

**CONTRACT NO. 12993**

**PREQUALIFIED GENERAL CONTRACTOR  
STANDARD AGREEMENT**

**BETWEEN**

**THE CHICAGO HOUSING AUTHORITY**

**AND**

**KOAL HVAC LLC**

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This **STANDARD AGREEMENT** (“Agreement”) is made as of this 1<sup>st</sup> day of October, 2023 (the "Effective Date") between the **CHICAGO HOUSING AUTHORITY**, a municipal corporation in the City of Chicago, State of Illinois (hereinafter, the "CHA"), with its offices located at 60 E. Van Buren St., Chicago, Illinois 60605 and **KOAL HVAC LLC**, (hereinafter, the “Contractor”) an Illinois limited liability company with offices located at 7033 W. 72<sup>nd</sup> Street, Chicago, Illinois 60638.

## **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 contractors to provide indefinite delivery, indefinite quantity services under this Agreement;

WHEREAS, the CHA issued Request for Proposal Event No. 3250 (the “RFP”) on April 27, 2023 to solicit multiple contractors to provide general contracting and construction-related services through the use of this Agreement; and

WHEREAS, the Contractor submitted its proposal in response to the RFP representing and warranting that it is highly qualified and competent to provide the Services (as defined herein) for CHA Projects assigned to it in accordance with this Agreement on or about June 6, 2023; and

WHEREAS, the Contractor agrees to the terms and conditions of this Agreement, which will govern future Task Orders that may be assigned to the Contractor; and

WHEREAS, the CHA’s Board of Commissioners authorized the award of this Agreement to Contractor on September 19, 2023 by Resolution No. 2023-CHA-32; and

WHEREAS, the CHA has created three tiers of contractors. Tier 1 is for contractors who have the ability to complete projects valued up to \$49,999. Tier 2 is for contractors who have the ability to complete projects and secure bonding for projects valued up to \$500,000. Tier 3 is for contractors who have the ability to bid on, secure bonding for, and complete projects valued up to \$1,000,000.

WHEREAS, Contractor has been assigned to Tier 2.

WHEREAS, the Contractor is ready, willing and able to provide the services required hereunder and to respond to CHA’s requests to submit Task Order Proposals as further set forth herein.

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 AND DEFINITIONS**

### 1.1 Incorporation of Recitals

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

### 1.2 Definitions

The following words and phrases have the following meanings for purposes of this Agreement:

“Adjustment Factor” - An adjustment to be applied to the Unit Prices listed in the Price List. For the purposes of this Agreement, the Adjustment Factor will be set at 1.11 for all contractors, unless otherwise specified for a specific Project, for specific work for a Project, or pursuant to a bid or competitive proposal.

“Architect/Engineer” or “AE” - The person, firm, or entity selected by the CHA to perform architectural and engineering services and to act on the CHA's behalf with respect to all aspects of the performance of the design, engineering and construction administration of Projects. Any reference herein to specific architectural, engineering, or related disciplines shall be construed as services directed and provided by the A/E, whether they are performed by the A/E or by professionals or sub-consultants retained by the A/E.

“Agreement” or “Contract” - This Standard Agreement entered into between the CHA and Contractor.

“Business Day” - Monday through Friday not including federal and state holidays.

“Calendar Day” - Monday through Sunday.

“Construction Activities” - All construction trades activities (both preparatory such as demolition of existing structures or interior demolition, remediation and actual construction) required to rehabilitate or build new residential housing, non-residential housing and recreational space.

“Construction Documents” - All of the Plans and Specifications, addenda, change orders, modifications, and all other prints, models, designs, computations, sketches, test data, photographs, renderings, plans, shop drawings, proposal drawings, and other materials relating to, or contemplated by the Detailed Scopes of Work prepared for the Task Orders by the CHA, an architect or by any engineer, professional or professional consultant engaged by the CHA in connection with a Project.

"Contract Documents" - The Contract Documents, which form the contract between parties, include all written modifications and amendments to this Agreement, the Agreement and all exhibits attached hereto, the Price List, as such may be amended from time to time, the “HUD

General Conditions for Construction (Form 5370)”, “HUD General Conditions for Small Construction (Form 5370-EZ)”, and the “HUD General Conditions for Non-Construction Contracts” (Form 5370-C), as applicable, the Task Orders issued under the Agreement and all related documentation including any Change Orders or Supplemental Task Orders & the “Work Schedule” for each Task Order as defined in paragraph 6 of the “HUD General Conditions for Construction”, as such Work Schedule may be amended from time to time, applicable wage rate determinations from either the U.S. Department of Labor or HUD, the Performance and Payment Bond or Bonds or other assurances of completion, the Technical Specifications and drawings for each Task Order, if any, the Contractor’s Affidavit or any other affidavits, certifications or representations the Contractor is required to execute under the Contract, the Diversity Goals Utilization Plans, CHA’s Diversity and Inclusion Contract Requirements, and Contractor’s Economic Disclosure Statement. The Contract Documents enumerated herein contain the entire Contract between the parties, and no other representations, warranties, agreements, memoranda, or promises (whether oral, written, expressed, or implied) by the CHA or Contractor are a part of the Contract unless expressly stated therein.

“Contract Year” - The 12 month period following the effective date of the Agreement and each subsequent 12 month period of the Agreement.

“Contracting Officer” - CHA’s Deputy Chief of Procurement or such other party as the CHA may designate.

“Contractor” - The person or entity designated as the prime construction contractor in this Agreement and in the Task Orders.

“Detailed Scope of Work” - A document setting forth the work the Contractor is obligated to complete for a particular Task Order.

“Final Completion” – The completion of all Work in accordance with the requirements of a Task Order, when the CHA and its designated representative have accepted 100% of the Work as complete, including all punch list items.

“Joint Scope Meeting” - A site meeting to discuss the work before the Detailed Scope of Work is finalized.

“Key Personnel” - Contractor and any designated individuals on Contractor’s staff to serve as the point of contact with respect to any assignments, and who shall maintain overall responsibility for oversight of the Work.

“Non Pre-Priced Task” - A task that is not set forth in the Price List.

"Plans and Specifications" - The final drawings and specifications for a Task Order, as amended from time to time.

“Pre-Priced Task” - A task described in the Price List for which a Unit Price is set forth.

“Private Property Managers” or “PPMs” - Firms which provide property management services at CHA properties.

"Project" - The collective improvements and construction services to be performed by the Contractor pursuant to a Task Order.

“Project Manager” or “PM” - The individual designated within CHA to administer a specific Task Order.

“Property”- CHA property where a Project is to be performed under a Task Order.

"Services"- The construction services, duties and responsibilities described in the Contract Documents and any and all work necessary to complete them or carry them out fully.

“Substantial Completion” - The stage in the progress of a project when the work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Work can be occupied or utilized for its intended use.

“Task Order” - A written order issued by the CHA, such as a Purchase Order, requiring the Contractor to complete the Detailed Scope of Work within the Task Order Completion Time for the Task Order Price.

“Task Order Completion Time”- The time within which the Contractor must complete the Detailed Scope of Work.

