UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

CONCILIATION AGREEMENT AND VOLUNTARY COMPLIANCE AGREEMENT

Between

U.S. Department of Housing and Urban Development
Assistant Secretary for the Office of Fair Housing and Equal Opportunity

(Complainant)

and

The Municipality of Anchorage

(Respondent/Recipient)

TITLE VIII CASE NAME: Assistant Secretary for FHEO v. Municipality of Anchorage
TITLE VIII CASE NUMBER: 10-14-0200-8
DATE FILED: May 5, 2014

ADA COMPLIANCE REVIEW NUMBER: 10-14-R001-D
SECTION 504 COMPLIANCE REVIEW NUMBER: 10-14-R001-4
TITLE VI COMPLIANCE REVIEW NUMBER: 10-14-R001-6

A. PARTIES

1. The U.S. Department of Housing and Urban Development, Office of Fair Housing and Equal Opportunity ("HUD" or the "Department") conducted a Multi-jurisdictional Compliance Review ("Review") of the Municipality of Anchorage ("Municipality"), a recipient of HUD funds through the Community Development Block Grant (CDBG), HOME Investment Partnership (HOME) and Emergency Solutions Grant (ESG) Programs. The Review was conducted under the following authorities:

   a. Title II of the Americans with Disabilities Act of 1990, as amended (ADA), which prohibits discrimination on the basis of disability in all activities, services and programs of public entities. 28 C.F.R. § 35.190 identifies HUD as the designated federal agency for ensuring the ADA compliance of state and local governments that administer housing assistance and referral or public housing programs.

   b. Section 504 of the Rehabilitation Act of 1973, as amended (Section 504), which prohibits discrimination on the basis of disability in programs or activities that receive federal financial assistance. 24 CFR 8.56(a) of the Department's regulations implementing Section 504 provides for the conduct of periodic reviews of the practices of HUD recipients to ascertain their compliance with Section 504.

   c. Title VI of the Civil Rights Act of 1964, as amended (Title VI), which prohibits discrimination on the basis of race, color, and national origin in programs or activities that receive federal financial assistance. 24 CFR 1.7(a) of the Department's regulations implementing Title VI provides for the periodic review of the practices of HUD recipients to determine whether they are in compliance with Title VI.

2. Complainant in Fair Housing Equal Opportunity ("FHEO") Case Number 10-14-0200-8 (the "Complaint") is the Assistant Secretary for Fair Housing and Equal Opportunity (the "Assistant Secretary") of the U.S. Department of Housing and Urban Development. The Assistant Secretary will be executing this conciliation agreement and voluntary compliance agreement (the "Agreement").

3. Respondent to the above cited FHEO Case Number is the Municipality of Anchorage. The Municipality was represented by the Municipal Attorney's Office. An authorized representative will execute the Agreement for the Municipality.

B. STATEMENT OF FACTS

4. On April 4, 2014, the Department initiated the Review of the Municipality to investigate the Municipality's land use regulations in relation to the ADA, Section 504, and Title VI.

5. On May 5, 2014, the Assistant Secretary filed the Complaint against the Municipality alleging violations of the Fair Housing Act (the "Act") in the Municipality's land use regulations. Specifically, the Assistant Secretary alleged the Municipality violated Sections 804(f)(1) and 804(f)(2) of the Act by discriminating against persons with disabilities. Alleged violations included: the exclusion of group homes for disabled persons from residential districts where other similar residential uses are allowed, restrictions based on particular disabilities (alcoholism), and spacing and procedural requirements (including conditional use permits and administrative variances) imposed upon group homes for persons with disabilities that are not imposed on similar residences for persons who are not disabled.

6. The Municipality denied having violated the Act. The Municipality agrees to settle the claims in the underlying action by entering into this Agreement. It is understood that this Agreement does not constitute an admission by the Municipality of any violation of the Act, the ADA, Section 504, Title VI or any other law.

C. TERM OF AGREEMENT

7. For the purposes of this Agreement, "days" refers to calendar days. If the date of compliance with this Agreement should fall on a weekend or federally recognized holiday, the date of compliance shall be the next business day after the weekend or federally recognized holiday.

