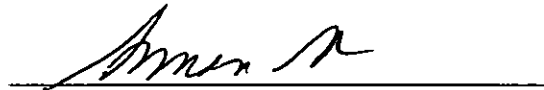


THE ATTACHED AGREEMENT HAS BEEN REVIEWED
AND APPROVED AS TO FORM BY THE CITY
ATTORNEY'S OFFICE AND WILL BE
FORMALLY SIGNED UPON APPROVAL BY
THE CITY COUNCIL



Glen R. Googins
City Attorney

Dated: 6/20/14

AGREEMENT
BETWEEN
CITY OF CHULA VISTA & CHULA VISTA HOUSING AUTHORITY
AND
COMPLIANCE SERVICES, LLC
TO PROVIDE COMPLIANCE MONITORITY OF
CITY OF CHULA VISTA AFFORDABLE HOUSING PROJECTS

Parties and Recital Page(s)
Agreement between
City of Chula Vista & Chula Vista Housing Authority
and

Compliance Services, LLC,

To provide compliance monitoring of City of Chula Vista affordable housing projects.

This agreement ("Agreement"), dated _____ for the purposes of reference only, and effective as of the date last executed unless another date is otherwise specified in Exhibit A, Paragraph 1, is between the City-related entities as is indicated on Exhibit A, Paragraph 2, as such (collectively "City"), whose business form is set forth on Exhibit A, Paragraph 3, and the entity indicated on the attached Exhibit A, Paragraph 4, as Consultant, whose business form is set forth on Exhibit A, Paragraph 5, and whose place of business and telephone numbers are set forth on Exhibit A, Paragraph 6 ("Consultant"), and is made with reference to the following facts:

Recitals

WHEREAS, as a condition of receiving Community Development Block Grant (CDBG), Emergency Shelter Grant (ESG), and HOME Investment Partnership (HOME) funding from the U.S. Department of Housing and Urban Development (HUD), State of California Redevelopment funds including Low and Moderate Income Housing funds, and issuance of Multi-Family Housing Revenue Bonds, California Tax Credit Allocation Committee, California Debt Limit Allocation Committee, and United States Internal Revenue Code, the City is required to monitor affordable housing projects in accordance with HUD and attendant federal regulations as found in the CFR, State of California Department of Housing and Community Development (HCD) and attendant state code of regulations as found in the CCR, and the Community Redevelopment Law of the State of California (Health and Safety Code Section 33000, *et seq.*); and

WHEREAS, the City of Chula Vista Housing Authority has funds from the annual monitoring fees collected from bond financed projects; and

WHEREAS, the City is seeking professional consultant services to assist the City in monitoring its affordable housing stock; and

WHEREAS, Consultant was selected due to its intimate knowledge of and approach to monitoring affordable housing using a web-based reporting compliance reporting system, its extensive experience, and its ability to complete the services in a timely manner; and

WHEREAS, Consultant warrants and represents that it is experienced and staffed in a manner such that it can deliver the services required of Consultant to City in accordance with the time frames and the terms and conditions of this Agreement.

NOW, THEREFORE, BE IT RESOLVED that the City and Consultant do hereby mutually agree as follows:

All of the Recitals above are hereby incorporated into this Agreement.

ARTICLE I. CONSULTANT'S OBLIGATIONS

A. General

1. General Duties. Consultant shall perform all of the services described on the attached Exhibit A, Paragraph 7, entitled "General Duties".
2. Scope of Work and Schedule. In the process of performing and delivering said "General Duties", Consultant shall also perform all of the services described in Exhibit A, Paragraph 8, entitled "Scope of Work and Schedule", not inconsistent with the General Duties, according to, and within the time frames set forth in Exhibit A, Paragraph 8, and deliver to City such Deliverables as are identified in Exhibit A, Paragraph 8, within the time frames set forth therein, time being of the essence of this Agreement. The General Duties and the work and deliverables required in the Scope of Work and Schedule shall be herein referred to as the "Defined Services". Failure to complete the Defined Services by the times indicated does not, except at the option of the City, terminate this Agreement.
 - i. *Reductions in Scope of Work.* City may independently, or upon request from Consultant, from time to time, reduce the Defined Services to be performed by the Consultant under this Agreement. Upon doing so, City and Consultant agree to meet in good faith and confer for the purpose of negotiating a corresponding reduction in the compensation associated with said reduction.
 - ii. *Additional Services.* In addition to performing the Defined Services herein set forth, City may require Consultant to perform additional consulting services related to the Defined Services ("Additional Services"), and upon doing so in writing, if they are within the scope of services offered by Consultant, Consultant shall perform same on a time and materials basis at the rates agreed upon by City and Consultant. All compensation for Additional Services shall be paid monthly as billed.
3. Standard of Care. The Consultant expressly warrants that the work to be performed pursuant to this Agreement, whether Defined Services or Additional Services, shall be performed in accordance with the standard of care ordinarily exercised by members of the profession currently practicing under similar conditions and in similar locations.
 - i. *No Waiver of Standard of Care.* Where approval by City is required, it is understood to be conceptual approval only and does not relieve the Consultant of responsibility for complying with all laws, codes, industry standards, and liability for damages caused by negligent acts, errors, omissions, noncompliance with industry standards, or the willful misconduct of the Consultant or its subcontractors.

B. Application of Laws. Should a federal or state law pre-empt a local law, or regulation, the Consultant must comply with the federal or state law and implementing regulations. No provision of the Agreement requires the Consultant to observe or enforce compliance with any provision, perform any other act, or do any other thing in contravention of federal, state, territorial, or local law, regulation, or ordinance. If compliance with any provision of the Agreement violates or would require the Consultant to violate any law, the Consultant agrees to notify City immediately in writing. Should this occur, the City and the Consultant agree that they will make appropriate arrangements to proceed with or, if necessary, terminate the Project, or portions thereof, expeditiously.

1. Subcontractors. Consultant agrees to take appropriate measures necessary to ensure that all Project participants, such as subcontractors, comply with all applicable laws, regulations, ordinances, and policies, whether federal, state, or local, affecting Project implementation. In addition, if a subcontractor is expected to fulfill any responsibilities of the Consultant under this Agreement, the Consultant shall assure that the subcontractor carries out the Consultant's responsibilities as set forth in this Agreement.

C. Insurance

1. General. Consultant must procure and maintain, during the period of performance of this Agreement,, and for twelve (12) months after completion, policies of insurance from insurance companies to protect against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work under the Agreement and the results of that work by the Consultant, his agents, representatives, employees or subcontractors and provide documentation of same prior to commencement of work.
2. Minimum Scope of Insurance. Coverage must be at least as broad as:
 - i. *CGL.* Insurance Services Office Commercial General Liability coverage (occurrence Form CG0001).
 - ii. *Auto.* Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto).
 - iii. *WC.* Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
 - iv. *E&O.* Professional Liability or Errors & Omissions Liability insurance appropriate to the Consultant's profession. Architects' and Engineers' coverage is to be endorsed to include contractual liability.