“Task Order Price” - The value of the Pre-Priced Tasks, Non Pre-Priced Tasks, quantities and Adjustment Factor required to complete the Detailed Scope of Work.

“Price List” - A comprehensive listing of construction related tasks together with a specific unit of measure and a Unit Price.

“Task Order Proposal” - A set of documents including at least: (a) Task Order Price; (b) required drawings or sketches; (c) list of anticipated subcontractors; (d) a work schedule, and (e) other documents requested by CHA.

“Technical Specification” - The written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

“Unit Price”-The price listed in the Price List for a specific construction or construction related work task. Unit Prices for new Pre-Priced Tasks can be established during the course of the Agreement and added to the Price List. Each Unit Price is comprised of labor, equipment, and material costs to accomplish that specific Pre-Priced Task.

“Value Engineering” means a technique by which contractors may voluntarily suggest methods for performing more economically. Value Engineering is identified after the submission of the Task Order Proposal.

“Work” means all labor, materials, and services required to be performed by the Contractor for the Services required by a Project.

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

### **2.1 Scope of Services**

The Scope of Services that the Contractor may be requested to provide pursuant to Task Orders issued under this Agreement are maintenance, facility repair, alteration, rehabilitation, and modernization at CHA-owned or controlled properties of the types listed below:

**Senior Housing: Senior Housing Buildings:** Consists of approximately 9,279 dwelling type units located in approximately 56 high-rise and mid-rise buildings in the CHA’s properties, constructed between the years 1955 and 1975. The various buildings are generally stand-alone, are non-contiguous, and are spread over various sites throughout the Chicago city limits, but some buildings are in clusters. All units are either studio or one bedroom.

**Family Housing:** Consists of approximately 6,798 dwelling type units located in approximately thirteen (13) properties in the CHA’s properties known as Family Housing, constructed between 1937 and 1980. The mid-rise and low-rise buildings include clusters as well as stand-alone, and are located at various sites within the Chicago city limits. All units have either one (1), two (2), three (3), four (4), five (5) or six (6) bedroom configurations.

**Single, Small, Medium and Large Family properties:** Consists of approximately 2,775 dwelling type units located in four (4) Regions in the CHA’s properties, constructed between 1937 and 2011. The low-rise, townhouse, walk-up and single buildings include clusters as well as stand-alone, are non-contiguous, and are spread over various sites through the Chicago city limits. All units have either one (1), two (2), three (3), four (4), five (5) or six (6) bedroom configurations.

**Facilities Property:** Consists of approximately forty-four (44) non-dwelling structures comprised of stand-alone buildings or facilities integrated into dwelling unit structures located at various sites in the Chicago city limits.

### **2.2 Statement of Work**

The work of this Contract will be set forth in the Detailed Scopes of Work referenced in the individual Task Orders. The Contractor is required to complete each Detailed Scope of Work for the Task Order Price and within the Task Order Completion Time. All work shall be accomplished in accordance with the terms and conditions of this Agreement, the Detailed Scope of Work, the Task Order specifications and drawings, if any, and the work schedule set forth for each Task Order.

The Scope of Services/Statement of Work that the Contractor shall provide under this Agreement is further described in Exhibit I, attached hereto and incorporated by reference herein.



### 2.3 Deliverables

In connection with its performance of the Services and the Work, the Contractor shall prepare and/or provide to the CHA, at the times specified in the Task Order or at such other times as the CHA shall designate, certain deliverables that include, but are not limited to, the items described below (hereinafter, collectively "Deliverables"). All Deliverables shall be in the form described in the Task Order or in such other form as the CHA shall require. The CHA reserves the right to reject any or all Deliverables which, in the reasonable judgment of the CHA, Project Manager, and others designated by the CHA are incomplete or do not meet the specified requirements. The CHA shall notify the Contractor in writing of any deficiencies the CHA identifies with respect to any Deliverable within fifteen (15) days after receipt of such Deliverable, in which event the Contractor shall have a period of not more than fifteen (15) days to correct such deficiency. The CHA may, at its sole and absolute discretion, accept a partial or incomplete Deliverable from the Contractor for review, but such acceptance shall not constitute a waiver of the CHA's right to insist upon completion and/or correction of such Deliverable.

Nature and Format of Deliverables. The Deliverables to be provided by the Contractor shall, in general, be sufficient to communicate the progress of and details concerning the Work. Deliverables may include, without limitation, such things as samples, reports, spreadsheets, critical path schedules, photographs, construction administration records or reports, as-built drawings and specifications, as-built surveys, and inspection reports.

1. Reports, studies, surveys, property inspections, recommendations and similar documents shall be provided in written and bound format and all photographic documentation and graphics shall be in both digital and color photographic form.
2. Deliverables such as samples, reports, spreadsheets, Critical Path Schedules, sketches, photographs, and drawings shall be provided in accordance with the schedule and delivery dates set by the Task Order.

### 2.4 Contract Administration

The Contractor, if selected to perform Services pursuant to a Task Order resulting from a Task Order Proposal, shall act as the prime contractor for the Detailed Scope of Work for the Project described in the Task Order. The Contractor will be required to work with CHA staff to satisfy the contracting objectives of awarded Task Orders. All Task Orders are subject to the terms and conditions of this Agreement.

- A. As projects are identified, CHA will request Task Order Proposals from contractors in the applicable tier on a rotational basis. CHA will establish a list order of contractors in each Tier, ranking the firms, highest to lowest, in order of their overall RFP evaluation score. Task Orders will be offered to the contractors, by Tier, in the order they appear on the list. The first task order will be offered to the contractor first on the list, the second Task Order will be offered to the next firm on the list and so on. Once the CHA reaches the end of the list, the CHA shall start at the beginning of the established list and continue to offer Task Orders to the next contractor.

- B. Section 3 Business Concerns within each tier have a preference for Task Orders issued in the following order: 1) Business Concerns of the residents of Public Housing developments where the Section 3 covered assistance is expended; 2) Business Concerns of the residents of other CHA Public Housing developments; 3) Business Concerns of HCV Participants; 4) all other Section 3 Business Concerns in the Chicago Metropolitan Statistical Area.
- C. Contractors in Tier 1 shall be assigned no more than one active (1) Task Order at a time. Contractors in Tiers 2 and 3 may be assigned no more than three (3) active Task Orders at a time.
- D. Exceptions to Task Ordering Procedure. All Task Orders shall be issued pursuant to the process above, unless one of the following exceptions applies:
  - 1. The Task Order is being issued pursuant to the competitive proposal process outlined in subparagraph Q below.
  - 2. The Task Order is a logical follow-on or supplemental Task Order to Services being performed by a Contractor under a previously issued Task Order.
  - 3. It is necessary to place a Task Order with a particular contractor to satisfy the Contractor's minimum guarantee on its Agreement.
  - 4. A Contractor with specialized expertise in a particular trade is required to complete the Scope of Work for the Task Order.
  - 5. The Contractor next on the list is currently at the maximum permitted capacity for Task Orders in progress. In such case, the Contractor will be eligible for additional Task Order assignments upon completion of an existing Task Order.
- E. Task Orders will be re-assigned to the next Contractor in the rotation when a Contractor is unable to immediately accept the work.
- F. The Contractor assigned to the project will jointly scope the work with the CHA Project Manager. At the Joint Scope Meetings, CHA and the Contractor will discuss such details as the scope of work for the Project, site access, working hours, staging areas, project timeline, the presence of hazardous materials, and requirements for catalog cuts, technical data, samples and shop drawings.
- G. Once the Detailed Scope of Work is finalized, the Contractor shall submit a Task Order Proposal, which shall include the following:
  - 1. The Task Order Price;
  - 2. Required drawings and sketches;

3. List of anticipated subcontractors and materialmen;
4. The work schedule, and
5. Any other requested documents as determined and conveyed at the joint scoping of the project.