D. EFFECTIVE DATE

8. The parties expressly agree this Agreement constitutes neither a binding contract under state or federal law, nor a Conciliation Agreement pursuant to the Act, nor a Voluntary Compliance Agreement under the ADA, Section 504, or Title VI unless and until such time as it is executed by the Municipality and the Department through the Assistant Secretary.

9. The Agreement shall become effective on the date that it is approved and executed by the Assistant Secretary.

E. GENERAL PROVISIONS

10. The parties acknowledge that this Agreement is a voluntary and full settlement of the Complaint and the Compliance Review. The parties affirm they have read and fully understand the terms set forth herein. No party has been coerced, intimidated, threatened or in any way forced to become a party to this Agreement.

11. The Municipality acknowledges it has an affirmative duty not to discriminate under the Act, the ADA, Section 504, and Title VI, and that it is unlawful to retaliate against any person because that person has made a complaint, testified, assisted or participated in any manner in a proceeding under the Act. The Municipality further acknowledges that any subsequent retaliation or discrimination constitutes both a material breach of this Agreement, and a statutory violation of the Act, the ADA, Section 504, and Title VI.

12. This Agreement, after it has been approved by the Assistant Secretary, or his or her designee, is binding upon the Municipality, its employees, heirs, board members, successors and assigns and all others in active concert. In addition, this Agreement applies to the Municipality's projects, related facilities, programs, services, benefits and activities funded in whole or in part with CDBG funds, and shall be binding upon the Municipality, its officers, trustees, directors, agents, successors, assignees, sub-recipients, contractors, and sub-contractors who own, control, operate or sponsor said projects, facilities, programs, services, benefits and activities.

13. It is understood that pursuant to Section 810(b)(4) of the Act, upon approval of this Agreement by the Assistant Secretary or his or her designee, it is a public document.

14. This Agreement does not in any way limit or restrict the Department's authority to investigate any other complaint involving the Municipality made pursuant to the Act, the ADA, Section 504, Title VI or any other complaint within the Department's jurisdiction.

15. This Agreement does not in any way limit or restrict the Municipality's ability to effectuate changes to its land use provisions subsequent to compliance with all the terms of this Agreement, if the Municipality determines that it is necessary to do so and does so in accordance with the Act, the ADA, Section 504, Title VI, or other required provisions.

16. This Agreement does not increase or diminish the ability of any person or class of persons to exercise their rights under the Act, the ADA, Section 504, or Title VI.

17. This Agreement does not create any private right of action for any person or class of persons not a party to this Agreement.

18. This Agreement does not supersede or in any manner change the rights, obligations, and responsibilities of the parties under any and all court orders or settlements of other controversies involving compliance with federal or state civil rights statutes.

19. This Agreement contains the sole and entire agreement and understanding of the parties with respect to the entire subject matter contained in the Agreement. Any and all prior discussions, negotiations, commitments, or understandings related to the Agreement, if any, are hereby merged in this Agreement. No representations, oral or otherwise, have been made by any party to this Agreement. No other agreements not specifically contained in this Agreement, oral or otherwise, shall be deemed to exist or to bind any of the parties to this Agreement.

20. No amendment to, modification of, or waiver of any provisions of this Agreement shall be effective unless: (a) all signatories or their successors to the Agreement agree in writing to the amendment, modification or waiver; (b) the amendment, modification or waiver is in writing; and (c) the amendment, modification or waiver is approved and signed by the Assistant Secretary, or his or her designee.

21. The parties agree that the execution of this Agreement may be accomplished by separate execution of consents to this Agreement, and that the original executed signature pages attached to the body of the Agreement constitute one document.

22. The parties agree to accept scanned or faxed copies of executed signature pages as true, official, and original executions of this Agreement.

23. The Department hereby forever waives, releases, and covenants not to sue the Municipality, its executors, assigns, agents, representatives, officials, employees, board members and attorneys with regard to any and all claims, damages and injuries of whatever nature, whether presently known or unknown, arising out of the subject matter of the above-referenced Complaint and Compliance Review which could have been filed in any action or suit arising from said subject matter.

