



# City of Moore Oklahoma

301 N. Broadway, Moore, OK 73160 | (405) 793-5000 | www.cityofmoore.com

## NOTICE TO PROCEED

**DATE:** October 3, 2018  
**TO:** The Compass Group, LLC  
**PROJECT:** H-01-W-LMI, The Curve Apartments

The City of Moore has considered the budget submitted by you for the above referenced project.

You are hereby notified the budget has been accepted in the amount of \$11,500.00.

You are required to return an acknowledged copy of Notice to Proceed to the City of Moore.

Dated this 3rd day of October, 2018.

By: Todd Jenson  
Todd Jenson, Assistant City Manager

## ACCEPTANCE OF NOTICE

Receipt of the foregoing Notice to Proceed is hereby acknowledge by The Compass Group Affordable Housing, LLC  
this 4th day of Oct., 2018.

By: Auber Heegman  
Title: Principal

# CONTRACT



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## **BETWEEN THE CITY OF MOORE, OKLAHOMA AND THE COMPASS GROUP, LLC FOR PROFESSIONAL SERVICES**

This Contract is entered into between the City of Moore, Oklahoma. ("the City"), a Oklahoma municipality, with principal offices at 301 N. Broadway, Moore, Oklahoma 73160 and The Compass Group, LLC ("Consultant"), a proprietorship, with principal offices at 2100 Crystal Drive, Suite 675, Arlington, VA 22202;

Whereas, the City requires the services of The Compass Group, LLC as a consultant to the City in the completion of certain tasks related to Cost Reasonableness Study, as detailed herein;

Whereas, the Compass Group, LLC has agreed to provide said services, to the extent outlined herein;

NOW THEREFORE, in consideration of the premises and conditions set forth below the party's contract;

### Section 1: Term, Termination, and Expansion

1) The term of the contract shall be until all obligations of the parties hereto with respect to this Agreement have been satisfied.

2) The Contract may be terminated in whole or in part as follows:

(1) By the City of Moore, if a Contractor fails to comply with the terms and conditions of a Federal award;

(2) By the City of Moore for cause;

(3) By the City of Moore with the consent of the Contractor , in which case the two parties must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated; or

(4) By the Contractor upon sending to the City of Moore written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the City of Moore determines in the case of partial termination that the reduced or modified portion of the Contract will not accomplish the purposes for which the Federal award was made, the City of Moore may terminate the Contract in its entirety.

(c) When a Contract is terminated or partially terminated, both the City of Moore and the Contractor remain responsible for compliance with the

requirements in 2 CFR 200.343 Closeout and 2 CFR 200.344 Post-closeout adjustments and continuing responsibilities. References: (2 CFR 200.339; 78 FR 78608, Dec. 26, 2013, as amended at 80 FR 43309, July 22, 2015)

3) The Contract may be amended as provided for in Section 8

## Section 2: Scope of Services

### **The Curve Apartments, City of Moore, OK—Cost Reasonableness Study.**

#### Scope of Work

Consultant will complete a Cost Reasonableness Study. Toward determining whether the CDBG is sufficient but not excessive, the analysis will undertake the following, relying on industry norms and standards and best practices, and referencing data wherever appropriate and possible:

- Analyze proposed development costs, including the total proposed cost, as well as development cost items such as hard costs, soft costs, builder fees, legal fees, developer fee, and other components. For each, based on available data, reference relevant standards and assess the reasonableness of the cost item.
- Perform a summary analysis of the proposed LIHTC equity to provide reasonable assurance that it has been properly calculated with respect to Eligible Basis, current 4% Yield, Basis Boost, Applicable Fraction, credit pricing, and other factors which affect the determination of equity.
- Perform a summary analysis of 1<sup>st</sup> mortgage underwriting, including an analysis of GPR (in consideration of LIHTC rent limits), operating expenses, and mortgage underwriting (interest rate, DSCR, term and amortization) toward developing an opinion regarding the 1<sup>st</sup> mortgage sizing (too large, too small or in a reasonable range). If the 1<sup>st</sup> is too large, the property will be at risk of failure; if it is too small, the amount of CDBG is greater than it should be.

The report includes narrative which reviews and discusses the following characteristics of the transaction, against the framework of cost reasonableness:

- Whether the construction is arms-length or Identity-of-Interest; i.e., whether there is developer profit in builders' fees.