3. Minimum Limits of Insurance. Contractor must maintain limits no less than those included in the table below:

i. General Liability: (Including operations, products and completed operations, as applicable)	\$1,000,000 per occurrence for bodily injury, personal injury, (including death), and property damage. If Commercial General Liability insurance with a general aggregate limit is used, either the general aggregate limit must apply separately to this project/location or the general aggregate limit must be twice the required occurrence limit.
ii. Automobile Liability:	\$1,000,000 per accident for bodily injury, including death, and property damage.
iii. Workers' Compensation Employer's Liability:	Statutory \$1,000,000 each accident \$1,000,000 disease-policy limit \$1,000,000 disease-each employee
iv. Professional Liability or Errors & Omissions Liability:	\$1,000,000 each occurrence

4. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either the insurer will reduce or eliminate such deductibles or self-insured retentions as they pertain to the City, its officers, officials, employees and volunteers; or the Consultant will provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration, and defense expenses.
5. Other Insurance Provisions. The general liability, automobile liability, and where appropriate, the worker's compensation policies are to contain, or be endorsed to contain, the following provisions:
- i. *Additional Insureds.* City of Chula Vista, its officers, officials, employees, agents, and volunteers are to be named as additional insureds with respect all policies of insurance, including those with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Consultant, where applicable, and, with respect to liability arising out of work or operations performed by or on behalf of the Consultant, including providing materials, parts or equipment furnished in connection with such work or operations. The general liability additional insured coverage must be provided in the form of an endorsement to the contractor's insurance using ISO CG 2010 (11/85) or its equivalent. Specifically, the endorsement must not exclude Products/Completed Operations coverage.

- ii. *Primary Insurance.* The Consultant's General Liability insurance coverage must be primary insurance as it pertains to the City, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers is wholly separate from the insurance of the contractor and in no way relieves the contractor from its responsibility to provide insurance.
 - iii. *Cancellation.* The insurance policies required must be endorsed to state that coverage will not be canceled by either party, except after thirty (30) days' prior written notice to the City by certified mail, return receipt requested. The words "will endeavor" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents, or representatives" shall be deleted from all certificates.
 - iv. *Active Negligence.* Coverage shall not extend to any indemnity coverage for the active negligence of the additional insureds in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the Civil Code.
 - v. *Waiver of Subrogation.* Consultant's insurer will provide a Waiver of Subrogation in favor of the City for each required policy providing coverage for the term required by this Agreement.
6. Claims Forms. If General Liability, Pollution and/or Asbestos Pollution Liability and/or Errors & Omissions coverage are written on a claims-made form:
- i. *Retro Date.* The "Retro Date" must be shown, and must be before the date of the contract or the beginning of the contract work.
 - ii. *Maintenance and Evidence.* Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract work.
 - iii. *Cancellation.* If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a "Retro Date" prior to the contract effective date, the Consultant must purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work.
 - iv. *Copies.* A copy of the claims reporting requirements must be submitted to the City for review.
7. Acceptability of Insurers. Insurance is to be placed with licensed insurers admitted to transact business in the State of California with a current A.M. Best's rating of no less than A V. If insurance is placed with a surplus lines insurer, insurer must be listed on the State of California List of Eligible Surplus Lines Insurers ("LESLI") with a current A.M.

Best's rating of no less than A X. Exception may be made for the State Compensation Fund when not specifically rated.

8. Verification of Coverage. Consultant shall furnish the City with original certificates and amendatory endorsements affecting coverage required by Section C. The endorsements should be on insurance industry forms, provided those endorsements or policies conform to the contract requirements. All certificates and endorsements are to be received and approved by the City before work commences. The City reserves the right to require, at any time, complete, certified copies of all required insurance policies, including endorsements evidencing the coverage required by these specifications.
9. Subcontractors. Consultants must include all subconsultants as insureds under its policies or furnish separate certificates and endorsements for each subconsultant. All coverage for subconsultants is subject to all of the requirements included in these specifications.
10. Not a Limitation of Other Obligations. Insurance provisions under this Article shall not be construed to limit the Consultant's obligations under this Agreement, including Indemnity.

D. Security for Performance

1. Performance Bond. In the event that Exhibit A, at Paragraph 18, indicates the need for Consultant to provide a Performance Bond (indicated by a check mark in the parenthetical space immediately preceding the subparagraph entitled "Performance Bond"), then Consultant shall provide to the City a performance bond in the form prescribed by the City and by such sureties which are authorized to transact such business in the State of California, listed as approved by the United States Department of Treasury Circular 570, <http://www.fms.treas.gov/c570>, and whose underwriting limitation is sufficient to issue bonds in the amount required by the agreement, and which also satisfy the requirements stated in Section 995.660 of the Code of Civil Procedure, except as provided otherwise by laws or regulations. All bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act. Surety companies must be duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds for the limits so required. Form must be satisfactory to the Risk Manager or City Attorney which amount is indicated in the space adjacent to the term, "Performance Bond", in said Exhibit A, Paragraph 18.
2. Letter of Credit. In the event that Exhibit A, at Paragraph 18, indicates the need for Consultant to provide a Letter of Credit (indicated by a check mark in the parenthetical space immediately preceding the subparagraph entitled "Letter of Credit"), then Consultant shall provide to the City an irrevocable letter of credit callable by the City at their unfettered discretion by submitting to the bank a letter, signed by the City Manager, stating that the Consultant is in breach of the terms of this Agreement. The letter of credit shall be issued by a bank, and be in a form and amount satisfactory to the Risk

Manager or City Attorney which amount is indicated in the space adjacent to the term, "Letter of Credit", in said Exhibit A, Paragraph 18.

3. Other Security. In the event that Exhibit A, at Paragraph 18, indicates the need for Consultant to provide security other than a Performance Bond or a Letter of Credit (indicated by a check mark in the parenthetical space immediately preceding the subparagraph entitled "Other Security"), then Consultant shall provide to the City such other security therein listed in a form and amount satisfactory to the Risk Manager or City Attorney.

- E. **Business License**. Consultant agrees to obtain a business license from the City and to otherwise comply with Title 5 of the Chula Vista Municipal Code.

ARTICLE II. CITY OBLIGATIONS

- A. **Consultation and Cooperation**. City shall regularly consult the Consultant for the purpose of reviewing the progress of the Defined Services and Schedule therein contained, and to provide direction and guidance to achieve the objectives of this Agreement. The City shall permit access to its office facilities, files and records by Consultant throughout the term of the agreement. In addition thereto, City agrees to provide the information, data, items and materials set forth on Exhibit A, Paragraph 9, and with the further understanding that delay in the provision of these materials beyond thirty (30) days after authorization to proceed, shall constitute a basis for the justifiable delay in the Consultant's performance of this agreement.

