



**Agreement between
City of Chula Vista
and
WILLDAN FINANCIAL SERVICES
FOR SPECIAL DISTRICT APPORTIONMENT,
DELINQUENCY MONITORING
ADMINISTRATION AND OTHER SERVICES**

This agreement (Agreement), effective February 3, 2015 is between the City-related entity whose name and business form is indicated on Exhibit A, Paragraph 2, (City), and the entity whose name, business form, place of business and telephone numbers are indicated on Exhibit A, Paragraphs 4 through 6, (Consultant), and is made with reference to the following facts:

RECITALS

WHEREAS, the City has formed Assessment Districts to provide funding for benefiting properties and infrastructure under the Municipal Improvement Act of 1913 and 1915; and,

WHEREAS, the City has formed, or is in the process of forming, Mello-Roos Community Facilities Districts to provide funding for the construction of infrastructure or for the maintenance of open space areas in accordance with the Community Facilities Act of 1982; and,

WHEREAS, the City has formed 24 Open Space Districts to provide funding for perpetual maintenance of common open space areas; and,

WHEREAS, Section 8730 of the Streets and Highways Code requires that when a parcel of land upon which there is an unpaid assessment divides, the original assessment must be segregated and apportioned in accordance with the benefits to the several parts of the original list; and,

WHEREAS, the Request for Proposal was prepared and advertised, proposals were received and reviewed, and firms were interviewed and ranked in accordance with City Policies; and,

WHEREAS, Willdan Financial Services was selected as the most qualified to provide Special District Administration, Apportionment and Delinquency Monitoring Services based on the qualifications of their staff, resources available to perform tasks on time, firm experience directly related this agreement and total annual costs; and,

WHEREAS, Consultant warrants and represents that they are experienced and staffed in a manner such that they are and can prepare and deliver the services required of Consultant to City within the time frames herein provided all in accordance with the terms and conditions of this Agreement;



[End of Recitals. Next Page Starts Obligatory Provisions.]



OBLIGATORY PROVISIONS PAGES

NOW, THEREFORE, for valuable consideration the City and Consultant do hereby mutually agree as follows:

All of the Recitals above are incorporated into this Agreement by this reference.

ARTICLE I. CONSULTANT'S OBLIGATIONS

A. General

1. General Duties. Consultant shall perform all of the services described on Exhibit A, Paragraph 7 (General Duties).
2. Scope of Work and Schedule. In performing and delivering the General Duties, Consultant shall also perform the services, and deliver to City the "Deliverables" described in Exhibit A, Paragraph 8, entitled "Scope of Work and Schedule," according to, and within the time frames set forth in Exhibit A, Paragraph 8, 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 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.
 - a. *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 the reduction.
 - b. *Additional Services.* In addition to performing the Defined Services, 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 set forth in the "Rate Schedule" in Exhibit A, Paragraph 10(C), unless a separate fixed fee is otherwise agreed upon. 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.



- a. *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 this 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 this 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, amend or terminate this Agreement, or portions of it, expeditiously.

1. Subcontractors. Consultant agrees to take appropriate measures necessary to ensure that all participants utilized by the Consultant to complete its obligations under this Agreement, 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 ensure 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 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 this 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:*
 - a. *CGL.* Insurance Services Office Commercial General Liability coverage (occurrence Form CG0001).
 - b. *Auto.* Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto).



c. *WC.* Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

d. *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.** *Consultant 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:*



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- a. *Additional Insureds.* City of Chula Vista, its officers, officials, employees, agents, and volunteers are to be named as additional insureds with respect to 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 Consultant's insurance using ISO CG 2010 (11/85) or its equivalent. Specifically, the endorsement must not exclude Products/Completed Operations coverage.
 - b. *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 Consultant and in no way relieves the Consultant from its responsibility to provide insurance.
 - c. *Cancellation.* The insurance policies required by this Agreement shall not be canceled by either party, except after thirty 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.
 - d. *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.
 - e. *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:
- a. *Retro Date.* The "Retro Date" must be shown, and must be before the date of the Agreement or the beginning of the work required by the Agreement.
 - b. *Maintenance and Evidence.* Insurance must be maintained and evidence of insurance must be provided for at least five years after completion of the work required by the Agreement.



- c. *Cancellation.* If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a "Retro Date" prior to the effective date of the Agreement, the Consultant must purchase "extended reporting" coverage for a minimum of five years after completion of the work required by the Agreement.
 - d. *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 effecting coverage required by Section I.C. of this Agreement. The endorsements should be on insurance industry forms, provided those endorsements or policies conform to the requirements of this Agreement. 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. Consultant 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 amount indicated at Exhibit A, Paragraph 18, 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.

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 its 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 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, and to provide direction and guidance to achieve the objectives of this Agreement. The City shall allow Consultant access to its office facilities, files and records, as deemed necessary and appropriate by the City, throughout the term of this Agreement. In addition, City agrees to provide the materials identified at Exhibit A, Paragraph 9, with the understanding that delay in the provision of those materials beyond thirty days after authorization to proceed, shall constitute a basis for the justifiable delay in the Consultant's performance.