- Based on available information, the developer's risk with respect to guarantys provided to limited partners and/or lenders, recourse debt, operating deficits, and other contingent liabilities of the transaction.
- Risk relative to the pay-in schedule: whether the assessed cost properly reflects the timing of disbursements.
- Cash flow to developer, based on the proforma, and in consideration of any deferral of fee.
- The proposed loan terms of the CDBG Note; including terms (if any) requiring final loan amount to be limited to the lesser amount of (a) CDBG eligible costs; (b) the Award Amount, or (c) the gap in development financing based on actual accountant-certified incurred costs, and actual developer-certified financing sources.
- The proposed disposition of reserves, including the operating reserve.

### **Timeframe**

Compass will provide Client with a draft report within ten business days of a Letter Agreement. Compass will be available to discuss (telephone) the report at any time thereafter, and will revise the report (consistent with the above Scope of Work) within two business days of the draft report discussion.

### **Pricing and Payment Terms**

The total price for the cost-reasonableness report is \$11,500, payable in full within 30 days of receipt of an invoice. Compass will invoice the City with the submission of the draft report.

The work will also include an Appendix for Specific Cost Metrics which will include the following:

Provide total development cost comparisons for proposed project to NCSHA data and GAO data with specific inflation—adjusted comparisons to median and mean TDC for selected metrics (i.e., regional, unit size, etc.)

Provide analysis of development cost limits relative to OHFA standards, per 2018 QAP. Subject to availability of data, provide analysis of development costs relative to recent OHFA-funded LIHTC transactions.

Review proposed rents to determine whether the correct limits have been applied, to ensure:

- Median and mean total per-unit TDC, nationally
- Median and mean total per-Unit TDC, relevant US Census Division Region (i.e., West South Central U.S.)
- Median regional total per-unit TDC, exclusive of land costs
- Median and mean per-unit TDC by area type (urban, suburban or rural)
- Median and mean per-unit TDC relative to DDA and QCT

- Median and mean per-unit TDC relative to credit type (4%)
- Median and mean per-unit TDC relative to the development type (New Construction)
- Median and mean per-unit TDC relative to the development size category (>200 units)
- Median and mean per-unit TDC relative to the unit size as represented by the average number of bedrooms
- Median and mean per-unit TDC relative to the target population

Provide an analysis of proposed costs relative to limits imposed by OHFA, including:

- OHFA cost limits (based on HOME Program Maximum Per Unit Subsidy Limits, based on bedroom size)
- OHFA standard limiting developer fee to 15% of non-boosted Eligible Basis
- OHFA standard limiting builder fees (general requirements, overhead and profit)
- Sizing and funding of reserves

### Section 3: Payment Schedule, Terms and Conditions

The City agrees to pay the Contractor for services rendered on the following schedule, terms and conditions:

- 1) The parties agree that the costs for technical services shall not exceed the \$11,500.
- 2) The Contractor shall be permitted to invoice the City during the contract period for reimbursement of labor and expenses incurred by the Contractor.
- 3) Contractor shall submit with each Invoice the Minority, Women Owned, and Section 3 Business Report contained in Appendix A
- 4) The City agrees to make full payment of any properly submitted invoice within thirty days of the invoice date.

#### Section 4: Proprietary Information

The parties agree that each will hold any proprietary information learned as a result of this Contract in confidence. The parties will not, during or after the term of this Contract, disclose such proprietary information to any other person or entity for any reason whatsoever, unless required by Title 51 O.S. Section 24A.1 et. seq.; also known as the State of Oklahoma Open Records Act

#### Section 5: Understanding and Authorization

This Contract shall constitute the entire understanding of the parties and any other understanding or representation of any kind shall not be binding upon either party. Each party represents that they are authorized by their organization to enter into this Contract and to bind their organization to its terms.

#### Section 6: Modification

Any modification of this Contract or additional obligations assumed by either party in connection with this Contract shall be binding only if placed in writing and signed by each party or an authorized representative thereof. Should any portion of this Contract be found to be invalid it shall not be deemed to invalidate the entire Contract.

#### Section 7: Assignment

The Contractor shall not assign or transfer any interest in this Contract without the prior written consent of the City of Moore; provided, however, that claims for money due or to become due to the contractors from the City

under this contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the City.

## Section 8: Law and Federal Requirements

### **Law:**

This Contract shall at all times be governed, construed and enforced by the laws of the State of Oklahoma. Prior to any litigation, disputes arising from this Contract shall be subject to arbitration as defined in accordance with the laws of the State of Oklahoma. The venue for any and all arbitration shall be in Cleveland County, Oklahoma;

### **Inspection of Records:**

All Contractor records with respect to any matters covered by this agreement shall be made available to the Grantee, grantor agency, and the Comptroller General of the United States or any of their authorized representatives, at any time during normal business hours, as often as deemed necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by the contractors within 30 days after receipt by the contractors. Failure of the Contractor to comply with the above inspection requirements will constitute a violation of this contract and may result in Remedies for Non-Compliance or Termination as provided for in the Contract.

