



City of Chicago



O2014-53

Office of the City Clerk

Document Tracking Sheet

Meeting Date:	1/15/2014
Sponsor(s):	Emanuel (Mayor)
Type:	Ordinance
Title:	Extension of Third Intergovernmental Agreement with Chicago Housing Authority
Committee(s) Assignment:	Committee on Budget and Government Operations



OFFICE OF THE MAYOR
CITY OF CHICAGO

RAHM EMANUEL
MAYOR

January 15, 2014

TO THE HONORABLE, THE CITY COUNCIL
OF THE CITY OF CHICAGO

Ladies and Gentlemen:

At the request of the Director of Administrative Hearings, I transmit herewith an ordinance authorizing the execution of an intergovernmental agreement with the Chicago Housing Authority.

Your favorable consideration of this ordinance will be appreciated.

Very truly yours,

Mayor

ORDINANCE

WHEREAS, the City of Chicago (the "City"), is a home rule unit of government as described in Section 6(a), Article VII of the 1970 Constitution of the State of Illinois and may exercise any power related to its local government affairs; and

WHEREAS, the Chicago Housing Authority (the "CHA") is a municipal corporation of the State of Illinois; and

WHEREAS, the CHA is engaged in the development and operation of safe, decent and sanitary housing throughout the City for low-income families and low-income senior citizens, and seeks to provide its residents with a fair and efficient grievance procedure to resolve disputes between CHA tenants and the CHA and/or its property management companies; and

WHEREAS, the City Council of the City ("City Council"), by ordinance adopted March 31, 2004 and published in the Journal of the Proceedings of the City Council of the City of Chicago for such date at pages 20968 – 20981, amended the powers and duties of the Director of the Department of Administrative Hearings ("DOAH"), as set forth in Title 2, Chapter 14, Section 030 of the Municipal Code of Chicago, to include the power and duty to establish a system for hearing grievances brought by CHA tenants against the CHA and/or its property manager; and

WHEREAS, in 2009, the City, by and through DOAH and pursuant to said ordinance, entered into an intergovernmental agreement with the CHA to provide hearing officers and related services in order to hear and adjudicate grievances brought by CHA tenants pursuant to the CHA grievance procedure; and

WHEREAS, the term of said intergovernmental agreement was for the period from April 1, 2009 through March 31, 2012 with the option to extend the agreement for one additional two year term through March 31, 2014; and

WHEREAS, the City and the CHA desire to enter into an intergovernmental agreement, in substantially the form attached as Exhibit A (the "Third IGA"), whereby CHA tenant grievances will continue to be heard and adjudicated by DOAH for an additional three-year term, with the option to extend the Third IGA for one additional two-year term; and

WHEREAS, the City and the CHA each have the legal authority to enter into the Agreement pursuant to Article VII, §10 of the Illinois Constitution of 1970 and the Intergovernmental Cooperation Act, as amended (5 ILCS 220/1 et seq.), now, therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHICAGO:

SECTION 1. The above recitals are expressly incorporated by reference as if fully set forth herein.

SECTION 2. The Director of DOAH ("Director"), or designee, is authorized, with the approval of the City's Corporation Counsel as to form and legality, to execute and deliver the Third IGA, and specifically with the indemnity provisions contained therein, and such other documents as are necessary, between the City and the CHA, which

Agreement may contain such changes, deletions or insertions as shall be approved the parties executing the same on the part of the City.

SECTION 3. To the extent that any ordinance, resolution, rule, order or provision of the Municipal Code of Chicago, or any part thereof, is in conflict with the provisions of this ordinance, the provisions of this ordinance shall control. If any section, paragraph, clause or provision of this ordinance shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any other provision of this ordinance.

SECTION 4. This ordinance shall be in full force and effect from and after the date of its passage and approval.