B. Compensation.

1. Following Receipt of Billing. Upon receipt of a properly prepared bill from Consultant, submitted to the City 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 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; or 2) arising out of or related to the errors, omissions, negligence or acts of willful misconduct of the Consultant, its agents, employees, or subcontractors.
 - a. *Errors and Omissions.* In the event that the City Administrator determines that the Consultant's 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 in this paragraph 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.
 - a. *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 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 that:
 - a. 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.

- b. 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.
- c. 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.
- d. 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 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 Design Professional Services covered under Article V., Section A.2., Consultant shall defend, indemnify, protect and hold harmless the City, its elected and appointed officers, agents 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, active negligence or 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. Design Professional Services. If Consultant provides design professional services, as defined by California Civil Code section 2782.5, as may be amended from time to time, Consultant 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 the negligence, recklessness, or willful misconduct of Consultant, its officials, officers, employees, agents, consultants, and contractors arising out of or in connection with the performance of Consultant's services. Consultant's duty to defend, indemnify, and hold harmless shall not include any claims or liabilities arising from the sole negligence, active negligence or willful misconduct of the City, its agents, officers or employees. This section in no way alters, affects or modifies the Consultant's obligations and duties under this Agreement.
1. Costs of Defense and Award. Included in the obligations in Sections A.1 and A.2, above, is the Consultant's obligation to defend, at Consultant's own cost, expense and risk, any and all suits, actions or other legal proceedings, that may be brought or instituted against the



City, its directors, officials, officers, employees, agents and/or volunteers, subject to the limitations in Sections A.1. and A.2. 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 related legal expenses and costs incurred by each of them, subject to the limitations in Sections A.1. and A.2.

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.
- 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 in this section.

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 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, Consultant agrees to submit a final certification of Project expenses and audit reports, as applicable.
- B. **Audit of Consultants.** Consultant agrees to perform financial and compliance audits the City may require. The Consultant also agrees to obtain any other audits required by City. Consultant agrees that Project closeout will not alter 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 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 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.
- 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 to them.
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, Consultant agrees and shall require that its agents, employees, subcontractors agree that 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 City may have concurred in or approved any solicitation, subagreement, or third party contract at any tier, City shall have no obligation or liability to any person or entity not a party to this Agreement.
- D. Administrative Claims Requirements and Procedures.** No suit or arbitration shall be brought arising out of this Agreement, against City unless a claim has first been presented in



writing and filed with City and acted upon by 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 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 that party's contract administrator who is authorized by the party to represent it in the routine administration of this Agreement.
- F. **Term.** This Agreement shall terminate when the parties have complied with all executor provisions hereof.
- 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 attorneys' 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 the 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 its principals is/are licensed with the State of California or some other state as a real estate broker or salesperson. Otherwise, Consultant represents that neither Consultant, nor its 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 in this Agreement 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 in it, embody the entire Agreement and understanding between the parties relating to the subject matter hereof. Neither this Agreement nor any provision of it 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 to this Agreement 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 necessary 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 under it, shall be the City of Chula Vista.

(End of page. Next page is signature page.)



**Signature Page
to
Agreement between
City of Chula Vista and
WILLDAN FINANCIAL SERVICES
FOR SPECIAL DISTRICT APPORTIONMENT,
DELINQUENCY MONITORING
ADMINISTRATION AND OTHER SERVICES**

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

Dated _____, 2015

City of Chula Vista

By: _____
Mary Casillas Salas, Mayor

Attest:

Donna Norris, City Clerk

Approved as to form:

Glen R. Googins, City Attorney

Dated January 7, 2015

WILLDAN FINANCIAL SERVICES

By: _____
MARK RISCO
PRESIDENT & CEO

Exhibit List to Agreement: Exhibit A



Exhibit A
to
**Agreement between
City of Chula Vista
and
WILLDAN FINANCIAL SERVICES**

1. Effective Date: The Agreement shall take effect upon full execution of the Agreement, as of the effective date stated on page 1 of the Agreement.

2. City-Related Entity:

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

() The Chula Vista Public Financing Authority, a

() The Chula Vista Industrial Development Authority, a

() Other: _____, a [insert business form]

(City)

3. Place of Business for City:

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

4. Consultant:

WILLDAN FINANCIAL SERVICES

5. Business Form of Consultant:

() Sole Proprietorship

() Partnership

(X) Corporation

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

**27368 VIA INDUSTRIA, SUITE 110
TEMECULA, CA 92590**



TELEPHONE: (951) 587-3500

FAX: (951) 587-3510

7. General Duties:

- The Consultant shall provide Special District Administration, Apportionment and Delinquency Monitoring Services as requested by the City from February 3, 2015 through February 2, 2018. The City Manager, at his/her sole discretion, may extend the agreement for two consecutive one-year periods. The two additional one-year periods shall be on the same terms and conditions. All services shall be in accordance with the City's covenants in the Bond Indenture for each Assessment District and Community Facilities District.
- The Consultant shall provide Assessment District apportionment services as requested by the City for tax years 2015/2016 through 2017/2018, as delineated in Section 8730 of the Streets and Highways Code. The Code states that when a parcel of land upon which there is an unpaid assessment divides, the original assessment must be segregated and apportioned in accordance with the benefits to the several parties of the original lot.
- The Consultant shall provide Community Facilities District administration services as requested by the City. It is anticipated that additional CFD's, both bonded and non-bonded Districts for construction of infrastructure and landscape maintenance Districts, will be added during the term of this contract. The Respondent's proposal shall take this into account.
- The Consultant shall provide Assessment District and Community Facilities District delinquency monitoring services as requested by the City. Delinquencies processed may have occurred outside the time periods specified in the contract.
- Provide Open Space District administration services as requested by the City.