The Task Order Price shall be calculated by summing the total of the calculation for each Pre-Priced Task from the Price List (Unit Price x quantity x Adjustment Factor) and the value of all approved Non Pre-Priced Tasks. The Contractor shall include all required tasks and quantities in the Task Order Proposal, applying the Adjustment Factor. Contractors shall submit Task Order Proposals within three (3) business days of CHA's request, or within such other time frame as set forth in CHA's request or as directed by CHA or CHA's designee. CHA reserves the right to request a Task Order Proposal from another contractor should Contractor fail to respond to CHA's request for a Task Order Proposal within the designated time frame. Contractors shall request any clarifications or additional information required to prepare the Task Order Proposal promptly so as not to delay submittal of Task Order Proposals.

**Adjustment Factor. The applicable adjustment factor shall be 1.11. Any overtime or holiday compensation shall be addressed on a per Task Order basis.**

- H. All Task Order Proposals must utilize the Price List, which contains construction tasks and materials with preset Unit Prices. All Unit Prices are based on local labor and equipment prices and are for the direct cost of construction. Unit Prices for materials are based upon an approved Maintenance, Repair, and Operations (MRO) catalog of products. All Unit Prices listed in the Price List are priced at a net value of 1.0000. Contractor agrees to utilize the Price List for all pre-priced tasks and materials. The Price List in effect as of the time a Task Order is issued is expressly incorporated into this Agreement.
- I. The Price List may be adjusted periodically in response to market conditions and labor rate adjustments. Respondents will be given the adjusted Price List 30 days prior to the implementation of new pricing to determine whether they wish to continue participating in the pool. Should Contractor decline to accept the adjusted pricing, Contractor may opt to withdraw from the pool by giving written notice to CHA within fourteen (14) days of receipt of any updated Price List.
- J. Non Pre-Priced Tasks. If an item from the Price List is unavailable or has a lead time that will not allow for project completion during the designated project duration, the contractor may submit a formal substitution request to the CHA Director. This form must be completed in its entirety and signed by the CHA Director *prior* to any materials not designated on the Price List being utilized. Substitution requests must be of equal or greater value and quality and meet CHA's design intent. The final approval of substitution requests is solely at the discretion of the CHA Director. No additional costs or deductions will be considered in conjunction with the substitution request.

Contractor shall submit specifications, technical data, drawings, or other relevant information in support of Non Pre-Priced Tasks. If the Contractor will perform the work,

it shall submit three independent quotes for all material to be installed and, to the extent possible, use Pre-Priced Tasks from the Price List for labor and equipment. If the Contractor is subcontracting the work, Contractor must submit three independent quotes from subcontractors. Subcontractor quotes or bids must be from subcontractors the Contractor is prepared to use. The CHA may require additional quotes or bids if those provided are not acceptable or if the pricing is deemed unreasonable.

Pricing for Non Pre-Priced Tasks shall be in accordance with the following formula:

A =Hourly Labor Rate (for trades not identified in the Price List) x the Quantity required

B =Direct Material Costs (supported by three quotes)

C =Direct Equipment Costs x the Quantity required

D =Subcontractor Costs (supported by three quotes)

E= Allowable Overhead and Profit = (A + B + C) x adjustment factor

Total Cost of Non Pre-Priced Task = A + B + C + D + E

Once a Non Pre-Priced Task is used on three separate Task Orders, upon approval by the CHA, the Unit Price for such task shall be deemed established, and shall no longer require price justification.

CHA's determination whether a task is a Pre-Priced Task or a Non Pre-Priced Task shall be conclusive, final, and binding upon the Contractor.

Any work completed not utilizing materials contained within the MRO catalog or without having obtained a fully executed substitution form prior to completion of the work may be deemed unsatisfactory and may be required to be redone utilizing the approved materials at Contractor's cost.

- K. Where a task in the Task Order Price Proposal is less than the actual cost of labor and material, the Contractor may be compensated for such tasks as a Non Pre-Priced Task. Alternatively, Contractor may use Pre-Priced Task rates to cover that actual cost, so long as there is no additional work for that trade on the Project or no work for that trade that can be scheduled concurrently, and the cost does not exceed \$1,000.
- L. CHA shall review Contractor's Task Order Proposal and evaluate the appropriateness of Contractor's approach and work plan, identified tasks and quantities proposed, and overall cost in comparison with CHA's independent cost estimate.
- M. If a Task Order Proposal is accepted, a Task Order will be issued, which shall reference the Detailed Scope of Work and set forth the Task Order Completion Time and the Task Order Price. The Task Order Price shall be a lump sum, fixed price for the completion of the Detailed Scope of Work. If a Task Order Proposal is rejected, Contractor must submit an acceptable Task Order Proposal within three (3) days of the rejection or CHA may reassign the Project(s). All required evidence of insurance and any required Diversity

Goals Utilization Plan must be submitted and approved prior to issuance of a Task Order. CHA's issuance of a purchase order shall serve as the Notice to Proceed to the Contractor. CHA will only guarantee payment with a valid purchase order.

- N. Changes in the Work. CHA may request modifications to the Detailed Scope of Work. Should modifications be required to the Detailed Scope of Work, CHA may issue a change order reflecting such additional work or any deletions from the Detailed Scope of Work.
- O. CHA reserves the right to reject a Task Order Proposal, cancel a Project, or perform the work through other means, should it be determined to be in the best interests of the CHA. Contractor shall not be entitled to reimbursement for costs incurred in the preparation of a Task Order Proposal, including, but not limited to, costs for attending the Joint Scope Meeting.
- P. Contractor shall be responsible for its means and methods of performing the Detailed Scope of Work. However, CHA shall have the right to reject any such methods that are deemed hazardous to persons or property, that will not complete the Project in accordance with the terms and conditions of this Contract or the Task Order, or will unnecessarily increase the Task Order Price, where alternatives are available.
- Q. Competitive Proposal Process for Certain Tier 3 Projects. CHA may elect to award certain Tier 3 projects through a competitive proposal process. Services for these projects shall be ordered pursuant to a Task Order Proposal Request that is issued to a minimum of three (3) contractors within the tier, which will describe the Scope of Work for the Task Order. Contractors will submit a Task Order Proposal in response to the Task Order Proposal Request, and the Project will be awarded based upon the following criteria:
  - 1. Quality of the Contractor's Proposal for performing the Task Order Work.
    - a. Proposed Firm Fixed Fee to perform the Scope of Work.
    - b. Proposed duration to perform the Scope of Work.
    - c. Overall approach and work plan for performing the Scope of Work.
  - 2. Past performance on earlier Task Orders or other work under any contract with the CHA, including quality, timeliness, cost control, and adherence to CHA's compliance requirements.
  - 3. Potential impact on the ability of the Contractor to perform previously awarded Task Orders.
  - 4. CHA will review each submitted proposal and award a Task Order to the Contractor whose Firm Fixed Fee Task Order Proposal is deemed, in CHA's sole discretion, to provide the best value and be in the best interest of the CHA, unless CHA a) cancels the Task Order Proposal Request, or 2) upon review of all Proposals, chooses not to award the Task Order.