Exhibit A TO THE ORDINANCE

**Third Intergovernmental Agreement
Between
The City of Chicago, Acting Through Its
Department of Administrative Hearings,
And
The Chicago Housing Authority**

THIS THIRD INTERGOVERNMENTAL AGREEMENT ("Agreement") is made and entered into as of the ____ day of _____, 2014 (the "Effective Date") by and between THE CITY of CHICAGO, an Illinois municipal corporation and home rule unit of government under Article VII, Section 6 (a) of the 1970 Constitution of the State of Illinois, acting through its Department of Administrative Hearings (hereinafter referred to as the "City") and THE CHICAGO HOUSING AUTHORITY, an Illinois municipal corporation organized and existing pursuant to 310 ILCS 10/1 et seq. of the Illinois Compiled Statutes (hereinafter referred to as "CHA").

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 Housing Authorities Act, 310 ILCS 10/1 et seq., as amended from time to time, and all other applicable laws, regulations and ordinances; and

WHEREAS, the CHA desires to continue to utilize the City's administrative hearing process and hearing officers to hear and rule upon grievances brought by CHA residents living in CHA federally subsidized housing, brought by CHA residents temporarily relocating to a Section 8 unit as described in the CHA Leaseholder Housing Choice and Relocation Rights Contract ("CHA RRC"), Section 11b(2), and in certain situations, brought by CHA residents at Mixed Finance Properties, which affect the residents rights, duties, welfare or status with their lease in accordance with the CHA's Resident Grievance Procedure attached hereto as Exhibit I and incorporated by reference as if fully set forth herein; and

WHEREAS, the City has a formal administrative hearing process and maintains a group of private independent hearing officers to adjudicate claims in accordance with the administrative hearing process set forth in Chapter 2-14 of the Chicago Municipal Code; and

WHEREAS, the HUD Procurement Manual, (7460.8), Section 4-42(c) provides that if the services required by a housing authority are to be provided by a state or local government and are part of the normal duties and responsibilities of the government's staff, it is permissible for the Housing Authority to share the services and cost of the staff under an intergovernmental agreement; and

WHEREAS, the City has represented that it is ready, willing and able to provide hearing officers to adjudicate grievances brought by Residents in accordance with the

CHA's Residents' Grievance Procedure; and

WHEREAS, the CHA and the City desire to enter into this Agreement to provide greater efficiency and independence in the provision of administrative hearings for the Residents; and

WHEREAS, the CHA and the City have authority to enter into this intergovernmental agreement pursuant to the Intergovernmental Cooperation Act, 5 ILCS 220/1 et seq.; and

NOW, THEREFORE, in consideration of the recitals set forth above, and the mutual covenants, terms, conditions, privileges and obligations herein set forth hereunder, and intending to be legally bound thereby, City and the CHA mutually agree as follows:

1. **Incorporation of Recitals.** The recitals set forth above are incorporated by reference as if fully set forth herein.
2. **Provision of Services.** The City's Department of Administrative Hearing shall provide administrative hearing officers to adjudicate CHA grievances ("the Services") in accordance with the CHA's Resident Grievance Procedure attached hereto as Exhibit I, and as periodically amended by the CHA, and as set forth in Statement of Work set forth immediately below (the "Services"):
3. **Statement of Work**
 - A. **City's Duties and Responsibilities:**
 - i. **Amendment of Municipal Code:** The City has amended Chapter 2-14 of the Chicago Municipal Code to allow its administrative hearing officers ("Hearing Officers") to hear and adjudicate grievances brought pursuant to the CHA Resident's Grievance Procedure.
 - ii. **Administrative Hearing Officers:** The CHA and its Central Advisory Council shall jointly agree upon a number of Hearing Officers under contract with the City's Department of Administrative Hearings ("Department") to adjudicate CHA grievances. For each grievance hearing request sent by the CHA's Office of the General Counsel, the Department will assign one of the approved Hearing Officers to adjudicate the grievance. Grievance hearings shall be conducted in accordance with the CHA Resident's Grievance Procedure, and Chapter 2-14 of the Chicago Municipal Code and Department's Procedural Rules and Regulations, to the extent such rules and regulations are applicable and not inconsistent with the CHA Resident's Grievance Procedure.
 - iii. **Use of Facilities:** The Department of Administrative Hearings will conduct grievance hearings at its facilities at 400 West Superior, and 2006 E. 95th Street.
 - iv. **Scheduling the Hearing Date:** The Department shall schedule the initial hearing to be held within thirty (30) calendar days of the Department's