8. Scope of Work and Schedule:

iii. Detailed Scope of Work:

The Consultant will be responsible for the following tasks:

- i. Community Facilities District (CFDs) Administration
 - a. Expert Resource: Consultant shall act as the City's "expert resource," and shall be available to answer questions and advise the City on particular issues involving the CFDs.
 - b. Data Collection: Consultant shall gather and review data pertinent to the administration of the CFDs. Data will be obtained from various sources such as assessor's parcel maps, building permits and County Assessor information as determined to be necessary based on the requirements of the Rate and Method of Apportionment for each CFD (hereinafter "Rate and Method of Apportionment") Consultant will maintain and periodically update a



- database of all parcels within the districts and relevant parcel information.
- c. Administrative Cost Recovery: Consultant shall identify all costs associated with the administration of the CFDs and recover those costs through the levy process as outlined in 53317(e) and 53340 of the Government Code of the State of California. Such costs may include, but are not limited to: bank fees, legal fees, County tax collection fees, and all costs and expenses of the public agency and its consultants related to district administration.
 - d. Cash and Equivalents Analysis: Consultant shall determine the Cash and Equivalents balance requirements, acquire the current Cash and Equivalents balances and make recommendations to keep the flow of funds and fund balances in compliance with the bond documents. Fund transfers might include the transfer of available surplus funds to be used as levy credits or the transfer of reserve funds to the redemption fund upon the prepayment of assessments. Cash flow analysis will be performed to determine any levy shortfall or surplus collections.
 - e. Special Tax Requirement: Consultant shall calculate the annual Special Tax Requirement (hereinafter "Special Tax" or "Special Taxes") that will include all necessary components as outlined in the Rate and Method of Apportionment, such as principal and interest due, administrative expenses, collection for direct financing of services or facilities and a fund credit or replenishment as determined from analysis of the district funds.
 - f. Levy Calculation: Consultant shall calculate the annual special tax levy for each parcel within the CFDs following the guidelines established in the Rate and Method of Apportionment.
 - g. Prior to June 30th of each year this Agreement is in effect, Consultant shall provide the City with Special Tax for each district, and each billing category within said district. Preceding submittal to the County, Consultant shall provide the City a computer disk or other mutually agreed upon format, which will include the district number, parcel number, and maximum Special Tax on each parcel – in a format which will be acceptable to the City.
 - h. Meeting Attendance: Consultant shall attend any district-related City Council/Board meeting related to district administration, as requested by the City.
 - i. Special Tax Levy Submittal: Consultant shall submit all Special Tax Levies to the County Auditor Controller in the required format and medium (i.e. tape, diskette). Special Tax Levies rejected by the County Auditor Controller will be promptly researched and resubmitted for collection on the same County Tax Roll. Any parcels that are not submitted to the County for collection will be invoiced directly to the parcel owner, with payment submitted to the public agency.
 - j. Special Tax Levy Report: Consultant shall provide an annual Special Tax Levy Report. This report will include a parcel listing with levy amounts and



other parcel information, the details of the annual Special Tax Requirement, current delinquency information, fund analysis, administrative expenses to be recovered, status of the project and current issues affecting the districts.

- k. Delinquency Monitoring: Consultant shall provide a comprehensive list of delinquencies after each special tax installment becomes due. The delinquency report will provide the district's overall delinquency percentage as well as a detailed list of each delinquent parcel, with the name and address of the delinquent parcel owner, the delinquent amount and penalties.
- l. Backup Special Tax: Consultant shall calculate a Backup or Extraordinary Special Tax and determine if payment of the Backup or Extraordinary Special Tax is required for CFDs 97-3, 98-3, 99-1, 2000-1, 2001-1, 2001-2 and other new CFDs as requested by the City. This shall be calculated using information obtained from approved maps and building permits over the past year and compared to the tables provided in the Rate and Method of Apportionment for each CFD to determine if there is any loss in units or residential floor area. If the Extraordinary Special Tax is required, Consultant shall provide a list of parcels and amounts owed. For CFD 98-3, the Extraordinary Special Tax shall be calculated and included in the billing in accordance with the Rate and Method of Apportionment.
- m. Prepayment Calculations: Consultant shall provide special tax prepayment calculations to interested parties. The party requesting the calculation shall pay the fee of any prepayment calculations.
- n. Bond Calls: Consultant shall prepare the spread of principal to be called within maturities for all bond calls and coordinate the call with the Paying Agent/Trustee.
- o. Release of Liens: Consultant shall prepare and file all documents required to release the liens of parcels that have prepaid the special tax or where the districts has matured.
- p. CDIAC Reporting: Consultant shall perform all necessary reporting to the California Debt and Investment Advisory Commission as required by 53359.5(b) and 53359.5(c) of the Government Code of the State of California.
- q. Notice of Special Tax Disclosure: Consultant shall provide Notice of Special Tax Disclosure notices to requesting parties as required by 53340.2 and 53341.5 of the Government Code of the State of California. The fee of any Notice of Special Tax shall be billed to the party requesting the disclosure form.
- r. Toll-Free Phone Number: Consultant will provide a toll-free phone number for use by the City, other interested parties and all property owners. Consultant's staff shall be available to answer questions regarding the districts and ongoing collection of the special tax during normal business hours (Mon. – Fri. 8:00am to 5:00pm). Bilingual staff shall be available for



Spanish-speaking property owners.