- R. Project Management Software. The Contractor shall maintain the capability to communicate and collaborate with the CHA and its designated representatives electronically via CHA's designated project management software.
- S. Subcontracts. All subcontractors utilized by the Contractor must receive prior approval in writing prior to utilization. Contractor shall comply with all applicable laws, regulations, policies and procedures of the CHA in the procurement of lower-tier subcontractors. Upon CHA's request, Contractor shall submit to the CHA a true and original copy of each subcontract it executes, and any amendment, modification, or change thereto, for any portion of the Work. CHA reserves the right to require Contractor to substitute or replace a subcontractor in the event that CHA informs the Contractor that the subcontractor has been placed on an administrative or investigative hold by the CHA, or due to prior instances of substandard performance by the subcontractor.
- T. Performance and Payment Bonds. Performance and Payment bonds shall be required for all Task Orders valued over \$50,000.
- U. Contractors in Tier 1 must self-perform on the site, and with their own employees and equipment, at least sixty-five percent (65%) of the total amount of Work to be performed under each Task Order.

Contractors in Tier 2 must self-perform on the site, and with their own employees and equipment, at least fifty-one percent (51%) of the total amount of Work to be performed under each Task Order.

Contractors in Tier 3 must self-perform on the site, and with their own employees and equipment, at least 25 percent (25%) of the total amount of Work to be performed under each Task Order.

## 2.5 Performance Standards and Quality Review

- A. Performance Standards. The Contractor shall perform all Work and Services in accordance with industry standards in Chicago, Illinois and applicable professional due care standards, and 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 applicable federal, state and local laws or statutes, and to the satisfaction of the CHA. The Contractor must at all times act in the best interests of the CHA consistent with the professional obligations assumed by it in entering into this Agreement. Contractor shall assure timely and satisfactory rendering and completion of its Services, including but not limited to Deliverables.

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 shall

use its best efforts to assure quality, timeliness, efficiency and creativity in rendering and completing the Projects on schedule. The Contractor agrees that performance of the Services in a satisfactory manner shall include timely response to the CHA's requests. Time is of the essence in the Contract. Accordingly, the Contractor shall return all telephone calls and respond to all electronic mail on a timely basis but in no event more than one (1) business day.

- B. Security. Contractors are required to use approved ingresses and egresses. All contractors are required to sign in at the front desk at the project site daily and must carry and be prepared to present state-issued, valid identification upon request by a CHA representative. Contractors are required to be professional in appearance and must have apparel that clearly identifies the organization they represent, such as a branded safety vest, company shirt or name tag.
- C. Quality Review. Contractors are expected to consistently perform at a high level of quality on all assigned projects. Completed work will be subject to quality reviews by CHA personnel. The evaluation criteria used to rate the Contractor include the following:

- 1. Project Development Evaluation Criteria

- a. Availability to meet with the CHA designee(s) when assigned a Project.
    - b. Contractor's input in developing / refining the Detailed Scope of Work.
    - c. Timely Submission of the Task Order Proposal (on or before the due date).
    - d. Response Time Making Requested Revisions to the Task Order Proposal.
    - e. Ability to provide Performance and Payment Bonds in a timely manner
    - f. Quality of other submissions such as utilization plans.
    - g. Overall level of professionalism.
    - h. Adherence to Code of Conduct.

- 2. Construction Evaluation Criteria

- a. Professional manner interacting with CHA residents and CHA Designee(s).
    - b. Timely mobilization once a Notice to Proceed/Purchase Order is issued.
    - c. Ability to meet construction timeline.
    - d. Quality of materials if supplied by the contractor in comparison to the MRO materials available on the Price List.
    - e. Extent of Punchlist and rework necessary on the project.
    - f. Ability to complete project meeting all OSHA safety guidelines.
    - g. Cleanliness of job site during construction.
    - h. Minimization of impact to any affected residents.
    - i. Communication with CHA and all designated parties.
    - j. Adherence to Code of Conduct.

- D. Tier Elevation. High-performing Contractors may be eligible to be assigned to a higher tier, permitting the award of higher value Task Orders. Any tier elevation is subject to the Contractor's ability to meet the bonding requirements of the higher tier. In Order to be eligible for elevation to the next tier, a Contractor must successfully complete a minimum of five (5) Task Orders within the Task Order Completion Time and have an evaluation rating of at least 4.0 out of the maximum 5.0. Ideally, Contractors graduating to the next tier will have successfully completed a minimum of 80% of its Task Orders within the Task Order Completion Time with an evaluation rating of 4.0 or higher.
- E. Performance Deficiencies. Contractors with unsatisfactory performance evaluations will be placed on probation and may be subject to suspension from the program or, should the Contractor have a consistent record of unsatisfactory performance, the Contractor may be removed from the program altogether.

Contractors who have an evaluation of less than 3.0 on one (1) Task Order will be placed on probation. Contractor may continue to receive assignments during Contractor's initial probationary period. During the probationary period, the CHA and/or CHA's designee will meet with the Contractor to identify areas of improvement and a time period to resolve performance issues. Contractor will be required to submit a written corrective action plan for approval by CHA. Successful completion of the action plan is required before the Contractor is permitted to be taken off of probationary status.

During the initial probationary period, if the contractor receives a second evaluation of less than 3.0, the CHA may, at its option, extend Contractor's probationary period, or the CHA may recommend the Contractor be terminated from the program. Contractor will be removed from the assignment rotation during any subsequent probationary period during the Contract term or during any extension of the initial probationary period. If the contractor is unable to successfully complete the probationary period and corrective action plan, Contractor may be terminated from the program.

**Violations of the Contractor's Code of Conduct may result in immediate termination from the program, without previously being placed on probation or suspension.**

- F. Contractor's Code of Conduct.
1. Contractor shall not engage in knowing misrepresentations, willful misconduct, fraudulent activity, or illegal activity in the performance of the Services, which may include, but are not limited to:
    - a. Misrepresenting the quality or manufacturer of materials used, or utilizing inferior materials or unapproved substitutions;
    - b. Manipulating or falsifying documentation required for invoicing, inspections, or other approvals
  2. Contractor shall be truthful regarding Contractor's services and qualifications and not make false claims regarding Contractor's ability to complete a Project.