24. The Municipality hereby forever waives, releases, and covenants not to sue the Department, their board members, heirs, executors, assigns, agents, representatives, officials, employees and attorneys with regard to any and all claims, damages and injuries of whatever nature whether presently known or unknown, arising out of the subject matter of the above-referenced Complaint and Compliance Review which could have been filed in any action or suit arising from said subject matter.

F. RELIEF IN THE PUBLIC INTEREST

25. The Municipality acknowledges that it is unlawful to discriminate by denying or otherwise making unavailable housing to persons with disabilities.

26. The Municipality acknowledges that it is unlawful to discriminate in the terms, conditions, or privileges offered to persons on the basis of their disability.

27. Within 60 days of the effective date of this Agreement, the Municipality shall retain an independent expert consultant ("Consultant") to review the Municipality's regulations with respect to Assisted Living Facility and Habilitative Care uses contained in Title 21 of the Municipality's Code of Ordinances. The Consultant shall set forth recommendations for affirmative compliance with Title VI, Section 504, the ADA, and the Act.

    a. The Consultant shall be an independent third party, not an employee of the Municipality, and shall be qualified to evaluate land use regulations for compliance with fair housing law pertaining to disability and group homes.

    b. The Consultant shall review and provide recommendations for any changes to Title 21 of the Anchorage Municipal Code to ensure that any restrictions on housing for persons with disabilities are equivalent to restrictions on housing for an equal or greater number of persons without disabilities.

    c. The Consultant shall also review and provide recommendations for any changes to the provisions of Title 21 of the Anchorage Municipal Code, in the following areas:

        i. Occupancy Limits: The Consultant shall evaluate the Municipality's occupancy limits for approval by right of assisted living facilities and habilitative care facilities under Title 21.

        ii. Administrative Variance Procedures: The Consultant shall evaluate the Municipality's administrative variance requirements and procedures for assisted living facilities in the R-1, R-1A, R-2A, R-2D, and R-2M zones under Title 21 and determine whether any changes are needed.

        iii. Conditional Use Permit Requirements: The Consultant shall evaluate the Municipality's conditional use permit requirements and procedures applicable to assisted living facilities and habilitative care facilities under Title 21.

    d. All costs and expenses associated with the Consultant shall be borne by the Municipality.

    e. Within 90 days from the date the Consultant is retained by the Municipality, the Consultant shall present the recommendations described above to the Municipality in writing.

f. Within 120 days from the date the Consultant provides written recommendations to the Municipality, the Municipality shall present to the Assembly an Ordinance to repeal, amend, supplement and/or otherwise modify the provisions of Title 21 of the Anchorage Municipal Code, in substantial accordance with the Consultant's recommendations and to the extent necessary to achieve compliance with Title VI, the ADA, Section 504, and the Act.

g. Within 90 days or the next available voting opportunity from the date of the presentation of the Ordinance, whichever occurs later, the Assembly shall approve, adopt, and implement the Ordinance. The Assembly may make amendments to the Ordinance as long as the final Ordinance adopted by the Assembly repeals, amends, supplements, or otherwise modifies the relevant provisions consistent with the recommendations of the Consultant, to the extent necessary to achieve compliance with Title VI, the ADA, Section 504, and the Act.

28. Refund and Waiver of Administrative Variance and Conditional Use Permit Fees:

a. The Municipality agrees to allocate a sum of up to $5,000 to provide refunds of permit fees to those individuals described in the subsections below.

b. Within 60 days of the effective date of this Agreement, the Municipality shall conduct a thorough review of its records to identify and provide permit fee refunds to all permit applicants who meet the following criteria:

i. The applicant submitted his or her permit application on or after January 1, 2012.

ii. The applicant sought an administrative variance or conditional use permit.

iii. The applicant sought a land use permit for Severe Alcohol Dependent Housing (SADH), an assisted living facility housing up to eight residents, or a habilitative care facility housing up to eight residents.

c. Refunds shall be delivered to qualifying applicants with a certified delivery receipt.

d. A list of fee refunds will be provided to HUD within 10 days of completion of the refunds.

e. Within fourteen (14) days after execution of this Agreement, the Municipality shall prepare, present, recommend, and advance an ordinance for prompt adoption by the Assembly to eliminate fees for applications for administrative variances and conditional use permits for assisted living or habilitative care

facilities for up to 8 residents, pending the adoption of the Ordinance described in Paragraph 27.