- s. Consultant Coordination: Consultant will provide all documentation and information to other City consultants as necessary throughout the year.

ii. *1913 and 1915 Act Assessment District Administration Services*

- a. Expert Resource: First and foremost, Consultant shall act as the City's "expert resource," and shall be available to answer questions and advise the City on particular issues involving Assessment Districts.
- b. Kick-Off Meeting, Project Schedule: Consultant shall meet with City staff, legal counsel and other interested parties to:
 - Establish lines of communication.
 - Clarify the specific project goals and criteria that will meet the City's preference.
 - Identify and resolve any special circumstances that may be involved in the administration of the districts.
 - Develop project schedules to meet legal requirements and provide for effective interaction of all involved parties.
 - Establish meeting dates consistent with schedule to achieve project milestones.
- c. Data Collection: Consultant shall gather and review data relevant to the administration of the districts. Data shall be obtained from various sources, including, but not limited to, City records, Assessor's parcel maps, and County Assessor information. A database containing said information for each of the Assessment Districts shall be created by Consultant.
- d. Policy Review: Consultant shall review policies and procedures that have been established by the Agency for compliance with governing documents and law. These policies shall be incorporated into Consultant's service to the City.
- e. Cost Recovery: Consultant shall identify all costs associated with the administration of the Assessment Districts and recover those costs through the levy process as outlined in 8682 and 8682.1 of the California Streets and Highways Code. These costs may include, but not be limited to Registrar/Transfer/Paying Agent fees, arbitrage Rebate calculation fees, bank fees and expenses of the City and its consultants related to the administration of the districts.
- f. Fund Analysis: Consultant shall determine the balance requirements and acquire the current cash balances for the districts. Consultant shall make recommendations to ensure that the flow of funds and fund balances are in compliance with bond documents. Cash flow analysis shall also be performed to determine any levy shortfall or surplus.
- g. Annual Assessment Levy: Consultant shall calculate the annual assessment



levy for each parcel in each of the districts and submit the amount for each parcel to the County in the format and medium (i.e. tape, diskette) required by the County Auditor-Controller.

- h. Resubmission or Rejects: Consultant shall research the status of any parcels rejected by the County Auditor-Controller, and resubmit corrected data for collection on the same County Tax Roll. Any parcels that are not accepted by the County for collection shall be invoiced directly, with payment directed to the City.
- i. Maintain Assessment District Data: Consultant shall annually track all parcel changes to ensure that all changes are documented. Historical parcel change and assessment apportionment data shall be maintained by Consultant.
- j. Annual Report: Consultant shall provide a comprehensive Assessment District Report that shows a detail listing of the amounts submitted to the levy or directly billed for collection, details of delinquent assessments, fund analysis, paid off parcels and release of liens, all bond call activity, and assessed valuation information.
- k. Delinquency Monitoring: Consultant shall provide the City with a comprehensive list of delinquencies after each installment becomes due. This report shall show delinquency percentage as well as a detailed list of each delinquent parcel, with the name and address of the delinquent parcel owner, the delinquent amount and penalties.
- l. Prepayment Calculation/Amortization Schedule: Consultant shall provide assessment prepayment calculations and amortization schedules to interested parties. The requester shall pay the cost of this service; however, there shall be no charge to the City or property owners.
- m. Bond Calls: Consultant shall prepare the spread of principal to be called within maturities for all bond calls and coordinate the call with the Paying Agent/Trustee.
- n. Release of Liens: Consultant shall prepare and file all documents required to release the liens of parcels that have prepaid the assessment.
- o. Notice of Special Assessment: Consultant shall provide a "Notice of Special Assessment" disclosure notice to requesting parties required by 53754 of the Government Code of the State of California. The fee of any Notice of Special Tax shall be paid by the party requesting the disclosure notice.
- p. Toll-Free Phone Number: Consultant shall provide a toll-free phone number for use by the City, other interested parties and all property owners. Consultant's staff shall be available to answer questions regarding the formation and ongoing collection of assessments for the districts during normal business hours (Mon., - Fri. 8:00am to 5:00pm). Bilingual staff shall be available for Spanish-speaking property owners.
- q. County Assessor Reporting: Consultant shall work with the County Assessor to aid in complying with the requirements of Revenue & Taxation Code



Section 163. This includes providing data such as parcel number, original assessment and current principal balance to the County Assessor.