3. Contractor shall follow all CHA procedures and instructions regarding submittals and invoicing.
4. Contractor shall not engage in any activity that places the health and safety of CHA's residents at risk.
5. Contractor shall not engage in abusive, disruptive, threatening, intimidating, condescending, violent or physically aggressive behavior directed at CHA residents, employees, property managers, or Project Managers.
6. Contractor shall provide safe working conditions in accordance with OSHA guidelines and/or industry standards.
7. Contractor shall not, under any circumstances, enter residents' homes or be on CHA property without securing written approval from CHA staff in advance.

## 2.6 Diversity and Inclusion Contract Requirements

The parties to this contract agree to comply with HUD's labor hour reporting requirements for Section 3 Workers and Targeted Section 3 workers pursuant to 24 C.F.R Part 75 (all tiers). Tiers 2 and 3 shall also comply with CHA's additional Diversity and Inclusion Contract Requirements, as applicable. CHA's Diversity and Inclusion Contract Requirements are attached hereto as Exhibit II. Tier 1 Contractors shall be exempt from the M/W/DBE Contract Compliance Requirements.

Contractor shall provide any required Diversity Goals Utilization Plans prior to the issuance of a purchase order. Approved Diversity Goals Utilization Plans shall be incorporated by reference into this Agreement and the Task Order for which they are submitted. Contractor shall fulfill its agreed commitments as set forth therein.

Compliance Deficiencies. Contractor's failure to fulfill its Diversity and Inclusion participation and reporting requirements or its Section 3 labor hour reporting requirements may result in the Contractor being placed on administrative hold pending compliance. Contractor's failure to rectify compliance deficiencies may result in the Contractor being deemed ineligible to perform on any CHA projects, including as a prime contractor or subcontractor on future Task Orders issued under the prequalified contractor program or other CHA projects.

## 2.7 General Conditions For Construction Contracts/General Conditions for Non-Construction Contracts

HUD's General Conditions for Construction Contracts (HUD form 5370) and HUD's General Conditions for Small Construction/Development Contracts (HUD Form 5370-EZ) the ("General Conditions"), are attached hereto as Exhibit III and Exhibit IV, respectively, and are incorporated by reference as if fully set forth herein. The Contractor agrees to fully comply with the General Conditions applicable to the individual Task Order (i.e., HUD Form 5370-EZ for Task Orders

under \$250,000, and HUD Form 5370 for Task Orders over \$250,000). In the event of a conflict between the terms and conditions of the General Conditions and the terms and conditions of the Agreement, the terms and conditions of the Agreement shall control.

Non-Construction Projects. HUD's General Conditions for Non-Construction Projects (HUD Form 5370-C) are attached hereto as Exhibit V and are incorporated by reference as if fully set forth herein. The General Conditions for Non-Construction Projects shall apply to all non-construction Task Orders. In the event of a conflict between the terms and conditions of the General Conditions for Non-Construction and the terms and conditions of the Agreement, the terms and conditions of the Agreement shall control.

In the event that any of the General Conditions are updated by HUD, the General Conditions in effect at the time a Task Order is issued shall apply to the Project

## 2.8 Minimum Wage and Davis Bacon Requirements

Contractor shall (i) pay its employees no less than the current applicable City of Chicago minimum wage requirement. Notwithstanding the foregoing, applicable Federal wage determinations (either Davis-Bacon or HUD-Determined Wage Rates) shall preempt any conflicting State prevailing wage rate or the Minimum Wage Requirement when the State prevailing wage rate or the Minimum Wage Requirement is higher than the Federally-imposed wage rate (24 CFR 965.101). Contractor shall comply with the requirements of the Davis-Bacon Act, as set forth in paragraph 46 of HUD's General Conditions for Construction Contracts (Exhibit IV). Contractor's failure to fulfill its certified payroll reporting requirements may result in the Contractor being placed on administrative hold pending compliance.

## 2.9 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.

## 2.10 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. § 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. 12319 (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); the Equal Opportunity Clause set forth in 41 CFR Part 60-1.4, which is incorporated by reference herein; the Age Discrimination Act, 42 U.S.C. sec. 6101-6106 (1989); Rehabilitation Act of 1973, 29 U.S.C. sec. 793-794 (1988); Fair Housing Amendments Act, 42 U.S.C. Sec. 3601 et seq., (1988); Americans with Disabilities Act of 1990, 42 U.S.C. 12101 and 41 C.F.R. Part 60 et seq., (1990). Illinois Human Rights Act,

775 ILCS 5/1-101 et seq., as amended, and regulations promulgated in accordance therewith, including but not limited to the Equal Employment Opportunity Clause, Ill. Admin. Code Tit. 44 section 750 Appendix A, which is attached hereto as Exhibit VI 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.

#### 2.11 Force Majeure

Notwithstanding any other provision in this Agreement, neither CHA nor Contractor shall be liable or held responsible for any failure to perform or for delays in performing their respective obligations under the Agreement, including but not limited to, the Detailed Scope of Work set forth in a Task Order, resulting from circumstances or causes beyond Contractor's or CHA's reasonable control, including without limitation, fire or casualty, acts of God, epidemics, strikes or labor disputes, war or violence, or any law, order or requirement of any government agency or authority.

#### 2.12 Health and Safety

The 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 Services with respect to its officers, directors, employees, agents, representatives, invitees and subcontractors (collectively "Contractor's Personnel") and 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. Contractor shall have sole responsibility for compliance with all applicable Executive Orders and/or public health guidance concerning COVID-19 safety protocols with respect to Contractor's employees, including such requirements pertaining to hazard notification, training, required equipment, work protocols, and risk mitigation. The CHA specifically disclaims any authority or responsibility for general work site safety and safety of persons other than CHA employees.

#### 2.13 Lead-Based Paint and Asbestos Abatement

- A. The Contractor shall comply with the requirements of the Lead-Based Paint Poisoning Prevention Act as documented in 24 CFR 35. In addition, neither the Contractor nor any of its subcontractors shall, in any CHA residential property, non-residential property, day care center on CHA property, or other leased space on CHA property, in the course of any construction, rehabilitation, or modernization, use or permit the use of lead-based paint on any surface.
- B. For the purpose of this prohibition, "lead-based paint" as defined in section 501 (3) of the Lead-Based Paint Poisoning Prevention Act as amended by Pub. L. 94-317 (42 U.S.C. § 4801 et. seq.) and the National Consumer Information and Health Promotion Act of 1976, means:

1. Any paint containing more than five-tenths of 1 per cent lead by weight (calculated as lead metal) in the total non-volatile content of the paint or the equivalent measure or lead in the dried film of paint already applied or both; or
  2. With respect to paint which is manufactured after June 22, 1977, lead-based paint means any paint containing more than six one-hundredths of 1 per cent lead by weight (calculated as lead metal) in the total nonvolatile content of the paint or the equivalent measure of lead in the dried film of paint already applied.
- C. Contractor shall comply with all federal state, and municipal laws and regulations concerning asbestos abatement, including all notice, licensure, and disposal requirements. Contractor shall coordinate all asbestos removal by it or any of its subcontractors with CHA's designated Environmental Consultant. Contractor and Contractor's subcontractors shall not engage in any asbestos abatement activity without the oversight of CHA's Environmental Consultant.
- D. The paragraph shall be included in all subcontracts at any tier.