receipt of the Grievance Petition and the Formal Hearing Request Form – GP4, which will be forwarded from the CHA's Office of the General Counsel. The General Counsel shall also forward the Resident's Grievance Hearing Proceedings Form – GP3, which includes the written decision of the Resident's informal hearing to the Department.

- v. **Sending the Hearing Notice to All Parties:** The Department shall send a written notification to the Resident at his/her address, to the CHA c/o the Office of the General Counsel, and directly to the relevant property management firm. The written notification shall include the date, time, and location of the hearing, as well as the consequences of failing to appear at the hearing. This notice shall be sent via first class mail or by personal service no later than seven (7) calendar days before the formal hearing date.
- vi. **Conducting the Hearing:** Hearings shall be conducted by the Hearing Officers at the Department's facilities, listed above, in accordance with the CHA's Resident's Grievance Procedure, attached hereto as Exhibit I, which may be periodically amended by the CHA, and in accordance with Chapter 2-14 of the Municipal Code and the Department of Administrative Hearings Procedural Rules and Regulations, to the extent the latter are not inconsistent with the CHA procedure.
- vii. **Taking and Maintaining a Record of Proceedings:** The Department shall be responsible for making a record of the hearing in accordance with the Department's Procedural Rules and Regulations. Copies of public records and public case files, including audio recordings, may be requested through the Freedom of Information Act. Except as set forth in paragraph 6.B.iii., written hearing transcripts of the audio recordings shall be arranged and paid for by the requesting party. This record shall include documents submitted by the parties, as well as a copy of the Hearing Officer's findings and written decision. The Department shall retain the record for at least six (6) months from the date of the hearing.
- viii. **Providing Reasonable Accommodations:** When necessary, the Department shall provide reasonable accommodations to persons with disabilities. This may include holding hearings in an accessible location, providing all materials and notices in an accessible format and, if necessary, providing qualified sign language interpreters, readers, or attendants. The cost of any reasonable accommodation, other than provision of an accessible location, shall be borne by the CHA.
- ix. **Completing and Delivering a Written Decision:** The Hearing Officer shall prepare a written decision for the hearing. The hearing result shall be sent via first class mail or by personal service to the grievant, or his or her representative, the CHA, and the property management firm within five (5) business days of the hearing, unless the hearing officer determines that additional time is necessary due to the complexity of the case. If more time is required for the formal decision, the Hearing Officer shall notify the parties of the revised timeline within five (5) business days of the hearing.

- x. **Grievant's Failure to Appear:** If a Hearing Officer finds a grievant in default, the Department shall serve a copy of the order of default upon the grievant by first class mail or by personal service. The resident shall have twenty-one (21) days from the date of the default is entered to petition the Hearing Officer to set aside the order of default upon a showing of good cause for the grievant's failure to appear.
- xi. **Reporting:** The Department will report the number of grievance hearings requested, scheduled and held on a quarterly basis to the CHA's Office of the General Counsel.
- xii. The City shall at all times use its best efforts to assure quality, timeliness and efficiency in rendering and completing the Services.