B. **Compensation**.

1. Following Receipt of Billing. Upon receipt of a properly prepared billing from Consultant submitted to the City periodically as indicated in Exhibit A, Paragraph 17, but in no event more frequently than monthly, on the day of the period indicated in Exhibit A, Paragraph 17, City shall compensate Consultant for all services rendered by Consultant according to the terms and conditions set forth in Exhibit A, Paragraph 10, adjacent to the governing compensation relationship indicated by a "checkmark" next to the appropriate arrangement, subject to the requirements for retention set forth in Paragraph 18 of Exhibit A, and shall compensate Consultant for out of pocket expenses as provided in Exhibit A, Paragraph 11.
2. Supporting Information. Any billing submitted by Consultant shall contain sufficient information as to the propriety of the billing, including properly executed payrolls, time records, invoices, contracts, or vouchers describing in detail the nature of the charges to the Project in order to permit the City to evaluate that the amount due and payable thereunder is proper, and such billing shall specifically contain the City's account number indicated on Exhibit A, Paragraph 17(C) to be charged upon making such payment.

3. Exclusions. In determining the amount of the compensation City will exclude any cost 1) incurred prior to the effective date of this Agreement; 2) arising out of or related to the errors, omissions, negligence or acts of willful misconduct of the Consultant, its agents, employees, or subcontractors.
 - i. *Errors and Omissions*. In the event that the City Administrator determines that the Consultants' negligence, errors, or omissions in the performance of work under this Agreement has resulted in expense to City greater than would have resulted if there were no such negligence, errors, omissions, Consultant shall reimburse City for any additional expenses incurred by the City. Nothing herein is intended to limit City's rights under other provisions of this agreement.
4. Payment Not Final Approval. The Consultant understands and agrees that payment to the Consultant for any Project cost does not constitute a City final decision about whether that cost is allowable and eligible for payment under the Project and does not constitute a waiver of any violation of Consultant of the terms of the Agreement. The Consultant acknowledges that City will not make a final determination about the eligibility of any cost until the final payment has been made on the Project or the results of an audit of the Project requested by the City has been completed, whichever occurs latest. If City determines that the Consultant is not entitled to receive any portion of the compensation due or paid, City will notify the Consultant in writing, stating its reasons. The Consultant agrees that Project closeout will not alter the Consultant's responsibility to return any funds due City as a result of later refunds, corrections, or other similar transactions; nor will Project closeout alter the right of City to disallow costs and recover funds provided for the Project on the basis of a later audit or other review.
 - i. *Consultant's Obligation to Pay*. Upon notification to the Consultant that specific amounts are owed to City, whether for excess payments or disallowed costs, the Consultant agrees to remit to City promptly the amounts owed, including applicable interest.

ARTICLE III. ETHICS

A. Financial Interests of Consultant

1. Consultant is Designated as an FPPC Filer. If Consultant is designated on Exhibit A, Paragraph 14, as an "FPPC filer", Consultant is deemed to be a "Consultant" for the purposes of the Political Reform Act conflict of interest and disclosure provisions, and shall report economic interests to the City Clerk on the required Statement of Economic Interests in such reporting categories as are specified in Paragraph 14 of Exhibit A, or if none are specified, then as determined by the City Attorney.
2. No Participation in Decision. Regardless of whether Consultant is designated as an FPPC Filer, Consultant shall not make, or participate in making or in any way attempt to use Consultant's position to influence a governmental decision in which Consultant knows or

has reason to know Consultant has a financial interest other than the compensation promised by this Agreement.

3. Search to Determine Economic Interests. Regardless of whether Consultant is designated as an FPPC Filer, Consultant warrants and represents that Consultant has diligently conducted a search and inventory of Consultant's economic interests, as the term is used in the regulations promulgated by the Fair Political Practices Commission, and has determined that Consultant does not, to the best of Consultant's knowledge, have an economic interest which would conflict with Consultant's duties under this agreement.
4. Promise Not to Acquire Conflicting Interests. Regardless of whether Consultant is designated as an FPPC Filer, Consultant further warrants and represents that Consultant will not acquire, obtain, or assume an economic interest during the term of this Agreement which would constitute a conflict of interest as prohibited by the Fair Political Practices Act.
5. Duty to Advise of Conflicting Interests. Regardless of whether Consultant is designated as an FPPC Filer, Consultant further warrants and represents that Consultant will immediately advise the City Attorney of City if Consultant learns of an economic interest of Consultant's that may result in a conflict of interest for the purpose of the Fair Political Practices Act, and regulations promulgated thereunder.
6. Specific Warranties Against Economic Interests. Consultant warrants, represents and agrees:
 - i. That neither Consultant, nor Consultant's immediate family members, nor Consultant's employees or agents ("Consultant Associates") presently have any interest, directly or indirectly, whatsoever in any property which may be the subject matter of the Defined Services, or in any property within 2 radial miles from the exterior boundaries of any property which may be the subject matter of the Defined Services, ("Prohibited Interest"), other than as listed in Exhibit A, Paragraph 14.
 - ii. That no promise of future employment, remuneration, consideration, gratuity or other reward or gain has been made to Consultant or Consultant Associates in connection with Consultant's performance of this Agreement. Consultant promises to advise City of any such promise that may be made during the Term of this Agreement, or for twelve months thereafter.
 - iii. That Consultant Associates shall not acquire any such Prohibited Interest within the Term of this Agreement, or for twelve months after the expiration of this Agreement, except with the written permission of City.
 - iv. That Consultant may not conduct or solicit any business for any party to this Agreement, or for any third party that may be in conflict with Consultant's responsibilities under this Agreement, except with the written permission of City.

IV. LIQUIDATED DAMAGES

- A. **Application of Section.** The provisions of this section apply if a Liquidated Damages Rate is provided in Exhibit A, Paragraph 13.
1. Estimating Damages. It is acknowledged by both parties that time is of the essence in the completion of this Agreement. It is difficult to estimate the amount of damages resulting from delay in performance. The parties have used their judgment to arrive at a reasonable amount to compensate for delay.
 2. Amount of Penalty. Failure to complete the Defined Services within the allotted time period specified in this Agreement shall result in the following penalty: For each consecutive calendar day in excess of the time specified for the completion of the respective work assignment or Deliverable, the Consultant shall pay to the City, or have withheld from monies due, the sum of Liquidated Damages Rate provided in Exhibit A, Paragraph 13 ("Liquidated Damages Rate").
 3. Request for Extension of Time. If the performance of any act required of Consultant is directly prevented or delayed by reason of strikes, lockouts, labor disputes, unusual governmental delays, acts of God, fire, floods, epidemics, freight embargoes, or other causes beyond the reasonable control of the Consultant, as determined by the City, Consultant shall be excused from performing that act for the period of time equal to the period of time of the prevention or delay. In the event Consultant claims the existence of such a delay, the Consultant shall notify the City's Contract Administrator, or designee, in writing of that fact within ten (10) calendar days after the beginning of any such claimed delay. Extensions of time will not be granted for delays to minor portions of work unless it can be shown that such delays did or will delay the progress of the work.