### **Access to Records:**

The Contractor agrees that the Federal awarding agency, Inspectors General, the Comptroller General of the United States, and the City Moore, or any of



their authorized representatives, have the right of access to any documents, papers, or other records of the Contractor which are pertinent to the Federal award, in order to make audits, examinations, excerpts, and transcripts. The right also includes timely and reasonable access to the Contractor's personnel for the purpose of interview and discussion related to such documents. Reference: (2 CFR 200.336)

**Record Retention Requirements:**

The Contractor agrees financial records, supporting documents, statistical records, and all other Contractor records pertinent to a Federal award shall be retained for a period of three years from the date of submission of the final expenditure report or, for Federal awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, respectively, as reported to the Federal awarding agency or the City of Moore in the case of a sub-recipient. Federal awarding agencies and the City of Moore may not impose any other record retention requirements upon Contractor. The only exceptions are the following:

- (a) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.
- (b) When the Contractor is notified in writing by the Federal awarding agency, cognizant agency for audit, oversight agency for audit, cognizant agency for indirect costs, or City of Moore to extend the retention period.
- (c) Records for real property and equipment acquired with Federal funds must be retained for three years after final disposition.

(d) When records are transferred to or maintained by the Federal awarding agency or the City of Moore, the 3-year retention requirement is not applicable to the Contractor. Reference: (2 CFR 200.333)

### **Breaches and Dispute Resolution**

(a) Disputes - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of the City of Moore Department of Capital Planning and Resiliency's Administrator or designee. This decision shall be final and conclusive unless within [ten (10)] calendar days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to Administrator or designee. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of Administrator or designee shall be binding upon the Contractor and the Contractor shall abide by the decision.

(b) Performance During Dispute - Unless otherwise directed by to the City of Moore Department of Capital Planning and Resiliency, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

(c) Claims for Damages - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefor shall be made in writing to

such other party within a reasonable time after the first observance of such injury of damage.

(d) Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the City of Moore Department of Capital Planning and Resiliency and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration in the City of Moore Department of Capital Planning and Resiliency if the parties mutually agree, or in a court of competent jurisdiction within the State in which the City of Moore Department of Capital Planning and Resiliency is located.

(e) Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the City of Moore Department of Capital Planning and Resiliency, Sub-Recipient or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing. References: 49 CFR Part 18

**Remedies for Noncompliance:**

If the Contractor fails to comply with Federal statutes, regulations or the terms and conditions of a Federal award, the City of Moore may impose additional conditions, as described in 2 CFR 200.207 Specific conditions. If

the City of Moore determines that noncompliance cannot be remedied by imposing additional conditions, the City of Moore may take one or more of the following actions, as appropriate in the circumstances:

(a) Temporarily withhold cash payments pending correction of the deficiency by the Contractor or more severe enforcement action by the City of Moore.

(b) Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.

(c) Wholly or partly suspend or terminate the Contract.

(d) Initiate suspension or debarment proceedings as authorized under 2 CFR part 180 and Federal awarding agency regulations (or in the case of a City of Moore, recommend such a proceeding be initiated by a Federal awarding agency).

(e) Withhold further Federal awards for the project or program.

(f) Take other remedies that may be legally available.

Reference: (2 CFR 200.338)

### Federal Laws and Regulations:

The Community Development Block Grant – Disaster Recovery (CDBG-DR) allocation to the City of Moore is governed by the following laws and regulations:

(a) The Housing and Community Development Act of 1974;

- (b) Section 312 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C.5155), as amended;
- (c) Section 18 of the Small Business Act, as amended (14A U.S.C. 647) 44 CFR 206.191 Duplication of Benefit
- (d) Duplication of Benefits Federal Register, Vol. 76, No.221, November 16, 2011 (76 FR 71060),Public Law 113-2:
- (e) Disaster Relief Appropriations Act, 2013 (at HR 152-34)
- (f) The HUD Federal Register Notice at 78 FR 14329 published March 5, 2013
- (g) HUD Federal Register Notice at 78 FR 23578 published April 19, 2013
- (h) HUD Federal Register Notice at 78 FR 76154 published December 16, 2013
- (i) The applicable laws of the State of Oklahoma; and
- (j) By the laws and regulations promulgated by the City for the CDBG-DR program.
- (k) In addition to the citations noted, the CDBG-DR allocation is also subject to “cross-cutting” Federal requirements referenced herein and contained in 2 CFR 200 Sub-part F – Appendix

**Changes to Federal Requirements:**

Contractor shall at all times comply with all applicable Federal regulations, policies, procedures and directives, including without limitation those listed directly or by reference in this Contract between the City of Moore

Department of Capital Planning and Resiliency and the Contractor, as such Federal regulations, policies, procedures and directives may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract. Reference: (49 CFR Part 18)

**Equal Opportunity:**

The following equal employment opportunity requirements apply to the underlying contract:

- a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq ., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age.

Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements HUD may issue.

- b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements HUD may issue.
- c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements HUD may issue. References: Executive Order 11246 September 24, 1965 as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations 41 CFR chapter 60

## **Civil Rights**

- a) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements HUD may issue.
- b) The Contractor agrees to comply with the non-discrimination in employment and contracting opportunities laws, regulations, and executive orders referenced in 24 CFR 570.607, as revised by Executive Order 13279. The applicable non-discrimination provisions in Section 109 of the HCDA are still applicable.
- c) The Contractor agrees to comply with Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974 as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and Executive Order 11246 as amended by Executive Orders 11375, 11478, 12107 and 12086. References: 29 U.S.C. § 623, 42 U.S.C. §



2000, 42 U.S.C. § 6102, 42 U.S.C. § 12112, 42 U.S.C. § 12132, 49 U.S.C. § 5332, 29 CFR Part 1630, 41 CFR Parts 60 et seq.

**Conflict of Interest:**

Any person who is an employee, agent, consultant, officer, or elected official or appointed official of the City of Moore, or of any of the City's subsidiaries, who exercises or have exercised any functions or responsibilities with respect to CDBG activities assisted, or who are in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from a CDBG-assisted activity, or have a financial interest in any contract, subcontract, or agreement with respect to a CDBG-assisted activity, or with respect to the proceeds of the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for one year after such decision making responsibilities have ended. Reference: 2 CFR 200.112

**Copyrights:**

The City of Moore Department of Capital Planning and Resiliency reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes: The copyright in any work developed under the Contract, and to any rights of copyright to which a Contractor, Sub-contractor or a Sub-recipient purchases ownership with grant support. Reference: 24 CFR Subtitle A. 85.34 Copyrights

**Lobbying:**

Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR Part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the City of Moore Department of Capital Planning and Resiliency. References: (31 U.S.C. 1352 as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65; 49 CFR Part 19, 49 CFR Part 20)

**Section 3:**

The City of Moore requires the Contractor and all applicable sub-contractors to follow the City's Section 3 requirements as defined by the [City's Section 3 Plan](#).

**Minority Owned, Woman Owned or Section 3 Business Utilization:**

The City of Moore requires the Contractor meet or exceeds the Contractors stated proportional use of Minority Owned, Woman Owned or Section 3 Business that the Contractor stated in responding to the Request for Proposals or Request for Qualification. The Contractor understands and

agrees that failure to meet this requirement may result in termination or such other sanctions as may be solely determined by the City.

### Section 9: Execution

This Contract may be executed in any number of counterparts, each of which shall be deemed an original, however all of which together shall constitute one and the same instrument.

### Section 10: Notifications

All notifications concerning this Contract shall be sent to the following addresses:

To: The City of Moore at:  
Kahley Gilbert  
City of Moore  
301 N. Broadway  
Moore, Oklahoma 73160

To: The Compass Group, LLC  
Anker Heegaard  
2100 Crystal Drive, Suite 675  
Arlington, VA 22202  
(W) 718-963-2163  
(C) 703-966-6274

IN WITNESS WHEREOF, each party has caused this Contract to be executed on the date indicated below, on this, the twentieth page of twenty pages.

The City of Moore

BY:   
Todd Jenson, Assistant City Manager

DATE: 10/2/18

*Affordable Housing*

The Compass Group, LLC  
BY:   
Anker Heegaard, Principal

DATE: 10-04-18

**APPENDIX A: MINORITY, WOMEN OWNED OR SECTION 3 BUSINESS REPORTING**

<b>MINORITY, WOMEN OWNED OR SECTION 3 BUSINESS REPORT</b>				
<b>CONTRACTOR</b>				
<b>Invoice Date</b>				
		<b>Total Amount of Invoice</b>		
<b>Name of MOB/WOB/Section 3 Business</b>	<b>MOB Amount</b>	<b>WOB Amount</b>	<b>Section 3 Amount</b>	<b>Percent of Invoice</b>
<b>SIGNATURE</b>				
<b>Printed Name and Position</b>				
<b>Date</b>				