- r. Consultant Coordination: Consultant shall provide all documentation and information to other City consultants as necessary throughout the year.

iii. *Open Space District Tax Roll Billing*

- a. Expert Resource: First and foremost, Consultant shall act as the City's "expert resource," and shall be available to answer questions and offer advice on particular issues involving the Open Space Districts.
- b. Kick-Off Meeting: Consultant shall meet with City staff to discuss:
 - Tax roll billing steps and appropriate timeline.
 - Method of application of the assessment and the data required to establish the proper procedure for levying the assessment.
 - The process to follow for any appeals or disputes.
- c. Data Gathering: Consultant shall gather and review data pertinent to the calculation and billing of the Open Space District and apply the formula, created during district formation, to determine each parcel's assessment (hereinafter "assessment formula"). Data shall be obtained from various sources, including, but not limited to, the City, assessor parcel maps and County Assessor information.
- d. Quality Control: Consultant shall perform cross-reference tests looking at the various data sources, land use codes, and other pertinent information to ensure the best and most accurate levy application.
- e. Database Maintenance: Consultant shall maintain and periodically update a database of all parcels within each district and relevant parcel information.
- f. Levy Calculation: Consultant shall calculate the annual levy for each parcel within the district following the guidelines established by the assessment formula.
- g. Prior to June 30th of each year this Agreement is in effect, Consultant shall provide the City with assessment rates for each district, and each billing category within said district. Preceding submittal to the County, Consultant shall provide to the City a computer disk or other mutually agreed upon media, which includes the district number, parcel number, and maximum assessment on each parcel in a format acceptable to the City.
- h. County Submittal: Consultant shall submit the levy to the County Auditor-Controller in the required electronic format. Levies rejected by the County Auditor Controller shall be researched and resubmitted for collection on the same County Tax Roll. Any parcels that are not submitted to the County for collection shall be invoiced with payment to be directed to the City.
- i. Reporting: Consultant shall provide an annual Open Space District Levy Report. The report shall include a parcel listing with levy amounts. Parcel and levy data can be provided via a CD ROM diskette or electronic file.



- j. Consultant Coordination: Consultant shall provide all documentation and information to other City consultants as necessary throughout the year.
- k. Toll-Free Phone Number: Consultant shall provide a toll-free phone number for use by the City and property owners. Consultant staff shall be available to answer questions regarding the formation and ongoing collection of assessments for the districts during normal business hours (Mon., - Fri. 8:00am to 5:00pm). Bilingual staff shall be available to assist Spanish-speaking property owners.

iv. Delinquency Management

- a. Delinquency Reports: Consultant shall provide the City with an updated list of delinquencies prior to sending any of the letters listed in this subsection 8.A.iv.) This report shall also detail each district's percentage of delinquencies, as well as a detailed list of each delinquent parcel.
- b. Reminder Letter: At the City's direction, send a reminder letter (the form of which shall be approved by the City) to the property owner of each delinquent parcel for the December 10th installment. The purpose of the letter is to inform and educate the property owner of their obligation to pay assessments.
- c. Demand Letter: At the City's direction, send a reminder letter (the form of which shall be approved by the City) to the property owner of each delinquent parcel for the April 10th installment. This letter shall be mailed to any property owner who remains delinquent for both installments or who is delinquent after April 10th only. The purpose of this letter is to further educate the property owner and advise them of potential foreclosure.
- d. Foreclosure Letter: Upon authorization from the City, Consultant shall send final twenty-one (21) day delinquency foreclosure letter to each delinquent property owner via certified mail. This type of letter is typically sent after the installments for a parcel have been removed from the tax roll. The letter delineates what amount must be paid directly to the City to forestall the turnover of documents to the foreclosure attorney.
- e. Tax Roll Removal: Consultant shall provide and file (if necessary) the information required to remove parcels from the tax roll. Consultant
- f. At the City's discretion, Consultant may be order ordered to offer payment plans to property owners in lieu of turning parcels over to the City's foreclosure counsel
- g. Subsequent Foreclosure Services: Once a decision to foreclose has been made by City, Consultant shall prepare and deliver al information to the City's foreclosure counsel. Consultant shall also continue to supply the City's counsel with additional information throughout the foreclosure process. Consultant shall continue to respond to property owner (unless ordered not to) and City staff phone calls regarding the status of all cases,



and shall coordinate and audit status reports on a bi-monthly basis from the City's foreclosure counsel. For those parcels sent to foreclosure, Consultant shall assist foreclosure counsel to initiate and prosecute judicial foreclosure proceedings in compliance with bond foreclosure covenants.

- h. Toll-Free Phone Number: Consultant shall provide a toll-free phone number for use by the City, other interested parties and all property owners. Consultant's staff shall be available to answer questions regarding the formation and ongoing collection of assessments/special taxes for the districts during normal business hours (Mon. – Fri. 8:00am to 5:00pm). Bilingual staff shall be made available for Spanish-speaking property owners.
- i. Consultant Coordination: Consultant shall provide all documentation and information to other City consultants as necessary throughout the year.

v. *Bond Issue Continuing Disclosure*

In accordance with the Disclosure Certificate of a bond issue, Consultant shall assist in compliance with the annual disclosure requirement of the SEC Continuing Disclosure Rule 15c2-12. Specifically, Consultant shall perform the following:

- a. Document Review: Consultant shall review pertinent documents related to the bond issue, including the Official Statement and Disclosure Certificate. Consultant shall identify material such as the Consolidated Annual Financial Report and/or other operating data that the City has agreed to provide in the Disclosure Certificate.
- b. Data Collection: Consultant shall collect the annual financial information and operating data that the City has agreed to provide to each Nationally Recognized Municipal Securities Information Repository (NRMSIR) and the appropriate State Information Depository (SID), if any.
- c. Report Preparation: Consultant shall prepare the Annual Disclosure Report as required in the Disclosure Certificate.
- d. Annual Dissemination: Consultant shall disseminate the Annual Disclosure Report to state and national repositories and post to our website to allow public access free of charge.
- e. Significant Events: Consultant shall prepare and disseminate a "Notice of Significant Events", as listed on the Continuing Disclosure Certificate, to the appropriate SID and to either each NRMSIR or the Municipal Securities Rulemaking Board (MSRB). Consultant's actions pursuant to this subsection should commence upon notification by the City of the occurrence of any of the events, if deemed by the City to be material. Typical significant events may include:
 - Principal and interest payment delinquencies
 - Non-payment related defaults
 - Unscheduled draws on debt service reserves reflecting financial difficulties



- Unscheduled draws on credit enhancements reflecting financial difficulties
- Substitution of credit or liquidity providers, or their failure to perform
- Adverse tax opinions or events affecting the tax-exempt status of the security
- Modifications to the rights of security holders
- Bond calls
- Defeasances
- Release, substitution, or sale of property securing repayment of the securities
- Rating changes

f. Consultant Coordination: Consultant shall provide all documentation and information to other City consultants as necessary throughout the year.

vi. Apportionments

Consultant shall provide Special Districts apportionment services as delineated in Section 8730 of the Streets and Highways Code. The Code states that when a parcel of land upon which there is an unpaid assessment divides, the original assessment just be segregated and apportioned in accordance with the benefits to the several parties of the original lot. The Consultant shall apportion the liens among the newly created parcels as if such a subdivision had existed at the time of the confirmation of the District and file documents to effectuate a segregation with the County Tax Auditor after the City reviews and authorizes such. Specifically, the Consultant shall perform the following:

- a. Segregation: Consultant shall apportion the special assessment according to the method described in the engineer's report.
- b. Notice of Apportionment: Consultant shall prepare an amended assessment diagram and notice. The diagram and notice shall be filed and recorded with the County Recorder.
- c. Assessment Diagram: Consultant shall prepare an amended assessment diagram and notice. The diagram and notice shall be filed and recorded with the County Recorder.
- d. Amortization Schedule: Consultant shall prepare an amortization schedule for each newly created assessment type.
- e. Apportionment Report: Consultant shall prepare and submit to the City an Apportionment Report showing the finalized apportionment and the amended assessment diagram.
- f. Optional – Application Forms: If requested by the City, Consultant shall also provide apportionment application forms and instructions to the City's Engineering representative for inclusion as a condition of approval for



subdivision within an assessment district.

- g. In the event proceedings are undertaken under Division 10, Part 10 of the California Streets and Highways Code, the following *additional* item shall be prepared:
 - Resolutions. Consultant shall prepare the required City Council resolutions to order the amended assessment, the amended assessment diagram, notices to the property owner, and fix the amount of costs to perform the apportionment.
 - Public Meetings. Consultant shall be available to attend any public meetings required to complete the apportionment.
- h. Consultant Coordination: Consultant shall provide all documentation and information to other City consultants as necessary throughout the year.

vii. *MuniMagic Software Services*

- a. MuniMagic: To complement the administration of the City's districts, Consultant shall provide authorized city staff, access to MuniMagic.
- b. Web Interface: Consultant shall provide programming support to the City to create an interface between the City's website and parcel data within MuniMagic for public access.

viii. *Optional Items*

If requested by the City, the following services shall be provided:

- a. Proposition 218 Compliance
 - Consultant shall work with the City, as needed, given the requirements of Proposition 218. Consultant understands that each City has different requirements and resources to complete the necessary tasks for the assessment balloting procedures. Therefore, an individually tailored approach to Proposition 218 Compliance may be required.
- b. District Closeout: Consultant shall administer the districts under the City's direction, taking into account the final-year maturity. Thereafter, Consultant shall perform the following
 - Perform a complete analysis of all funds for each Assessment District in accordance with Municipal Improvement Act 1913 and the Improvement Act of 1915.
 - Prepare a detailed Analysis Report for each district projecting revenue and expenditures resulting in a surplus amount. Projected revenue may include, but is not limited to, investment earnings and assessment levies. Projected expenditures may include, but is not limited to, debt service payments, arbitrage rebate payments, administrative costs and



project maintenance costs.