ARTICLE V. INDEMNIFICATION

A. **Defense, Indemnity, and Hold Harmless.**

1. General Requirement. Except for liability for Professional Services covered under Article V, Section (A)(2), Consultant shall defend, indemnify, protect and hold harmless the City, its elected and appointed officers and employees, from and against any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any alleged acts, omissions, negligence, or willful misconduct of Consultant, its officials, officers, employees, agents, and contractors, arising out of or in connection with the performance of the Defined Services or this Agreement. This indemnity provision does not include any claims, damages, liability, costs and expenses (including without limitations, attorneys fees) arising from the sole negligence or sole willful misconduct of the City, its officers, employees. Also covered is liability arising

from, connected with, caused by or claimed to be caused by the active or passive negligent acts or omissions of the City, its agents, officers, or employees which may be in combination with the active or passive negligent acts or omissions of the Consultant, its employees, agents or officers, or any third party.

2. Professional Services. For those professionals who are required to be licensed by the state (e.g. architects, landscape architects, surveyors and engineers) (“Design Professionals”), Design Professionals shall defend, indemnify and hold the City, its officials, officers, employees, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or relating to any negligence, errors or omissions, recklessness, or willful misconduct of Design Professional, its officials, officers, employees, agents, consultants, and contractors arising out of or in connection with the performance of the Design Professional's Services. Also covered is liability arising from, connected with, caused by, or claimed to be caused by the active or passive negligent acts or omissions of the City, its agents, officers, or employees which may be in combination with the active or passive negligent acts or omissions of the Design Professional, its employees, agents or officers, or any third party. The Design Professional’s duty to indemnify, protect and hold harmless shall not include any claims or liabilities arising from the sole negligence or sole willful misconduct of the City, its agents, officers or employees. This section in no way alters, affects or modifies the Design Professional’s obligation and duties under this Agreement.
3. Costs of Defense and Award. Included in the obligations in Sections 1 and 2, above, is the Consultant’s obligation to defend, at Consultant’s own cost, expense and risk, any and all aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against the City, its directors, officials, officers, employees, agents and/or volunteers. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against City or its directors, officials, officers, employees, agents and/or volunteers, for any and all legal expense and cost incurred by each of them in connection therewith.
4. Insurance Proceeds. Consultant’s obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the City, its directors, officials, officers, employees, agents, and/or volunteers.
5. Declarations. Consultant’s obligations under Article V shall not be limited by any prior or subsequent declaration by the Consultant.
6. Enforcement Costs. Consultant agrees to pay any and all costs City incurs enforcing the indemnity and defense provisions set forth in Article V.
7. Survival. Consultant’s obligations under Article V shall survive the termination of this Agreement.

ARTICLE VI. TERMINATION OF AGREEMENT

- A. **Termination for Cause.** If, through any cause, Consultant shall fail to fulfill in a timely and proper manner Consultant's obligations under this Agreement, or if Consultant shall violate any of the covenants, agreements or stipulations of this Agreement, City shall have the right to terminate this Agreement by giving written notice to Consultant of such termination and specifying the effective date thereof at least five (5) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, reports and other materials prepared by Consultant shall, at the option of the City, become the property of the City, and Consultant shall be entitled to receive just and equitable compensation, in an amount not to exceed that payable under this Agreement and less any damages caused City by Consultant's breach, for any work satisfactorily completed on such documents and other materials up to the effective date of Notice of Termination. Consultant hereby expressly waives any and all claims for damages or compensation arising under this Agreement except as set forth herein.
- B. **Termination of Agreement for Convenience of City.** City may terminate this Agreement at any time and for any reason, by giving specific written notice to Consultant of such termination and specifying the effective date thereof, at least thirty (30) days before the effective date of such termination. In that event, all finished and unfinished documents and other materials described hereinabove shall, at the option of the City, become City's sole and exclusive property. If the Agreement is terminated by City as provided in this paragraph, Consultant shall be entitled to receive just and equitable compensation, in an amount not to exceed that payable under this Agreement, for any satisfactory work completed on such documents and other materials to the effective date of such termination. Consultant hereby expressly waives any and all claims for damages or compensation arising under this Agreement except as set forth herein.

ARTICLE VII. RECORD RETENTION AND ACCESS

- A. **Record Retention.** During the course of the Project and for three (3) years following completion, the Consultant agrees and to maintain, intact and readily accessible, all data, documents, reports, records, contracts, and supporting materials relating to the Project as City may require.
- B. **Access to Records of Consultant and Subcontractors.** The Consultant agrees to permit, and require its subcontractors to permit City or its authorized representatives, upon request, to inspect all Project work, materials, payrolls, and other data, and to audit the books, records, and accounts of the Contractor and its subcontractors pertaining to the Project.
- C. **Project Closeout.** The Consultant agrees that Project closeout does not alter the reporting and record retention requirements of this Agreement.

ARTICLE VIII. PROJECT COMPLETION, AUDIT, AND CLOSEOUT

- A. **Project Completion.** Within ninety (90) calendar days following Project completion or termination by CITY, the Consultant agrees to submit a final certification of Project expenses and audit reports, as applicable.
- B. **Audit of Consultants.** The Consultant agrees to have performed financial and compliance audits the City may require. The Consultant also agrees to obtain any other audits required by City. The Consultant agrees that Project closeout will not alter the Consultant's audit responsibilities. Audit costs are allowable Project costs.
- C. **Project Closeout.** Project closeout occurs when City notifies the Consultant that City has closed the Project, and either forwards the final payment or acknowledges that the Consultant has remitted the proper refund. The Consultant agrees that Project closeout by City does not invalidate any continuing requirements imposed by the Agreement or any unmet requirements set forth in a written notification from City.

ARTICLE VIII. SOFTWARE LICENSE TERMS

A. **Definitions.** For purposes of this Agreement, the following terms shall have the meanings ascribed to them below:

1. "Designated Personnel" means the individual or individuals associated with the City who are the main contact persons between Consultant and City identified in Exhibit A, Paragraph 12.
2. "Property" or "Properties" means those certain real property locations listed in Exhibit B, as amended by the parties from time to time, that are covered by the "License" (defined below).
3. "Software" means that certain custom computer software used in compliance monitoring of affordable housing properties with various governmental regulations, and related documentation, licensed under this Agreement, and any customization thereof, as further described in this Article.
4. "Updates" means any modifications, bug-fixes, corrections or additions that, when made or added to the Software, change its utility, efficiency, functional capability, bring the Software into material conformity with the current specifications of the Software, or a procedure or routine that, when observed in the regular operation of the Software, avoid the practical adverse effect of such nonconformity without creating other material adverse effects.