### **ARTICLE III            TERM OF AGREEMENT**

#### **3.1    Term of Agreement**

This Agreement shall commence on the Effective Date (October 1, 2023) and shall continue and remain in effect for a base term of three (3) years, through September 30, 2026 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 Task Order issued to the Contractor prior to the termination date until the entire Detailed Scope of Work required under an assigned Task Order has been completed in accordance with its respective terms and all Work has been accepted by the CHA. A Task Order shall be deemed "issued" for purposes of this paragraph when the Contractor has been issued a purchase order.

#### **3.2    Contract Extension Options**

The CHA, at its sole discretion, may extend this Agreement for two (2) additional one (1) year option periods, subject to approval of the CHA's Board of Commissioners, if required. 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 9.3 of this Agreement.

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

The Contractor will complete the Detailed Scope of Work pursuant to a Task Order within the Task Order Completion Time provided in the Task Order. The Contractor acknowledges that sometimes deadlines for the Detailed 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**

Contractor shall be entitled to earn a minimum amount of One Thousand and 00/100 Dollars (\$1,000.00) under this Agreement. The initial maximum not-to-exceed amount of compensation payable to the the Contractor under the Agreement is Five Hundred Thousand and 00/100 Dollars (\$500,000.00). The Contractor acknowledges that the CHA is not obligated to issue a Task Order to the Contractor for more than the minimum amount set forth above, and that in order to receive more than the minimum amount, the Contractor must accept assigned Task Orders as set forth in Article II above. The Contractor agrees to and waives any and all claims for payment of Work that would result in billings beyond the Task Order Price established in a Task Order without a prior written change order/modification to the Task Order authorizing said additional work and additional costs. The Contractor acknowledges an affirmative duty to monitor its performance and billings to ensure that the Detailed Scope of Work is completed within the agreed upon Task Order Price as set forth in the Task Order.

### **4.2     Payments**

Invoice/Accounting Statements. The Contractor shall submit an invoice within ten (10) business days following completion of a Task Order, or at such other agreed-upon intervals during the Project. Each invoice shall contain back-up information as required by the CHA, including but not limited to, an itemized schedule of costs incurred, a brief description of the services provided during the invoice period, and such documentation as required in accordance with the payment provisions set forth below. The Contractor and Project Manager shall reach agreement on the percentage complete of the Detailed Scope of Work and amount for which Contractor's invoice may be submitted prior to submission for payment. Contractor shall upload approved invoices to into the project management system of record or submit the invoice as otherwise directed.

- A. Contractor shall provide waivers of lien and an original, current Contractor's Sworn Statement to Owner for all payment requests, and waivers of lien from its subcontractors. Prime and subcontractor waivers of lien must not trail for more than 14 days. The CHA shall not be required to give approval or make payments pursuant to a submitted invoice unless all information required to be included with the invoice, Deliverables, and any other information that has been specifically requested by the CHA is provided, and all reporting requirements as set forth in this Agreement have been met. Any payments made despite Contractor's failure to submit the Subcontractors' lien waivers requested pursuant to this paragraph shall not waive the CHA's right to require lien waivers for future payment requests.
- B. Contractor shall be required to execute and provide a Final Sworn Statement to Owner

and Final Waiver of Liens prior to final payment. If the Contractor has contracted with subcontractors, the Contractor shall provide a Final Waiver of Liens from each subcontractor and materialman supplying goods and services, in addition to its own Final Lien Waiver.

- C. Unless required by Federal, State or local law, CHA shall not (1) determine or adjust any claims for payment or disputes arising thereunder between the Contractor and its subcontractors or material suppliers; or, (2) withhold any funds for the protection of the subcontractors or material suppliers unless requested pursuant to a valid notice of mechanic's lien.
- D. The Contracting Officer shall, upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor under this Contract or any other Federal contract (i.e., "set-off rights") with the same Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the Contract.
- E. The CHA shall not be obligated to make any payment to the Contractor unless the Contractor has fully complied with all of the Contract provisions including, but not limited to the following:
  - 1. The Contractor has provided an acceptable Performance and Bond as required for the Task Order.
  - 2. The Contractor has completed the entire Detailed Scope of Work in accordance with the requirements of the Task Order.
  - 3. The Contractor's minimum rates of pay have been and are in conformance with those promulgated pursuant to the Davis-Bacon Act (40 USC 276a et. seq.) as determined and readjusted periodically by the U.S. Department of Labor's General Wage Decisions.
  - 4. The Contractor maintains required insurance.
  - 5. The Contractor has submitted proper certified payroll and related reports in a timely fashion as required.
  - 6. The Contractor has complied with the Diversity and Inclusion Contract Requirements.

CHA will make commercially reasonable efforts to make payment for services rendered under this Agreement within thirty (30) days after receipt and approval of each invoice submitted. All invoices shall be subject to review and approval by the CHA. If the CHA objects to all or any portion of any invoice, it shall notify the Contractor of its objection in writing and both parties

shall make every effort to settle the disputed portion of the invoice. Notwithstanding the foregoing, the CHA may, at its option, pay the undisputed portion of any invoice without being deemed to have accepted the disputed portion.

#### 4.3 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 the CHA's Board of Commissioners, if required; and (c) 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 or any Task Order issued pursuant hereto, the CHA will notify 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.

### **ARTICLE V DISPUTES**

#### 5.1 Disputes

In the event of a dispute between the CHA and the Contractor involving this Agreement, both parties will attempt to negotiate a resolution. The first avenue of negotiation shall be with the CHA Project Manager, as designated by the CHA, and/or Director of CHA's Property and Asset Management Division. If the parties cannot resolve the dispute through negotiation, either party shall, unless otherwise set forth herein, submit the dispute in writing to CHA's Deputy Chief of Procurement, in accordance with the provision set forth in Paragraph No. 31 of the HUD General Conditions for Construction Contracts (Exhibit IV).

- A. It is expressly agreed by the Contractor that in no event shall it be entitled to bring any legal action or claim pursuant to this Contract or any amendment thereto upon the passing of one (1) calendar year after the termination of this Contract, or the Final Completion of a Task Order, whichever shall occur earliest, notwithstanding any other provision at law or under this Contract.
- B. This Contract shall not create any rights or benefits to parties other than the CHA and the Contractor, except such other rights as may be specifically called for herein.
- C. This paragraph shall be included in all subcontracts at any tier.

### **ARTICLE VI RISK MANAGEMENT AND INDEMNIFICATION**

#### 6.1 Insurance Requirements

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

programs maintained by the CHA shall apply in excess of and shall not contribute with insurance provided by the Contractor under this Contract. It is further expressly agreed that the insurance coverages required per this Contract do not act as limitations of liability of the Contractor, its joint ventures, parent companies or subcontractors.