- Determine if arbitrage rebate calculations have been performed and funds have been cleared for disbursement by the City Finance Department.
- Determine the best use of the surplus amount in accordance with applicable laws.
- Prepare a Certificate of Project Completion and Use of Funds for Project Maintenance Letter, to be signed by the Public Works Director.
- Prepare a City Council Resolution Declaring Surplus, Determining Use and Approving the Analysis Report.
- Prepare documents and coordinate the advanced maturity of bonds as required.
- Prepare a detailed report for the processing of refunds to property owners by the City.
- Review procedures with legal counsel and City staff as required.
- Prepare a detailed delinquency report and consider the delinquencies in the analysis of funds and refunds.
- Coordinate the implementation of a policy for the collection of delinquencies and timeline for completion.

c. Processing of Bond Tenders (1915 Act Bonds and CFD Bonds)

- Expert Resource: First and foremost, Consultant shall act as the City's "expert resource", and is available to answer questions and advise the City on particular issues involving the use of Bond Tenders.
- Kick-Off Meeting: Consultant shall meet via telephone or in person with City staff, legal counsel and other interested parties to discuss details and implementation of a bond tender policy.
- Implementation of Bond Tender Policy. Consultant shall implement the City's existing bond tender administrative policy. If desired, Consultant shall review and make modifications to this existing policy or develop and implement a new policy. As this requires significant additional work, hourly rates shall apply.
- Primary Contact. Consultant shall serve as the primary and direct contact for property owners, bondholders, and other interested parties. Consultant shall provide instructions and guidelines on the bond tender process.
- Letters of Intent to Tender. Consultant shall review and reply



to Letters of Intent to Tender with a formal Letter of Instructions to Tender, and shall provide updates to the Letter of Instructions base on amount change triggers.

- Facilitator of Bond Tenders. Consultant shall act as facilitator of bond tenders, and shall provide the following:
 1. Analysis of bond tendered and application of bonds tendered as payment of delinquencies, current year installments, and prepayment of the future of the lien.
 2. Provide documentation of the tender to property owners, trustee, fiscal agent, paying agent, City/Agency and other professionals.
 3. Update of debt service schedules and mandatory sinking fund schedules, as required.
 4. Calculation and request payment of any amounts due in cash in addition to the bonds tendered.
- Data Corrections: Consultant shall perform County Tax Roll corrections, future annual levy, and future amortization (annual levies) corrections resulting from the bond tender.
- Toll-Free Phone Number: Consultant shall provide a toll-free phone number for use by the City, other interested parties and all property owners during normal business hours (Mon. – Fri. 8:00pm to 5:00pm)

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: Prior to June 30th of each year this Agreement is in effect, Consultant shall provide the City with Assessment rates for each Community Facilities District, Assessment District and Open Space District.

Deliverable No. 2: On August 1st of each year, submit a computer disk of annual assessments and/or collections to the County Auditor-Controller

Deliverable No. 3: On or before August 10th of each year, final corrections to the tax roll shall be submitted to the County Auditor-Controller.



Deliverable No. 4: On or before October 15th of each year, submit to the City three (3) copies and one (1) unbound copy of each final Special Tax District report with corrected printouts and computer files.

Deliverable No. 5: On September 30th of each year, submit to the City a copy of each Amended Assessment Diagram.

Deliverable No. 6: within 10 business days after the effective or execution date of this agreement (whichever is later), provide City staff with access to MuniMagic and establish a timeline for creation of web interface.

D. Date for completion of all Consultant services: The date when all services assigned to the Consultant have been resolved, or upon notification from City of contract termination.

9. Materials Required to be Supplied by City to Consultant:

- A. Copy of Final Special Tax Report for all Community Facilities Districts.
- B. Copy of Final Official Statement, bond indenture, arbitrage certificate and other documents as required for Community Facilities Districts involving a bond issue.
- C. Access to the City's computerized permit tracking system.
- D. Copies of Site development plans (for commercial and multiple family properties), Final Maps which have been approved prior to March 1st of the previous fiscal year, and building permit information.
- E. (After first fiscal year of formation) Copies of tax reapportionment forms completed by City for parcels which have been segregated by the County during the previous fiscal year.
- F. Budget information.
- G. List of Special Tax Districts the City would like Consultant to administer for each Fiscal Year.
- H. Copy of Final Engineer's Report and Final Official Statement for each Special District.
- I. Listing of parcels that have been called for each Special District since the bonds were issued. The list should include the amount of bonds called and their corresponding Fiscal Year for each Special District.
- K. List of parcels requiring apportionment services for each Assessment District for each Fiscal Year.
- L. Name and address of the underwriter or other original purchaser of the bonds for each Special District.
- M. A sample of the City-approved notice to underwriters or other original purchaser of bonds.
- N. A copy of last year's database (in electronic format if available) and diagrams for each Special District.

10. Compensation:

- A. () 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: _____, payable as follows:

Milestone or Event or Deliverable

Amount or Percent of Fixed Fee

- () 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 Consultant shall have represented in writing that said percentage of completion of the phase has been performed by the Consultant. 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.

Phase

Fee for Said Phase

- | | |
|----|----------|
| 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 18 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 Consultant shall have represented in writing that said percentage of completion of the phase has been performed by the Consultant. The practice of making interim monthly advances shall not convert this agreement to a time and materials basis of payment.

C. () Hourly Rate Arrangement

D. (X) Other

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:

- Apportionment Services

<u>TASK</u>	<u>BASE FEE*</u>	<u>PER PARCEL FEE</u>
<i>Mapping:</i>		
0 – 25 parcels	\$950	\$18
20 – 100 parcels	\$850	\$15
101 – 500 parcels	\$750	\$12
>500 parcels	\$650	\$10
<i>Data:</i>		
Spreadsheet Updating	N/A	\$0.50
Electronic Tape Preparation	N/A	\$0.30

*Base Fee only applies for those districts requiring an amended diagram.