B. License grant; Ownership

1. License Grant. Subject to the terms and conditions of this Agreement, Consultant hereby grants to City, under all of Consultant's intellectual property rights in the Software, a non-

exclusive, non-transferable, non-assignable, license to use the Software during the Term solely for its own internal business operations and solely for use for the Properties listed in Exhibit B (the "License").

2. Restrictions. City shall not (a) license, sublicense, sell, resell, transfer, assign, distribute, or otherwise commercially exploit or make available to any third party the Software; (b) modify or make derivative works based upon the Software; (c) create Internet "links" to the Software or "frame" or "mirror" any portion of the Software on any other server or wireless or Internet-based device; or (d) reverse engineer or access the Software in order to (i) build a competitive product or service, (ii) build a product using similar ideas, features, functions or graphics of the Software, or (iii) copy any ideas, features, functions or graphics of the Software.

3. No Implied Licenses. Except to the extent set forth herein, neither Party grants the other Party any other license, express or implied, to such Party's intellectual property rights and nothing in this Agreement or the performance thereof, or that might otherwise be implied by law, will operate to grant either Party any right, title or interest, implied or otherwise, in or to the intellectual property rights of the other Party. Each Party expressly reserves all intellectual property rights not expressly granted under this Agreement.

4. Ownership of Software. Consultant retains all right, title and interest, including all intellectual property rights, in and to the Software, including any and all Updates, even if such updates were created in collaboration between Consultant and City, and/or created subsequent to the Effective Date. Apart from the license rights expressly set forth in this Agreement, Consultant does not grant and City does not receive any ownership right, title or interest nor any security interest or other interest in any intellectual property rights relating to the Software, nor in any copy of any part of the foregoing.

C. Hosting; Access. Consultant will host the Software on its Web servers; City is responsible for providing its own Internet connection to access and use the Software. Consultant shall make the Software available for access and use by City upon execution of this Agreement. City is solely responsible for providing or acquiring the required hardware and supported software set forth in this Article, Paragraph J to enable City to access and use the software.

D. Training; Support. Consultant shall provide to City's Designated Personnel, at no additional fee over and above the Fees, its one time introductory training on accessing and using the Software at a mutually convenient time and location. Consultant shall also provide to City's Designated Personnel, at no additional fee over and above the Fees, up to twenty (20) hours total during the Term of basic maintenance and support in connection with the Software.

E. Updates. During the Term, Consultant shall make commercially reasonable efforts to make available any Updates to the Software, whenever the same become available to any other City of Consultant that has a commercial license to the Software. Once an Update is incorporated into the Software, it will be considered part of the Software and subject to the terms and conditions of this Agreement.

F. City Responsibilities. City is responsible for all activity occurring under its accounts and shall abide by all applicable local, state, national and foreign laws, treaties and regulations in connection with use of the Software, including, without limitation, those related to data privacy, international communications and the transmission of technical or personal data. City shall notify Consultant immediately of any unauthorized use of any password or account or any other known or suspected breach of security. Consultant does not own any data, information or material that City uses in connection with the Software ("City Data"). City, not Consultant, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use all City Data, and Consultant shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any City Data.

G. Confidentiality. Without the prior written consent of the disclosing Party, the receiving Party will not use any Confidential Information (defined herein) except in performing under this Agreement and will not, by any act or failure to act, divulge to any third party, or cause to be entered into the public domain, any Confidential Information. "Confidential Information" means all information that is transmitted by the disclosing Party to the receiving Party (or otherwise developed or obtained by the receiving Party) in connection with the performance of this Agreement that should reasonably have been understood by the receiving Party due to legends or other markings, the circumstances of disclosure or the nature of the information itself, to be proprietary and confidential to the disclosing Party, including, without limitation, the Software and any proprietary, technical, or other non-public information. Each Party will exercise at least the same amount of diligence in preserving the secrecy of the Confidential Information as it uses in preserving the secrecy of its own most valuable confidential information, but in no event less than commercially reasonable best efforts. Information shall not be considered Confidential Information if and to the extent that it: (1) was in the public domain at the time it was disclosed or has entered the public domain through no fault of the receiving Party; (2) was known to the receiving Party, without restriction, at the time of disclosure as proven by the files of the receiving Party in existence at the time of disclosure; (3) becomes known to the receiving Party, without restriction, from a source other than the disclosing Party without breach of this Agreement by the receiving Party and otherwise not in violation of the other disclosing Party's rights; or (4) disclosure is required by law, including but not limited to, Agency ordinances, resolutions, rules, or policies.

H. Disclaimer. Except as expressly set forth in this agreement and to the maximum extent permitted by applicable law, Consultant makes no representation, warranty, or guaranty as to (1) the use of the software will be secure, timely, uninterrupted, error-free, or operate in combination with any other hardware, software, system, or data, and (2) the software or the server(s) that make the software available are free of viruses or other harmful components. Notwithstanding the aforementioned, the City expressly warrants that the work to be performed pursuant to this Agreement shall be performed in accordance with the standard of care ordinarily exercised by members of the profession currently practicing under similar conditions and in similar locations.

I. **Internet Delays.** The software may be subject to limitations, delays, and other problems inherent in the use of the internet and electronic communications. Consultant is not responsible for any delays, delivery failures, or other damage resulting from such problems.

J. **Software Description and Requirements.** The Software will enable the compliance monitoring of affordable housing properties with various government regulations. The functionality of the Software will be accessed via password at the www.housingcompliance.org website.

City is solely responsible for providing or acquiring the following required hardware and expressly acknowledges that Consultant is not responsible for providing such required hardware:

1. Any computer that supports the Software, such as Pentium-based or equivalent computers running Windows 7 or higher.

City is solely responsible for acquiring separate licenses for the following supporting software, and expressly acknowledges that Consultant is not responsible for providing such supporting software:

a. Consultant supports the following Web browsers: Microsoft Internet Explorer, versions 6.0 or higher, Mozilla Firefox version 2.0 or higher (other Web browsers may work successfully, but are not directly supported by Consultant); and

b. Software requires the following additional software: MS Word, versions 2003 or higher, Excel versions 2003 or higher, and Adobe Acrobat Reader, versions 5.0 or higher.

Consultant may alter the software from time-to-time as ongoing Updates are made to the Software. As a result the screen view for the Software may change from time to time. Consultant will use commercially reasonable efforts to notify City of such changes in advance. Consultant may alter the list of required hardware and supporting software from time-to-time, but will use commercially reasonable efforts to retain compatibility with City's existing hardware and supporting software. Consultant is not responsible for the cost, installation, maintenance or support of any third-party software, hardware, or functionality developed as custom modifications to the Software.