4. **CHA's Duties and Responsibilities:**

- A. **Training:** The CHA will train the Department's Hearing Officers on the CHA's Resident Grievance Procedure and as required for any amendments thereto. It shall be the duty of the CHA to inform the Department of any amendments to the Resident Grievance Procedure. The CHA shall conduct, at the CHA's sole expense, a formal training program that shall include initial and periodic training for Hearing Officers. Training shall be conducted at times and places to be mutually agreed upon by the City and the CHA. Prior to conducting any initial or periodic training, the CHA agrees to submit to the Department, for the Director's review and approval, a list of all training personnel/speakers, and copies of all training curricula and written training documents. Training shall include, among other matters, instruction on the CHA's Resident's Grievance Procedure, orientation to each subject area that Hearing Officers will adjudicate, and participation in hypothetical grievance hearings.

Subject to the Director's review and approval, the CHA agrees to provide (and to seasonably update) the Department and each Hearing Officer with a "bench book" containing, among other matters, a description of the CHA's organization, common grievance issues, and copies of standard lease and relocation documents, and copies of relevant CHA/HUD regulations, policies and procedures.

The CHA further agrees to assist the Department on a case-by-case basis to answer, among other matters, questions concerning the CHA/HUD regulations, policies and procedures.

- B. **Notice:** The CHA will promptly provide notice of requested hearings to the Department.
- C. **Payment:** The CHA will make payments to the City based upon invoices submitted to the CHA pursuant to this Agreement.

5. **Term of Agreement/Extension Option.** This Agreement shall commence on the Effective Date (_____, 2014) and shall continue through on March 31, 2017. Upon mutual agreement of the CHA and the City, the Agreement may be extended for one (1) additional two (2) year term, thereafter under the same terms and conditions as

this original Agreement.

6. Compensation and Payment

A. Compensation. The total amount of compensation payable under this Agreement for Services provided by the City, shall be an amount not-to-exceed \$75,000 (the "Maximum Amount"). All reimbursables for performance of the Services under this Agreement are included in the amount of compensation set forth in this paragraph. The Services shall be suspended when funds appropriated for payment under this Agreement have been exhausted.

B. Basis of Compensation. The CHA shall compensate the City as follows:

i. Case Initiation Fee.

The CHA shall pay the City a case initiation fee of \$75.00 for each Formal Hearing Request received by the City. The case initiation fee shall include and compensate the City for:

- a. File preparation and docketing.
- b. Data entry.
- c. Processing discovery and freedom of information requests for files, tapes and other documents.
- d. Costs associated with recording hearings and maintaining the record.
- e. Messenger costs.
- f. Processing Motions to Set Aside.
- g. Scheduling hearings; notice costs including postage; processing and mailing default orders.
- h. Processing hearing officer payments, along with special billing requirements pursuant to the Agreement.
- i. Costs of preparing form orders, notices, default instructions and other documents.

ii. Hearing Officer Fees.

The CHA shall reimburse and compensate the City at the prevailing rate for all time expended by Hearing Officers to adjudicate CHA grievances including, but not limited to, attending initial and periodic CHA training, preparing for hearings, conducting hearings, motion hearings, and rendering written decisions.

iii. Other Out-of-Pocket Expenses.

In addition to and not in limitation of the other provisions of the Agreement, the CHA agrees to pay the City's out-of-pocket expenses incurred in connection with the City's provision of Services under the Agreement. Out-of-pocket expenses shall include, among other expenses, court reporter fees incurred by the City to prepare written hearing transcripts when the Resident, the CHA, or the management

company seeks judicial review of the Hearing Officer's decision. Such transcript costs must be reasonable and commensurate with standard competitive court reporter fees/rates and need not be pre-approved by the CHA. Other out-of-pocket nominal expenses need not be pre-approved by CHA, but expenses that are not nominal must be pre-approved by the CHA.

C. Invoices and Payment.

- i. **Invoices.** The City shall submit invoices to the CHA's Office of the General Counsel on a quarterly basis.
- ii. **Payments.** The CHA agrees to promptly pay, but not later than 45 days, all proper and reasonable invoices submitted by the City for Services rendered under this Agreement. Payments shall be made directly to the City of Chicago, Department of the Comptroller, and shall provide a written confirmation of each CHA payment to the Comptroller.

