

## PROFESSIONAL SERVICES AGREEMENT

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This **AGREEMENT** is made and entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 2009, by and between the CITY OF EL PASO, ("City"), a municipal corporation, EL PASO HOUSING FINANCE CORPORATION, a nonprofit corporation organized under Chapter 394, Texas Local Government Code ("HFC") and CENTER FOR NEIGHBORHOOD TECHNOLOGY, (the "Contractor"), a nonprofit corporation organized under the laws of the State of Illinois and doing business in the State of Texas.

**WHEREAS**, The City and HFC desire to engage the professional services of the Contractor, pursuant to this Agreement, to provide the City and HFC with analysis services by conducting an analysis and providing data on housing and transportation affordability in the El Paso, Texas metropolitan area.

**NOW, THEREFORE, IN CONSIDERATION OF THE PREMISES AND OF THE MUTUAL COVENANTS AND AGREEMENTS OF THE PARTIES HERETO HEREBY MUTUALLY AGREE AS FOLLOWS:**

### I. SCOPE OF SERVICES

- A. The Contractor will perform the following services as specifically set forth in the scope of services attached hereto as **Exhibit "A"** and incorporated herein for all purposes.
- B. The City and HFC designate the Executive Director of HFC as the Contractor's primary contact ("Project Manager") during the term of this Agreement. All aspects of the Contractor's services shall be coordinated with the Project Manager, who shall facilitate the successful completion of the Contractor's services.
- C. The Project Manager shall promptly provide the requested transit data to the Contractor, as identified in **Exhibit "A"**.

### II. CONSIDERATION

- A. The City agrees to pay to the Contractor an amount not to exceed FIVE THOUSAND AND NO/100 DOLLARS (\$5,000.00), in return for the performance of the services under this Agreement, as described in Exhibit "A". HFC agrees to reimburse to the City an amount not to exceed ONE THOUSAND SIX HUNDRED SIXTY SEVEN AND NO/100 DOLLARS (\$1,667.00), which represents HFC's contribution of one-third of the services costs incurred by the City under this Agreement.
- B. Payment shall be made upon delivery of the final report and the Project Manager's acceptance thereof and within thirty (30) days following the receipt of the Contractor's invoice for services rendered.

### III. TERM OF AGREEMENT

This Agreement commences upon execution of the Agreement and services shall be completed no later than eight (8) weeks from the date on which the Project Manager provides the Contractor with the requested transit data. At the sole discretion of the City Manager, the City may extend the term by an additional thirty (30) days upon written request by the Contractor.

### IV. REPRESENTATIONS OF CONTRACTOR

The Contractor represents, warrants and agrees as follows:

- A. It will comply with all applicable federal, state and local governmental laws, rules, regulations and all provisions of the City of El Paso Charter and Code of Ordinances, now existing or as may be amended, in the performance of its duties under this Agreement.
- B. It shall obtain and pay for all licenses, permits and certificates required by any applicable statute, ordinance, rule or regulation of any regulatory body having jurisdiction over the conduct of its operations hereunder. The Contractor warrants that it is duly authorized and licensed to perform its duties hereunder in each jurisdiction in which it will act. It further warrants that its employees, agents and subcontractors shall maintain all required professional licenses during the term of the Agreement. If the Contractor receives notice from a licensing authority of a suspension or revocation of a license of Contractor's employee(s), agent(s) or subcontractor(s), the Contractor shall immediately remove such employee, agent or subcontractor from performing any further services under this Contract until such license is reinstated and in good standing. If the Contractor fails to maintain such licenses or fails to remove any employee, agent or subcontractor who performs services under this contract whose license has expired or been revoked or suspended, the City shall be entitled, in its sole discretion, to immediately terminate this Agreement upon notice to Contractor.
- C. The Contractor warrants that the services, and those of his subcontractor(s) will be performed in a professional manner in accordance with the applicable professional standards. The Contractor gives no warranty, express or implied, as to the results of any recommendations made in any reports provided to the City under this Agreement. The Contractor will not be liable for any damages that result or are alleged to result from any recommendations or reports provided to the City under this Agreement.
- D. It warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for commission, percentage, brokerage, or contingent fee excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty the City shall have the right in addition to any other right or rights to cancel this contract without liability and to deduct from the contract price, or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.
- E. The Contractor is an independent contractor and is responsible for its respective acts or omission, and the City and HFC shall in no way be responsible as an employer to

Contractor's employees, agents or subcontractors who perform service in connection with this Agreement.

- F. No party hereto has authority to bind the other or to hold out to third parties that it has the authority to bind the other.

## **V. CONTRACTOR'S QUALITY OF WORK**

The City's review of any documents prepared by the Contractor is only general in nature and its option to approve and accept the work in no way relieves the Contractor of responsibility for any specific deficiencies in its professional services. The Contractor's professional services shall be performed as expeditiously as is consistent with professional skill and care. The professional services provided by the Contractor under this Agreement shall be performed in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing under similar circumstances.

These warranties are in lieu of all warranties, express or implied.