K. **City Data.** Consultant shall back up and protect all City data, using commercially reasonable efforts. City shall designate an authorized contact person(s), who shall have 24/7 access to the aforementioned City Data.

L. **Custom Coding.** The City may from time to time need additional types of reports created from Data and/or Information provided to Consultant. Consultant agrees to provide the additional types of reports as "Additional Service" (as set forth in Article I.A.2.ii) if requested by the City. If Consultant is required to customize its software to meet the City's request, then the City agrees to pay Consultant a Custom Coding Fee, which will be priced based on the scope of work and customization needed at \$175 per hour.

ARTICLE IX. MISCELLANEOUS PROVISIONS

- A. **Assignability.** The services of Consultant are personal to the City, and Consultant shall not assign any interest in this Agreement, and shall not transfer any interest in the same (whether by assignment or notation), without prior written consent of City.
1. Limited Consent. City hereby consents to the assignment of the portions of the Defined Services identified in Exhibit A, Paragraph 16 to the subconsultants identified thereat as "Permitted Subconsultants".
- B. **Ownership, Publication, Reproduction and Use of Material.** All reports, studies, information, data, statistics, forms, designs, plans, procedures, systems and any other materials or properties produced under this Agreement shall be the sole and exclusive property of City. No such materials or properties produced in whole or in part under this Agreement shall be subject to private use, copyrights or patent rights by Consultant in the United States or in any other country without the express written consent of City. City shall have unrestricted authority to publish, disclose (except as may be limited by the provisions of the Public Records Act), distribute, and otherwise use, copyright or patent, in whole or in part, any such reports, studies, data, statistics, forms or other materials or properties produced under this Agreement. This paragraph does not include software developed by Consultant to perform its monitoring services under this Agreement.
- C. **Independent Contractor.** City is interested only in the results obtained and Consultant shall perform as an independent contractor with sole control of the manner and means of performing the services required under this Agreement. City maintains the right only to reject or accept Consultant's work products. Consultant and any of the Consultant's agents, employees or representatives are, for all purposes under this Agreement, independent contractors and shall not be deemed to be employees of City, and none of them shall be entitled to any benefits to which City employees are entitled including but not limited to, overtime, retirement benefits, worker's compensation benefits, injury leave or other leave benefits. Therefore, City will not withhold state or federal income tax, social security tax or any other payroll tax, and Consultant shall be solely responsible for the payment of same and shall hold the City harmless with regard thereto.
1. Actions on Behalf of City. Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever, as an agent or otherwise. Consultant shall have no authority, express or implied, to bind City or its members, agents, or employees, to any obligation whatsoever, unless expressly provided in this Agreement.
 2. No Obligations to Third Parties. In connection with the Project, the Consultant agrees and shall require that it's agents, employees, subcontractors agree that the City shall not be responsible for any obligations or liabilities to any third party, including its agents, employees, subcontractors, or other person or entity that is not a party to this Agreement. Notwithstanding that the City may have concurred in or approved any solicitation,

subagreement, or third party contract at any tier, neither City shall have any obligations or liabilities to such other party.

- D. **Administrative Claims Requirements and Procedures.** No suit or arbitration shall be brought arising out of this Agreement, against the City unless a claim has first been presented in writing and filed with the City and acted upon by the City in accordance with the procedures set forth in Chapter 1.34 of the Chula Vista Municipal Code, as same may from time to time be amended, the provisions of which are incorporated by this reference as if fully set forth herein, and such policies and procedures used by the City in the implementation of same. Upon request by City, Consultant shall meet and confer in good faith with City for the purpose of resolving any dispute over the terms of this Agreement.
- E. **Administration of Contract.** Each party designates the individuals ("Contract Administrators") indicated on Exhibit A, Paragraph 12, as said party's contract administrator who is authorized by said party to represent them in the routine administration of this agreement.
- F. **Term.** The term of this Agreement shall begin when all signatories have signed this Agreement and shall end when Consultant completes the duties set forth in Exhibit A or by June 30, 2015, whichever comes first. The term of this Agreement may be extended if the City elects to extend this Agreement as set forth in Attachment A, Paragraph 8.D.
- G. **Attorney's Fees.** Should a dispute arising out of this Agreement result in litigation, it is agreed that the prevailing party shall be entitled to a judgment against the other for an amount equal to reasonable attorney's fees and court costs incurred. The "prevailing party" shall be deemed to be the party who is awarded substantially the relief sought.
- H. **Statement of Costs.** In the event that Consultant prepares a report or document, or participates in the preparation of a report or document in performing the Defined Services, Consultant shall include, or cause the inclusion of, in said report or document, a statement of the numbers and cost in dollar amounts of all contracts and subcontracts relating to the preparation of the report or document.
- I. **Consultant is Real Estate Broker and/or Salesman.** If the box on Exhibit A, Paragraph 15 is marked, the Consultant and/or their principals is/are licensed with the State of California or some other state as a licensed real estate broker or salesperson. Otherwise, Consultant represents that neither Consultant, nor their principals are licensed real estate brokers or salespersons.
- J. **Notices.** All notices, demands or requests provided for or permitted to be given pursuant to this Agreement must be in writing. All notices, demands and requests to be sent to any party shall be deemed to have been properly given or served if personally served or deposited in the United States mail, addressed to such party, postage prepaid, registered or certified, with return receipt requested, at the addresses identified herein as the places of business for each of the designated parties.

- K. **Integration.** This Agreement, together with any other written document referred to or contemplated herein, embody the entire Agreement and understanding between the parties relating to the subject matter hereof. Neither this Agreement nor any provision hereof may be amended, modified, waived or discharged except by an instrument in writing executed by the party against which enforcement of such amendment, waiver or discharge is sought.
- L. **Capacity of Parties.** Each signatory and party hereto hereby warrants and represents to the other party that it has legal authority and capacity and direction from its principal to enter into this Agreement, and that all resolutions or other actions have been taken so as to enable it to enter into this Agreement.
- M. **Governing Law/Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of California. Any action arising under or relating to this Agreement shall be brought only in the federal or state courts located in San Diego County, State of California, and if applicable, the City of Chula Vista, or as close thereto as possible. Venue for this Agreement, and performance hereunder, shall be the City of Chula Vista.

(Signature Page to Follow)

Signature Page
to
Agreement between
City of Chula Vista and Compliance Services, LLC
To provide compliance monitoring of City of Chula Vista affordable housing projects.

IN WITNESS WHEREOF, City and Compliance Services, LLC, have executed this Agreement thereby indicating that they have read and understood same, and indicate their full and complete consent to its terms:

Dated: _____

For the City of Chula Vista

By: _____

Name:

Title:

Attest:

Donna Norris, City Clerk

Approved as to form:

Glen Googins, City Attorney

Dated: _____

For Compliance Services, LLC,

By: 

Name: *RICHARD B. WARREN*

Title: *GENERAL MANAGER*

Exhibit List to Agreement (X) Exhibit A, B, C.