In addition to any other provisions of this Contract or at law, the Contractor may immediately, and without notice, have all compensation withheld or suspended, be suspended from providing further Work, be removed from the assignment rotation, or be terminated for cause from this Contract, for any lapse in coverage or material change in coverage pursuant to the requirements of this Agreement, for failure to furnish the CHA with a timely certificate or renewal of certificate, or for making an incorrect or a false representation with regard to the provision of the insurance specified herein.

## 6.2 Hold Harmless and Indemnification

- A. The Contractor shall indemnify, defend, and hold harmless the CHA, its respective commissioners, board members, officers, directors, agents, construction management firm, employees, vendors, invitees and visitors from and against any and all claims, suits, actions, judgments, demands, losses, costs, expenses, damages, and liability caused by, resulting from (directly or indirectly), or arising out of Contractor's violation or breach of any term of this Contract or the negligent acts, errors, or omissions of the Contractor, its officers, employees, agents, subcontractors, materialmen, or representatives arising in tort or in the performance of the Work under this Contract.
- B. The Contractor shall indemnify and hold harmless the CHA, its respective commissioners, board members, officers, directors, agents, construction management firm, employees, vendors, invitees and visitors from and against any and all claims and demands of third persons resulting from the Contractor's non-compliance with any of the provisions of the CHA's policies and directly related governmental statutes regarding Equal Employment Opportunity and other similarly titled policies and statutes.
- C. The extent of this paragraph shall not be limited by the insurance the Contractor provides and/or by the insurance required under this Contract.
- D. The Contractor further agrees that it will not hold the CHA, its respective commissioners, board members, officers, directors, agents, construction management firm, employees, vendors, invitees and visitors responsible for loss, damage or injury caused by any fault or negligence of other consultants or contractors providing work or services in connection with the Project. The Contractor agrees that it will look solely to said consultants or contractors for recovery from them, or any of them, for any such damage or injury.
- E. The Contractor's duties and responsibilities under this paragraph include, without limitation, investigation and defense of any such claims asserted or suit brought against the CHA, its respective commissioners, board members, officers, directors, agents, construction management firm, employees, vendors, invitees and visitors, and payment of any judgment against CHA, its respective commissioners, board members, officers,



directors, agents, construction management firm, employees, vendors, invitees and visitors resulting from any such claim or suit. It is further agreed that the CHA, its respective commissioners, board members, officers, directors, agents, construction management firm, employees, vendors, invitees and visitors have the right, at their respective option, to participate in any such claim resolution or litigation without, however, relieving the Contractor of its obligations hereunder; and further provided that this paragraph shall not apply to injury, sickness, disease, death or destruction, the proximate cause of which is an act or omission of the CHA.

- F. Nothing contained in this paragraph shall be construed to obligate Contractor to indemnify the CHA for the CHA's own negligence or willful misconduct.
- G. For purposes of this paragraph, "CHA" shall include all CHA-controlled entities described as "additional insureds" in the insurance requirements attached hereto.
- H. This paragraph shall be included in all subcontracts at any tier.

### 6.3 Consequential Damages

Neither the CHA, nor the Contractor, shall be liable to the other for any consequential damages incurred by either due to the fault of the other, regardless of the nature of the fault, or whether it was committed by either, their respective employees, agents or subcontractors. Consequential damages include, but are not limited to, loss of use and loss of profit.

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

### 7.1 Events of Default Defined

- A. Each of the following shall constitute an event of default:
  - 1. The Contractor's failure to perform any of its obligations under this Agreement or an assigned Task Order.
  - 2. Any material misrepresentation, whether negligent or willful and whether in the inducement or in the performance, made by Contractor to the CHA.
  - 3. Failure to perform the Services required with sufficient personnel or with sufficient material to ensure the performance of the Services.
  - 4. The Contractor fails to execute, deliver and/or furnish the bond and insurance certificates required and specified within seven (7) calendar days after notification of a Task Order award.

5. The Contractor fails to maintain and renew bonds required pursuant to this Agreement or for any awarded Task Order.
6. The Contractor fails to maintain continuous insurance coverage as required, such failure to include lapses in coverage of one (1) day or more.
7. The Contractor makes a general assignment for the benefit of its creditors.
8. A receiver is appointed for the Contractor on account of its insolvency.
9. 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;
10. The Contractor violates any provision of the Contract Documents.
11. The Contractor fails to pay any of its subcontractors or suppliers promptly after receipt of payment from the CHA.
12. The Contractor suspends diligent prosecution of the Work or abandons the Work for ten (10) or more days.
13. The Contractor does not prevent the imposition of liens impacting the Project.
14. The Contractor makes any material misrepresentation of the representations and warranties or any certifications or affidavits made in connection with this Contract, whether intentional or not.
15. A loss time injury or death occurs in which an OSHA penalty is assessed.
16. The Contractor fails to complete the Work within the Task Order Completion Time.
17. 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.
18. The Contractor or its subcontractors fail to pay Davis-Bacon wages, inaccurately certify payrolls, or miscategorize an employee's job classification.
19. The Contractor is terminated for default on any other CHA or City of Chicago contract.
20. The Contractor is debarred from any other Federal, State of Illinois, or City of Chicago procurement activity or contract during the term of this Contract.

21. The Contractor or any of its principals owning more than five (5%) percent of the Contractor is charged with or arrested for criminal conduct for which there may be a felony conviction.
22. The Contractor fails to obtain in a timely manner, maintain, continuously renew, or lacks any license, permit or registration required by the City of Chicago or State of Illinois.
23. The Contractor fails to maintain a “drug-free” work site.
24. The Contractor fails to provide accurate and timely work schedules and updates.
25. The Contractor fails to fulfill its commitments pursuant to CHA’s Diversity and Inclusion Contract Requirements and Contractor’s approved Utilization Plan.
26. Failure to meet any of the performance standards set forth in this Agreement or a Task Order.
27. Failure to promptly re-perform Work or redo Deliverables within a reasonable time that are rejected as erroneous or unsatisfactory.
28. Discontinuance of the Services for reasons or circumstances not beyond the Contractor’s control.
29. Failure to comply with a material term of this Agreement or a Task Order, including, but not limited to, the provisions concerning compliance with HUD regulations, Diversity and Inclusion reporting, health and safety protocols, insurance and nondiscrimination.
30. 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.
31. The Contractor's default under any other agreement it may presently have or may enter into with the CHA during 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.
32. The Contractor’s default under any CHA-funded, secured, or guaranteed lending or credit program.
33. Any other acts specifically and expressly stated in this Agreement or the exhibits hereto as constituting an event of default.

## 7.2 Remedies

Upon the occurrence of any event of default which the Contractor fails to cure within thirty (30) calendar days after receipt of written notice specifying the event of default, 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, 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. 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 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 Task Orders 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 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. In the event the Contractor's surety is required to complete the Work, it is specifically agreed that the Contractor shall not be allowed to complete or subcontract to complete the Work through the surety.

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.

In the event the CHA's decision to terminate this Contract 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 in paragraph 7.3.

The remedies under the terms of this Agreement or under any Task Order issued hereunder 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.

Notices required under this paragraph may be delivered via electronic mail.