- Delinquency Monitoring Services

<u>SERVICES</u>	<u>FEES</u>
Delinquency Reminder Letter	\$15
Delinquency Demand Letter	\$45
Foreclosure Letter	\$65
Effect Removal from Tax Roll and Record Subsequent Notice of Satisfaction	\$65
Payment Plan	\$200
Subsequent Foreclosure Services	\$300
Delinquency Demand Payoff	\$50
Zero Demand	\$50

- Arbitrage Compliance Services

Arbitrage Rebate Fee Table

<u>ARBITRAGE SERVICES</u>	<u>FEE</u>
Engagement Fee (one-time fee)	\$250
Base Fee Range	\$900 - \$1,500
Spending Exception Analysis	\$500 per period
Commingled Funds Analysis	\$250 per fund
Data Analysis in Excess of 12 months	\$250 per year
Transferred Proceeds Analysis	\$250 per year
IRA Audit Assistance	\$150 per hour
Online Compliance Management System	No Charge
Preparation of IRS Form 8038T (payment)	No Charge

Continuing Disclosure Fee Table

<u>DISCLOSURE SERVICES</u>	<u>FEE</u>
Setup Fee	\$250 per issue
Non-land based Issues	\$1,450
Land based Issues	\$1,200



Incremental Annual Fee for Bonds Issued on Parity	\$450 per issue
Supplemental/Amended Reports	\$250
Notice of Occurrence of Listed Events	\$250 per Notice
Annual Third Party Expenses	At Cost
Continuing Disclosure Compliance Review, if requested	\$200 per issue/per year

() (X) 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 **\$118,125**, including all Materials, and other "reimbursables" (Maximum Compensation).

- Optional Services: At the discretion of the City, Consultant shall provide those services related to annual use, increases, closeouts, refunding, etc. Fees for those services will be determined by the City and Consultant as fixed-fee (to be negotiated later) or at Consultant rates. The City may choose which method (negotiated or fixed-fee or hourly). The hourly rates are shown below.

Hourly Rates

<u>CONSULTANT TITLE</u>	<u>HOURLY RATE</u>
• Group Manager	\$210
• Principal Engineer	\$200
• Principal Consultant	\$200
• Senior Project Analyst	\$165
• Project Manager	\$145
• Senior Project Analyst	\$130
• Senior Analyst	\$120
• Analyst	\$100
• Assistant Analyst	\$ 75
• Property Owner Services Representative	\$ 55
• Support Staff	\$ 50



(1) () 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. See Exhibit B for wage rates.

() 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

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:

☐ None, the compensation includes all costs.

	<u>Cost or Rate</u>
<input type="checkbox"/> Reports, not to exceed \$ _____ :	\$ _____
<input checked="" type="checkbox"/> Copies, not to exceed \$ _____ :	\$0.06/page
<input checked="" type="checkbox"/> Travel, not to exceed \$1,000:	\$ACTUAL COST
<input checked="" type="checkbox"/> Printing, not to exceed \$ _____ :	\$ACTUAL COST
<input checked="" type="checkbox"/> Postage, not to exceed \$ _____ :	\$ACTUAL COST
<input checked="" type="checkbox"/> Delivery, not to exceed \$ _____ :	\$ACTUAL COST
<input checked="" type="checkbox"/> Outside Services:	\$ACTUAL COST
<input checked="" type="checkbox"/> Other Actual Identifiable Direct Costs:	\$ACTUAL COST
County Charges (for tapes, maps, and recording fees, not to exceed \$1,000:	\$ _____
_____, not to exceed \$ _____ :	\$ _____

12. Contract Administrators:

City: Amy Partosan, Management Analyst

Consultant: Beatrice Medina, Project Manager

13. Liquidated Damages Rate:

- ☐ \$ _____ per day.
☐ Other: _____

14. Statement of Economic Interests, Consultant Reporting Categories, per Conflict of Interest Code (Chula Vista Municipal Code chapter 2.02):

☒ Not Applicable. Not an FPPC Filer.

☐ FPPC Filer

☐ Category No. 1. Investments, sources of income and business interests.



- () Category No. 2. Interests in real property.
- () Category No. 3. Investments, business positions, interests in real property, and sources of income subject to the regulatory, permit or licensing authority of the department administering this Agreement.
- () Category No. 4. Investments and business positions 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 and business positions in business entities and sources of income that, within the past two years, have contracted with the City of Chula Vista or the City's Redevelopment Agency to provide services, supplies, materials, machinery or equipment.
- () Category No. 6. Investments and business positions in business entities and sources of income that, within the past two years, have contracted with the department administering this Agreement to provide services, supplies, materials, machinery or equipment.
- () 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:

() Monthly



- ☐ Quarterly
☒ Other: See Section 10

B. Day of the Period for submission of Consultant's Billing:

- ☐ First of the Month
☐ 15th Day of each Month
☐ End of the Month
☐ Other: _____

C. City's Account Number: Appropriate AD, CFD and OSD accounts

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: _____
☐ Other: The Retention Amount may be released on a monthly basis provided that Consultant has performed said monthly services to the sole satisfaction of the Assistant City Manager/Director of Development Services or his designee.