Exhibit A
to
Agreement between
City of Chula Vista and Chula Vista Housing Authority
and
Compliance Services, LLC,
To provide compliance monitoring of City of Chula Vista affordable housing projects.

1. Effective Date of Agreement: Same as final City signature on the Signature Page of this agreement.

2. City-Related Entity:

City of Chula Vista, a municipal chartered corporation of the State of California

Housing Authority Acting as Successor Housing Agency of the City of Chula Vista, a political subdivision of the State of California

Industrial Development Authority of the City of Chula Vista, a

Other: _____, a [insert business form]

(collectively "City")

3. Place of Business for City:

City of Chula Vista
276 Fourth Avenue
Chula Vista, CA 91910

4. Consultant:

Compliance Services, LLC

5. Business Form of Consultant:

Sole Proprietorship

Partnership

Corporation

Limited Liability Company

6. Place of Business, Telephone and Fax Number of Consultant:

2999 Oak Road, Suite 710

Walnut Creek, CA 94597

Voice Phone: (925) 933-9229 x 225 and Fax: (925) 933-8457

Internet: www.housingcompliance.org

E-mail: clanctot@housingcompliance.org

7. General Duties:

Consultant shall license reporting software to the City for monitoring compliance of all units listed in Exhibit B with applicable federal, state, and local affordability and reporting requirements and related support for the use of said software as detailed below.

8. Scope of Work and Schedule:

A. Detailed Scope of Work:

Consultant shall provide compliance monitoring reporting software for the Properties listed in Exhibit B, or properties that are added to the system at the request of the City, as follows:

1. Consultant shall review the regulatory agreement for each property and prepare a concise Compliance Summary. The summary shall outline tenant eligibility responsibilities specific to each project and provide procedures for ensuring continuing compliance.
2. Property Status Reports (PSRs) will initially be uploaded from an excel file into the compliance reporting software.
3. Consultant shall maintain the FOCUS web-based compliance reporting software that is used by the City to collect semi-annual compliance reports from Developer and Property Managers.
4. Consultant will ensure that each property is set up to allow each Developer to report on property's specific requirements.
5. Consultant will ensure that the applicable HUD/HCD income and rent limits are set up in the system for each Property, as applicable.
6. Consultant shall add new properties to the system at the request of the City.
7. Consultant shall support the City in the resolution of legal issues involving regulatory agreement enforcement.

B. Date for Commencement of Consultant Services:

(X) Same as Effective Date of Agreement

() Other: _____

C. Dates or Time Limits for Delivery of Deliverables:

Deliverable No. 1: The following shall be completed:

- Upload HCD and HUD Income Limits and Rents, as they become available.

Deliverable No. 2:

- Set up new properties on the FOCUS system (includes data load), as needed.

Deliverable No. 3: Provide technical assistance to users

D. Date for completion of all consultant services: June 30, 2015.

Subject to City Council approval, the City, in its sole and unfettered discretion, has the option to extend this Agreement for up to three additional years. Said extension shall be without going through the City's Consultant selection process as outlined in the City's Municipal Code. The City Contract Administrator shall give notice of election to extend this Agreement by sending notice by letter to Consultant.

9. Materials and Services required by the City to Consultant and to implement the contract:

The City will provide to Consultant the following: (1) Regulatory agreements; (2) contact information for each property manager; and (3) monitoring schedule.

City shall notify all property managers and sign-up users at the end of the reporting period to login to the FOCUS software and submit their semi-annual reports.

10. Compensation:

Notwithstanding the below compensation terms, the total compensation for this Agreement shall not exceed: sixty thousand dollars (\$60,000).

A. (X) Single Fixed Fee Arrangement.

For performance of all of the Defined Services by Consultant as herein required, City shall pay a single fixed fee in the amounts and at the times or milestones or for the Deliverables set forth below:

Single Fixed Fee Amount: Properties listed in Exhibit B, payable as follows:

<u>Milestone or Event or Deliverable</u>	<u>Amount or Percent of Fixed Fee</u>
Beginning of Fiscal Year	\$12,000 Annual License Fee
New Property Set Up Completion	\$300 per property and \$6 per unit (with a minimum of \$500.00) annually

Description:

Annual License Fee:

During the Term of this Agreement, City agrees to pay Consultant an Annual License Fee of \$12,000 for the properties listed in Exhibit B. Additional Properties may be added to this Agreement at any time for an additional \$300 set-up fee and an increase to the annual fee of \$6.00 per unit per year with a minimum of \$500 per Property. The Annual License Fee shall be prorated for any partial years or mid-year Fee adjustments during the Term.

City anticipates adding the following properties during the next 12 months:

Lofts on Landis -\$300 set up fee, \$500 Annual Fee

Congregational Tower- \$300 set up fee, \$1,116 Annual Fee

Garden Villas (FKA Kiku Gardens)- \$300 set up fee, \$600 Annual Fee.

License fee pricing will remain in effect for the first twelve (12) months of the Term. An initial price adjustment can be made, upon reasonable notification to City, after the first twelve (12) month period of the Term and, thereafter, on an annual basis. Price adjustments must be supported by appropriate written documentation such as the Consumer Price Index. Price increase shall not exceed five (5%) over one (1) calendar year period. Price adjustments will not be retroactive. Price adjustments are effective immediately.

() 1. Monthly Payments. The City shall make monthly payments against the Single Fixed Fee Amount. Each payment shall be equal to the Single Fixed Fee Amount specified above for a particular fiscal year divided by the total number of months for which the Consultant's services have been contracted for that same fiscal year.

() 2. Interim Monthly Advances. The City shall make interim monthly advances against the compensation due for each phase on a percentage of completion basis for each given phase such that, at the end of each phase only the compensation for that phase has been paid. Any payments made hereunder shall be considered as interest free loans that must be returned to the City if the Phase is not satisfactorily completed. If the Phase is satisfactorily completed, the City shall receive credit against the compensation due for that phase. The retention amount or percentage set forth in Paragraph 19 is to be applied to each interim payment such that, at the end

of the phase, the full retention has been held back from the compensation due for that phase. Percentage of completion of a phase shall be assessed in the sole and unfettered discretion by the Contracts Administrator designated herein by the City, or such other person as the City Manager shall designate, but only upon such proof demanded by the City that has been provided, but in no event shall such interim advance payment be made unless the Contractor shall have represented in writing that said percentage of completion of the phase has been performed by the Contractor. The practice of making interim monthly advances shall not convert this agreement to a time and materials basis of payment.

