any certification, affidavit or acknowledgment made under oath or failure to disclose in connection with this Agreement is made under penalty of perjury and, if false, is also cause for termination of this Agreement.

## **7.2 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, to the fullest extent permitted by law.

## **7.3 Business Documents and Contractor's Affidavit**

The Contractor shall provide to the CHA evidence of its authority to conduct business in the State of Illinois, including without limitation, registrations of assumed names or limited partnerships and certifications of good standing with the Office of the Secretary of the State of Illinois. The Contractor's Affidavit and Equal Opportunity Compliance Certificate are attached hereto as Exhibit VI and are 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 and the Equal Opportunity Clause.

#### **7.4 Conflict of Interest**

- A. The Contractor covenants that it and its employees, or subcontractors, presently have no interest and shall acquire no interest, direct or indirect, in this Agreement which would conflict in any manner or degree with the performance of the Services hereunder. The Contractor further covenants that during the performance of this Agreement, no person having any such interest shall be employed. Contractor agrees that if the CHA determines that any of Contractor's services for others conflict with the Services that the Contractor is to render for the CHA under this Agreement; Contractor shall terminate such other services immediately upon request of the CHA.
- B. Additionally, pursuant to the conflict of interest requirements in OMB Circular A-102 and 2 C.F.R. §200.318(c)(1), 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.

#### **7.5 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.

#### **7.6 Third-Party Funding**

Certain Projects may involve funding from third party lenders or grant sources. Contractor agrees to cooperate with the CHA and any third party funders to comply with third-party funding and grant requirements, as applicable, which may include, but are not limited to, the use of designated forms or specific processes relating to approvals (i.e. change orders) or payments.

### **ARTICLE VIII GENERAL CONDITIONS**

#### **8.1 Entire Agreement**

This Agreement, comprised of this Agreement and the Exhibit(s) attached hereto and incorporated herein, and the Project Proposals approved hereunder, shall constitute the entire agreement between the parties 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. This Agreement and the Project Proposals approved

hereunder supersede and replace all terms and conditions of any prior or contemporaneous agreements, communications, arrangements, negotiations, or representations, written or oral, with respect to the Projects or the Work between the CHA and the Contractor.

## **8.2 Counterparts**

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

## **8.3 Amendments**

No changes, amendments, modification or discharge of this Agreement, or any part thereof, shall be valid unless in writing and signed by the authorized agent of Contractor and by the Contracting Officer or the Contracting Officer's designated representative. The CHA shall incur no liability for additional Services without a written and signed amendment to this Agreement or to a Project Proposal pursuant to this Section. Whenever in this Agreement Contractor is required to obtain prior written approval, the effect of any approval which may be granted pursuant to 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 requested.

## **8.4 Deemed Inclusion**

Provisions required by law, ordinances, rules, regulations or executive orders to be included in this Agreement are deemed inserted in this Agreement whether or not they appear in the Agreement or, upon application of either party, the Agreement shall be amended to make this insertion; however, in no event shall the failure to insert the required provisions before or after the Agreement is signed prevent their enforcement.

## **8.5 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. 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. Contractor agrees that service of process on 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, by registered or certified mail addressed to the office actually maintained by Contractor or by personal delivery on any officer, manager or director of Contractor. If 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.

## **8.6 Severability**

If any provisions of this Agreement shall be held or deemed to be or shall in fact be inoperative or unenforceable as applied in any particular case in any jurisdiction or in all cases because it conflicts

with any other provision or provisions hereof or of any constitution, statute, ordinance, rule of law or public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatsoever. 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.

**8.7 Interpretation**

The 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. 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.

**8.8 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 permitted successors.

**8.9 Waiver**

Whenever under this Agreement the CHA by a proper authority expressly waives in writing Contractor's performance in any respect or expressly waives a requirement or condition to either the CHA or Contractor's performance, the waiver in writing 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 under this Agreement.

**8.10 CHA and HUD Inspectors General**

It is the duty of the Contractor and its subcontractors to cooperate with the CHA or HUD Inspectors General in any investigation, audit or hearing undertaken. All of the Contractor's subcontracts must include this provision and require agreement and compliance with the same.

**ARTICLE IX COMMUNICATION AND NOTICES**

**9.1 Communication Between the Parties**

All verbal and written communications relating to the Work, including required reports, project schedules, specifications, and related submissions, between the Contractor and the CHA shall be through the **Chicago Housing Authority, Property and Asset Management, 60 East Van Buren St., 8<sup>th</sup> Fl., Chicago, Illinois 60605**, when required, unless otherwise specified in writing. All verbal and written communications relating to this Agreement between the Contractor and the CHA shall be through the **Chicago Housing Authority, Department of Procurement and Contracts, 60 E. Van Buren St., 8<sup>th</sup> Floor, Chicago, IL, 60605**, unless otherwise specified in writing. 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.

## 9.2 Notices

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

Otis Elevator Company  
651 West Washington Street  
Chicago, Illinois 60661  
Attention: General Manager

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

Chicago Housing Authority  
60 E. Van Buren St., 12<sup>th</sup> Floor  
Chicago, Illinois 60605  
Attention: Chief Executive Officer

With a copy to:

Chicago Housing Authority  
60 E. Van Buren St., 12<sup>th</sup> Floor  
Chicago, IL 60605  
Attention: Chief Legal Officer

## **ARTICLE X            AUTHORITY**

### **10.1 CHA's Authority**

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

**10.2 Contractor's Authority**

Contractor has the power and authority to enter into and perform all of its obligations under this Agreement, and this Agreement, when executed, will constitute the duly authorized, valid and legally binding obligation of the Contractor. Execution of this Agreement by Contractor is authorized by a resolution of its Board of Directors and the signature(s) of each person signing on behalf of the Contractor has been made with complete and full authority to commit Contractor to all terms and conditions of this Agreement.

*[Remainder of page intentionally left blank; signature page attached hereto]*



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

**CHICAGO HOUSING AUTHORITY**

**OTIS ELEVATOR COMPANY**

DocuSigned by:  
*Sheila Johnson*  
By: \_\_\_\_\_  
Sheila Johnson  
Deputy Chief, Procurement

By: *Christine Helmke*  
Print Name: Christine Helmke  
Title: Contract Specialist

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

OUR ACCEPTANCE OF THIS  
AGREEMENT IS CONDITIONED  
ON PROVISIONS CONTAINED  
IN THE ATTACHED  
ACKNOWLEDGEMENT FORM  
# Dated 8/27/2022

DocuSigned by:  
*LaRue Little*  
By: \_\_\_\_\_  
LaRue Little  
Deputy Chief Legal Officer