G. MONITORING

29. If HUD believes the Municipality is in violation at any time with the terms of this Agreement, HUD shall advise the Municipality in writing of the alleged violation, the reasons for its reasonable belief there has been a violation, and advise the Municipality what steps it should take to correct the alleged violation.

30. Prior to the expiration of any timeframe in this Agreement, the Municipality may submit to the Department a reasonable request for an extension of that time frame. The Department shall not refuse such an extension unless it establishes that the Municipality is requesting the extension for purposes of delay.

H. REPORTING AND RECORDKEEPING

31. Within 10 days of retention of the Consultant, as described in Paragraph 27, the Municipality shall certify its compliance in writing to the Department. The written certification shall include the name of the Consultant and a copy of any contract or agreement entered into to retain said Consultant.

32. Within 10 days of the presentation of recommendations to the Municipality by the Consultant, as described in Paragraph 27, the Municipality shall provide a copy of the written recommendations to the Department.

33. Within 10 days of presenting an ordinance to repeal, amend, supplement and/or otherwise modify the Assisted Living Facility and Habilitative Care Facility provisions of Title 21 of the Code of Ordinances to the Assembly, as described in Paragraph 27, the Municipality shall provide a copy of the proposed ordinance to the Department.

34. Within 10 days of the Assembly's approval of any Ordinance to amend or modify the relevant code provisions in accordance with Paragraph 27 in this Agreement, the Municipality shall certify its compliance in writing to the Department. The written certification shall include a copy of the new ordinance, and any policies or procedures adopted by the Municipality in conjunction with the ordinance.

35. Within 10 days of refunding any fees and adopting any ordinances in accordance with Paragraph 28, the Municipality shall certify its compliance in writing to the Department. The written certification shall include a copy of the new ordinances, the identities of parties who received refunds, an accounting of the original charges

assessed against the applicants, the amount of the refunds, copies of payment checks, and certified mail delivery receipts demonstrating delivery of the refunds.

All required certifications and documentation of compliance must be submitted to:

Region X Office of Fair Housing and Equal Opportunity
U.S. Department of Housing and Urban Development
Attn: Conciliation Monitoring
909 First Avenue, Suite 200
Seattle, WA 98104

I. CONSEQUENCES OF BREACH

36. Whenever the Department has reasonable cause to believe that the Municipality has breached this Agreement, and after providing notification required in Paragraph 31 and providing an opportunity for the Municipality to correct the alleged breach, and if the Municipality refuses to implement the corrections set forth by the Department in its notice, the matter may be referred to the Attorney General of the United States, to commence a civil action in the appropriate U. S. District Court, pursuant to §§ 810(c) and 814(b)(2) of the Act.

37. If the Municipality is found to have breached the Agreement, said breach may lead the Department to reactivate the ADA, Section 504 and/or Title VI compliance reviews. If those reviews are concluded and result in supported findings of non-compliance and the findings cannot be resolved by informal means, the Department may seek to effect compliance with these authorities by means of a referral of the matter to the Department of Justice for appropriate enforcement proceedings, the termination of or refusal to grant or continue federal financial assistance, the initiation of debarment proceedings, or any other means authorized by law.

38. If the Municipality is found to have breached the agreement, said breach may also provide evidence indicating that the Municipality is not in compliance with its civil rights related program requirements under the CDBG, HOME and ESG programs, and may lead the Department to question the Municipality's affirmatively furthering fair housing certifications and other civil rights certifications submitted pursuant to regulations at 24 C.F.R. §§ 91.225(a)(1), 91.225(b)(6) and 570.601.

RESPONDENT SIGNATURE

The Municipality of Anchorage

Date 4/14/15

By: George Vakalis

Title: Municipal Mgr

COMPLAINANT SIGNATURE

Gustavo Velasquez
Assistant Secretary
Office of Fair Housing and Equal Opportunity
U.S. Department of Housing and Urban Development

4/15/15
Date

Sara Pratt, Deputy Assistant Secretary for Enforcement and Programs
On behalf of the Department of Housing and Urban Development

4/15/15
Date