B. () Phased Fixed Fee Arrangement.

For the performance of each phase or portion of the Defined Services by Consultant as are separately identified below, City shall pay the fixed fee associated with each phase of Services, in the amounts and at the times or milestones or Deliverables set forth. Consultant shall not commence Services under any Phase, and shall not be entitled to the compensation for a Phase, unless City shall have issued a notice to proceed to Consultant as to said Phase.

<u>Phase</u>	<u>Fee for Said Phase</u>
1.	\$ _____
2.	\$ _____
3.	\$ _____

() 1. Interim Monthly Advances. The City shall make interim monthly advances against the compensation due for each phase on a percentage of completion basis for each given phase such that, at the end of each phase only the compensation for that phase has been paid. Any payments made hereunder shall be considered as interest free loans that must be returned to the City if the Phase is not satisfactorily completed. If the Phase is satisfactorily completed, the City shall receive credit against the compensation due for that phase. The retention amount or percentage set forth in Paragraph 19 is to be applied to each interim payment such that, at the end of the phase, the full retention has been held back from the compensation due for that phase. Percentage of completion of a phase shall be assessed in the sole and unfettered discretion by the Contracts Administrator designated herein by the City, or such other person as the City Manager shall designate, but only upon such proof demanded by the City that has been provided, but in no event shall such interim advance payment be made unless the Contractor shall have represented in writing that said percentage of completion of the phase has been performed by the Contractor. The practice of making interim monthly advances shall not convert this agreement to a time and materials basis of payment.

C. () Hourly Rate Arrangement

For performance of the Defined Services by Consultant as herein required, City shall pay Consultant for the productive hours of time spent by Consultant in the performance of said Services, at the rates or amounts set forth in the Rate Schedule herein below according to the following terms and conditions:

(1) () Not-to-Exceed Limitation on Time and Materials Arrangement

Notwithstanding the expenditure by Consultant of time and materials in excess of said Maximum Compensation amount, Consultant agrees that Consultant will perform all of the Defined Services herein required of Consultant for \$ _____, including all Materials, and other "reimbursables" ("Maximum Compensation").

(2) () Limitation without Further Authorization on Time and Materials Arrangement

At such time as Consultant shall have incurred time and materials equal to ("Authorization Limit"), Consultant shall not be entitled to any additional compensation without further authorization issued in writing and approved by the City. Nothing herein shall preclude Consultant from providing additional Services at Consultant's own cost and expense.

() Hourly rates may increase by 6% for services rendered after [month], 20____, if delay in providing services is caused by City.

11. Materials Reimbursement Arrangement

A. For the cost of out of pocket expenses incurred by Consultant in the performance of services herein required, City shall pay Consultant at the rates or amounts set forth below:

(X) None, the compensation includes all costs.

	Cost or Rate
() Reports, not to exceed \$ _____:	\$ _____
() Copies, not to exceed \$ _____:	\$ _____
() Travel, not to exceed \$ _____:	See Paragraph B.
() Printing, not to exceed \$ _____:	\$ _____
() Postage, not to exceed \$ _____:	\$ _____
() Delivery, not to exceed \$ _____:	\$ _____
() Outside Services:	\$ _____
() Other Actual Identifiable Direct Costs:	\$ _____
_____ , not to exceed \$ _____:	\$ _____
_____ , not to exceed \$ _____:	\$ _____

12. Contract Administrators:

City: Jose Dorado, Project Coordinator
Voice Phone: (619) 476-5375
Fax Phone: (619) 585-5698
Email: jdorado@ci.chula-vista.ca.us

Consultant: Caitlin Lanctot, Compliance Manager
Voice Phone: (925) 933-3033 x. 225
Fax Phone: (925) 933-8457
Email: clanctot@housingcomplainece.org

13. Liquidated Damages Rate:

- \$_____ per day.
 Other: _____

14. Statement of Economic Interests, Consultant Reporting Categories, per Conflict of Interest Code:

Not Applicable. Not an FPPC Filer.

FPPC Filer

- Category No. 1. Investments and sources of income.
- Category No. 2. Interests in real property.
- Category No. 3. Investments, interest in real property and sources of income subject to the regulatory, permit or licensing authority of the department.
- Category No. 4. Investments in business entities and sources of income that engage in land development, construction or the acquisition or sale of real property.
- Category No. 5. Investments in business entities and sources of income of the type which, within the past two years, have contracted with the City of Chula Vista (Redevelopment Agency) to provide services, supplies, materials, machinery or equipment.
- Category No. 6. Investments in business entities and sources of income of the type which, within the past two years, have contracted with the designated employee's department to provide services, supplies, materials, machinery or equipment.

() Category No. 7. Business positions.

() List "Consultant Associates" interests in real property within 2 radial miles of Project Property, if any:

15. () Consultant is Real Estate Broker and/or Salesman

16. Permitted Subconsultants: None

17. Bill Processing:

A. Consultant's billing to be submitted for the following period of time:

(X) Monthly

() Quarterly

() Other: _____

B. Day of the period for submission of Consultant's billing:

() First of the Month

() 15th Day of each Month

(X) End of the Month

() Other: _____

C. City's Account Number:

18. Security for Performance

() Performance Bond, \$ _____

() Letter of Credit, \$ _____

() Other Security: _____

Type: _____

Amount: \$ _____

() Retention. If this space is checked, then notwithstanding other provisions to the contrary requiring the payment of compensation to the Consultant sooner, the City shall be entitled

to retain, at their option, either the following "Retention Percentage" or "Retention Amount" until the City determines that the Retention Release Event, listed below, has occurred:

Retention Percentage: _____%

Retention Amount: \$_____

Retention Release Event:

Completion of All Consultant Services

Other: _____

Exhibit B

	Property Name and Address	Number of Restricted Units
1	Cordova Village (Rancho Del Rey) 1280 East J St. Chula Vista, CA 91910	40
2	Teresina Apts 1250 Santa Cora Avenue Chula Vista, CA 91911	88
3	Sunrose 1325 Santa Rita Ave.	180
4	Rancho Buena Vista Apts (Eastlake) 2155 Corte Vista Chula Vista, CA 91915	150
5	*Main Plaza 1689 Broadway Chula Vista, CA 91911	106
6	Los Vecinos 1501 Broadway Chula Vista, CA 91910	42
7	St. Regis Park (aka Peartree Apts) 1025 Broadway Chula Vista, CA 91911	118
8	Landings I 2122 Burdock Way Chula Vista, CA 91915	92
9	Landings II Under Construction	143
10	Villa Serena Senior Apartments 1231 Medical Center Dr. Chula Vista, CA 91911	132
11	Harvest Ridge Seniors 1325 Santa Rita Avenue Chula Vista, CA 91913	91
12	MAAC Seniors On Broadway 1325 Broadway, Chula Vista, CA 91910	40
13	Oxford Terrace 555 Oxford St. Chula Vista, CA 91911	105
Total Restricted Units:		1327

*Property is already monitored by Compliance Services. There is no annual compliance monitoring fee for this property.