7. Non-Appropriation. Funding for this Agreement is subject to 1) availability of Federal funds from HUD, and 2) the approval of funding by CHA's Board of Commissioners. 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, then the CHA shall promptly notify the City of such occurrence and the Services shall be suspended on the earlier of the last day of the fiscal period for which sufficient appropriation was made or when the funds appropriated for payment under this Agreement are exhausted. No payments shall be made or due to the City under this Agreement beyond those amounts appropriated and budgeted by the CHA to fund payments hereunder.

8. Indemnification.

- A. The City agrees, except to the extent liability of a municipal corporation, as such, is precluded by the Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101 et seq. or the Common Law of the State of Illinois, to defend, indemnify and hold the CHA, its officers, agents and employees completely harmless from and against any and all suits, claims, grievances, damages, costs, expenses, judgments and/or liabilities, including costs of defense and reasonable attorneys' fees arising out of or relating to any and all claims, liens, demands, obligations, actions, suits, judgments or settlements, proceedings or causes of action of every kind, nature and character (collectively "Claims") arising from the City's control, operation, use and maintenance of the facilities described in subsection 3.iii., "Use of Facilities," in connection with the Services, except to the extent caused by the negligence, acts or omissions of the CHA, its agents or employees. Upon notice from the CHA of any claim, and consistent with the exceptions noted above, the City shall timely appear and defend all suits and claims and shall pay all costs and expenses incidental thereto, but the CHA shall have the right at its option and at its own expense, to participate in the defense of any suit, without relieving the City of any of

its obligations hereunder.

- B. The CHA agrees to defend, indemnify and hold harmless the City, its officers, agents and employees against any Claims challenging the constitutionality or adequacy of the CHA's Resident Grievance Procedure or involving any claims arising from appeals of Hearing Officer adjudications pursuant to the Illinois Administrative Review Act. Upon notice from the City of any Claim consistent with the above, the CHA shall timely appear and defend all suits and claims and shall pay all costs and expenses incidental thereto, but the City shall have the right at its option and at its own expense, to participate in the defense of any suit, without relieving the CHA of any of its obligations hereunder.

9. Record-keeping Requirements. The City shall maintain all books, records, and documents necessary to its performance of this Agreement and shall adopt a system of accounting in accordance with generally accepted accounting principles and practice to properly reflect all cost of whatever nature claimed to have been incurred or anticipated to be incurred in connection with the City's performance under this Agreement. In addition, the City shall keep such books, records and documents in a safe place and make them available for examination by the CHA or a third party designated by the CHA, upon reasonable notice to the City of such an examination for a period of three (3) years after the expiration of the Agreement.

10. Termination. Either party may terminate this Agreement upon providing thirty (30) days written notice to the other party in accordance with the provisions of paragraph 22 below.

11. Default. The following shall constitute an event of default ("Event of Default") hereunder:

- A. The violation or breach by the CHA of any law, statute, rule or regulation of a governmental or administrative entity relating to its performance under this Agreement, or the violation or breach by the City of any law, statute, rule or regulation of a governmental or administrative entity relative to its performance under this Agreement;
- B. The transfer or assignment by CHA of its rights and obligations hereunder without the prior written consent of the City, or the transfer or assignment by the City of its rights and obligations hereunder without the prior written consent of CHA;
- C. Any misrepresentation by the CHA of any material fact, or any misrepresentation by the City of any material fact;
- D. A material breach by the City or the CHA of any other provision of this Agreement including, but not limited to, a failure to perform services according to the time requirements and conditions set forth herein, a failure to meet any deadline for the submission of reports, proposals and other documents required by any provision of this Agreement and the continuance of this failure for sixty (60) days after notice; or

- E. There is a cessation or deterioration of Services for a period that, in the reasonable judgment of the CHA, materially and adversely affects the operation of the public services required to be performed by the City and such cessation or deterioration of services is not cured within fifteen (15) days after the CHA gives notice to the City.