### 7.3 Termination for Convenience

Notwithstanding the foregoing, the CHA may terminate the Agreement, the Services or Contractor's right to proceed with the Work under a Task Order, or any portion of a Task Order, for convenience at any time by giving notice, in writing, to the Contractor if the CHA deems the Agreement to no longer be in the best interest of the CHA. Contractor shall continue to render the Services until the effective date of the termination. No costs incurred by Contractor after the effective date of the termination shall be allowed. Notwithstanding anything to the contrary in the General Conditions, in the event of a termination for convenience, the Contractor shall be entitled to the following amounts as a final payment under the contract:

1. Costs of work completed and accepted by the CHA;
2. Costs of non-defective materials and supplies delivered to the Project sites and accepted by the CHA; and
3. 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, if applicable, in accordance with the Task Order, and that the work completed may be relied upon by the CHA, its designees and any subsequent contractor retained to complete a Task Order. It is the CHA's exclusive right to determine use of the termination for default or termination for convenience provisions of this Agreement.

### 7.4 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, or resulting from circumstances beyond CHA's reasonable control, including, without limitation, epidemics, 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. Contractor's sole and exclusive remedy for suspension of work or delays caused by the CHA or resulting from circumstances beyond CHA's reasonable control is an extension of time equal to the duration of the suspension or delay to allow Contractor to perform.

### 7.5 Right to Offset

To the extent permitted by applicable law:

- A. In connection with Contractor's performance under the Agreement and any assigned Task Order, 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 7.2 of the Agreement;
  - iii. If the CHA has any credits due or has made any overpayments under a Task Order.

The CHA may offset these incremental costs and any other damages by use of any payment due for the Services 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 an assigned Task Order 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 agreements between the CHA and the Contractor or otherwise unrelated to this Agreement, including, but not limited to, Contractor's default under any CHA-funded, secured, or guaranteed lending or credit program. 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 this Agreement inconsistently with the determination or resolution.

**ARTICLE VIII REPRESENTATIONS, WARRANTIES AND SPECIAL CONDITIONS**

**8.1 Warranties, Representations and Covenants**

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

- A. That it is financially solvent; and that it and 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 the Services 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 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, nor, within the last five (5) years, have they been terminated for 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 Contractor to enter into this Agreement or has been relied upon by Contractor.
- E. That 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 Contractor acknowledges that the CHA, in its selection of Contractor to perform the Services hereunder, materially relied upon the Contractor's proposal submitted in response to the RFP, 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 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 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.

## 8.2 Joint and Several Liability

To the extent permitted by law, in the event that the Contractor, or its successors or assigns, if any, are 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 Contractor shall be the joint and several obligation or undertaking of each individual or other legal entity.

## 8.3 Business Documents

Upon request, 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. Contractor's Economic Disclosure Statement and Contractor's Affidavit submitted with Contractor's proposal are incorporated by reference as if fully set forth herein. Contractor shall at all times be in compliance with the representations contained in the Contractor's Affidavit and Contractor's Economic Disclosure Statement and shall disclose any changes to the accuracy of the representations made therein.

#### 8.4 Conflict of Interest

- A. 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. 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.

#### 8.5 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.

#### 8.6 Independent Contractor

The Contractor is an independent contractor under contract with the CHA and is not in a joint venture, partnership, agent-principal or employer-employee relationship with the CHA. The Contractor represents that it has, or will secure, at its own expense, all personnel required to perform the Work. Such personnel shall not be employees of, nor have any contractual relationship with, the CHA. The Contractor, consistent with its status as an independent contractor, agrees that it or its personnel will not hold themselves out as, nor claim to be, officers, agents, representatives or employees of the CHA. As an independent contractor, the Contractor will maintain complete control of and responsibility for its employees, subcontractors and agents and shall be solely responsible for the means and methods for carrying out the Work and the safety of its agents and



employees. The functions, duties and responsibilities of the Contractor with respect to any contractor employed by the CHA in connection with the Project shall be consistent with this Paragraph, and in no case shall the Contractor assume any of the obligations of the CHA to any contractor, unless expressly provided for in this Contract.

## **ARTICLE IX GENERAL CONDITIONS**

### **9.1 Entire Agreement**

This Agreement, comprised of this Agreement and the Exhibit(s) attached hereto and incorporated herein, 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.

### **9.2 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. 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.

### **9.3 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 Chief Executive Officer of the CHA or his or her designated representative. The CHA shall incur no liability for additional Services without a written and signed amendment to this Agreement 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 granted.

### **9.4 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 its enforcement.

### **9.5 Governing Law**

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

#### 9.6 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 circumstances, or of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatever. The invalidity of any one or more phrases, sentences, clauses or sections contained in this Agreement shall not affect the remaining portions of this Agreement or any part thereof.

#### 9.7 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.

#### 9.8 Assignments

Unless otherwise provided for herein, the Contractor shall not 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 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 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.

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.

#### 9.9 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.

#### 9.10 HUD and/or CHA Inspector General

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

#### 9.11 Participation by Other Government Agencies

Other local government agencies ("Local Government Agencies") may be eligible to purchase Services pursuant to the terms and conditions of this Agreement if such agencies are authorized, by law or their governing bodies, to utilize such Services, if such authorization is allowed by CHA's Contracting Officer, and if such purchases have no significant net adverse effect on CHA and result in no observed diminished ability on the Contractor to provide the Services to CHA. Local Government Agencies shall include without limitation: City of Chicago, Chicago Park District, Chicago Public Schools, Chicago Transit Authority, and City Colleges of Chicago. All purchases and payment transactions shall be made directly between the Contractor and the requesting Local Government Agency. CHA shall not be responsible for payment of any amounts owed by any Local Government Agency to Contractor. CHA assumes no authority, liability or obligation on behalf of any Local Government Authority

## **ARTICLE X COMMUNICATION AND NOTICES**

#### 10.1 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 Division, 60 East Van Buren St., 8th 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., 8th 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.

## 10.2 Notices

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

Koal HVAC LLC  
7033 W. 72<sup>nd</sup> Street  
Chicago, Illinois 60638  
Attention: Raul Rosales, Managing Officer  
Email: [raul@koalinc.com](mailto:raul@koalinc.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.  
Chicago, Illinois 60605  
Attention: Chief Executive Officer

With a copy to:

Chicago Housing Authority  
60 E. Van Buren St.  
Chicago, IL 60605  
Attention: Chief Legal Officer

Unless required by law, written notice under this Agreement may be given by electronic mail, return receipt requested.

## **ARTICLE XI      AUTHORITY**

### 11.1 CHA's Authority

Execution of this Agreement by the CHA is authorized by resolution of CHA's Board of Commissioners, 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.

11.2 Contractor's Authority

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 Contractor, has been made with complete and full authority to commit Contractor to all terms and conditions of this Agreement.

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

**CHICAGO HOUSING AUTHORITY**

**KOAL HVAC LLC**

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

By: \_\_\_\_\_  
Name: *Raul Rosales*

Title: *Owner*

Approved as to form and legality:

DocuSigned by:  
Ellen Harris  
By: \_\_\_\_\_  
D9B3AA441EDF4CB...  
Ellen Harris  
Chief Legal Officer