This Agreement may be terminated by the non-defaulting party, if an Event of Default occurs. If no cure period is stated for any of the items listed under this Section, the cure period shall be three (3) days after the defaulting party receives notice from the non-defaulting party.

12. Independent Contractor. The City shall perform under this Agreement as an independent contractor to the CHA and not as a representative, employee, agent, or partner of the CHA.

13. Amendment. This Agreement may not be altered, amended, changed or modified in any respect without the written consent of both the City and the CHA

14. Assignment. Neither party may assign its right or obligations under this Agreement without the prior written consent of the other party, which consent shall be in the other party's sole discretion. This Agreement shall inure to the benefit of and be binding upon the City, the CHA and the respective successors and permitted assigns.

15. No Third Party Beneficiary. This Agreement is for sole and exclusive benefit of the CHA and the City and their respective successors and permitted assigns. No other person or entity is an intended third party beneficiary of this Agreement or shall have the right to enforce any of the provisions of this Agreement. Nothing contained in this Agreement may be construed to create or imply any partnership, joint venture or other association between the City and the CHA.

16. Headings. The section headings contained herein are for convenience only and are not intended to limit, expand or modify the provisions of such sections.

17. Non-Liability of Public Officials. No official, employee or elected or appointed representative or the CHA or the City may be held personally liable for any breach of any provision of this Agreement or any damage, loss or injury arising out of the performance of this Agreement.

18. Compliance with All Laws/Governmental Orders

- A. The City and the CHA shall at all times observe and comply with all applicable laws, ordinances, rules, regulations and executive orders of the federal, state and local government, now existing or hereinafter in effect, which may in any manner affect the performance of this Agreement including, but not limited to, the Uniform Administrative Requirements contained in 24 C.F.R. Section 85.1 et seq., (1993), as amended; Title VI of the Civil Rights Act of 1967 (42 U.S.C. 2000d et seq.); Fair Housing Act (42 U.S.C. 3601-20 et seq.); Executive Order 11063, as amended by Executive Order 12259; Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.); Rehabilitation Act of 1973 (29 U.S.C.

Chicago, Illinois 60654
Attn: Director

With copies to: City of Chicago, Department of Law
121 N. LaSalle Street, Room 600
Chicago, Illinois 60602
Attn: Finance and Economic Development Division

If to the CHA: Chicago Housing Authority
60 East Van Buren Street, 12th Floor
Chicago, Illinois 60605
Attn: General Counsel

Unless otherwise specified, any notice, demand or request required hereunder shall be given in writing at the addresses set forth above and shall be effective: (a) if delivered by personal service upon delivery, (b) if sent by overnight courier, effective one business day after delivery to such courier, or (c) if sent by registered or certified mail, return receipt requested, effective three business days after the date of mailing. A party's address for notices may be changed by giving written notice in the manner specified in this Section.

23. Authority.

- A. CHA Authority. Execution of this Agreement is authorized by resolution of the CHA's Board of Commissioners dated _____, 2014 approving this Agreement and pursuant to the United States Housing Act of 1937, 42 U.S.C. § 1437 et seq.; regulations promulgated by HUD, and the State Housing Authorities Act, 310 ILCS 10/1 et seq., as amended, and other applicable laws, regulations and ordinances.
- B. City Authority. Execution of this Agreement by the City is authorized by an ordinance enacted by the City Council of the City of Chicago approving this Agreement on _____, 2014.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date first set forth above.

CITY OF CHICAGO

By: _____
Patricia Jackowiak, Director
Dept. of Administrative Hearings

CHICAGO HOUSING AUTHORITY

By: _____
Linda Riley Mitchell
Chief Financial and Administrative
Officer

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

By: _____
Scott W. Ammarell
Chief Legal Officer