## **VI. CONFIDENTIAL WORK**

- A. Contractor recognizes that all materials to be prepared hereunder and all data received by the Contractor shall be kept in strictest confidence. The Contractor shall not divulge such confidential information except as approved in writing by the City or as otherwise required by law.
- B. The Contractor shall establish a method to secure the confidentiality of records or information that the Contractor may have access to in accordance with the applicable federal, state, and local laws and regulations. This provision shall not be construed as limiting the City or its authorized representatives, right of access to records or other information under this Contract.
- C. If the Contractor receives inquiries regarding documents within its possession pursuant to this Contract, the Contractor shall immediately forward such request to the City Attorney's office for disposition.

## **VII. OWNERSHIP**

The work to be performed for this project utilizes proprietary data and models belonging to the Contractor. All work product(s) produced by this Contract shall be the property of the Contractor, including the copyright for written report(s) and the Housing and Transportation Index model data inputs and outputs. The City and HFC are hereby granted a non-exclusive perpetual license for the use of the work product for non-commercial and governmental purposes. In no event shall either the City or HFC be held responsible for or liable for the other party's breach or default of the perpetual license granted herein.

The City represents and warrants that it owns or has the right to use all data provided by the City to the Contractor for the development of the work product. To the extent of the City's ownership rights to the data, the Contractor is granted a non-exclusive perpetual license to use this data for the purpose of completing the scope of work and thereafter using the work product.

## VIII. INSURANCE REQUIREMENTS

With no intent to limit the Contractor's liability or the indemnification provisions set forth below, the Contractor shall provide and maintain certain insurance in full force and effect at all times during the term of this Agreement and any extensions thereto. Such insurance is described as follows:

Employer's Liability

Bodily Injury by Accident  
\$500,000 (each accident)  
Bodily Injury by Disease  
\$250,000 (policy limit)  
Bodily Injury by Disease  
\$250,000 (each employee)

Comprehensive General:  
Including Broad Form  
Coverage, Contractual  
Bodily and Personal Injury

Bodily Injury and Property  
Damage, combined limits of  
Liability \$500,000 each occurrence  
and \$1,000,000 aggregate

- A. Form of Policies. The insurance may be in one or more policies of insurance, the form of which must be approved by the City's Purchasing Manager, Financial Services Department, upon request.
- B. Issuers of Policies. The issuer of any policy must have a certificate of authority to transact insurance business in the State of Texas. Each issuer must be responsible, reputable, and have financial capacity consistent with the risks covered. Each issuer shall be subject to approval by the Purchasing Manager in his sole discretion as to conformance with these requirements.
- C. Insured Parties. Each policy, except those for Workers' Compensation, Employer's Liability and Professional Liability, must name the City (and its elected and appointed officials, officers, agents and employees) as Additional Insured parties on the original policy and all renewals or replacements during the term of this Agreement.
- D. Subcontractors. Contractor shall require all subcontractors to carry insurance naming the City as an Additional Insured and meeting all of the above requirements

## IX. CANCELLATION BY THE CITY

The City shall have the right to cancel for default all or any part of the undelivered portion of this order if the Contractor breaches any of the terms hereof including warranties of the Contractor or if the Contractor becomes insolvent or commits acts of bankruptcy. Such right of cancellation is in addition to and not in lieu of any other remedies that the City may have in law or equity.

## X. GRATUITIES

The City may, by ten (10) day written notice to the Contractor, cancel this Agreement without liability to the Contractor if it is determined by the City that gratuities, in the form of entertainment, gifts, or otherwise, were offered or given by the Contractor, or any agent or representative of the Contractor, to any officer or employee of the City of El Paso with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making or any determinations with respect to the performing of such a contract. In the event this contract is canceled by the City, pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.

## **XI. INDEMNIFICATION AND LIMITATION OF LIABILITY**

THE CITY SHALL NOT BE SUBJECT TO ANY OBLIGATIONS OR LIABILITIES OF THE CONTRACTOR INCURRED IN THE PERFORMANCE OF THIS AGREEMENT. THE CONTRACTOR EXPRESSLY AGREES TO INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY FOR ANY AND ALL LIABILITIES AND OBLIGATIONS INCURRED IN CONNECTION WITH THIS AGREEMENT DUE TO THE NEGLIGENCE OF THE CONTRACTOR, ITS EMPLOYEES, OFFICERS, AGENTS OR AGENCIES, OR THE NEGLIGENT ACTS OR OMISSIONS, BREACHES OF CONTRACT, OR OTHER CLAIMS AGAINST THE CONTRACTOR OR ITS EMPLOYEES, OFFICERS, AGENTS OR AGENCIES.

To the extent allowed by state law, the City will be responsible for its own actions.

The Contractor shall procure and maintain insurance as required by and set forth in the terms and conditions of this Agreement. Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, the total liability, in the aggregate, of Contractor and Contractor's officers, directors, partners, employees, agents, and consultants (hereafter referred to collectively as "Contractor"), to City and anyone claiming by, through, or under City for any and all claims, losses, costs, or damages, whatsoever arising out of, resulting from or in any way related to the Project or the Agreement from any cause or causes, including but not limited to negligence, professional errors or omissions, strict liability, or breach of contract, or warranty express or implied of Contractor (hereafter "City's Claims"), shall not exceed an amount in excess of its primary general comprehensive policy limits. No party will be responsible to the other for any special, indirect, or consequential damages arising in any manner from the work or services. If no such insurance coverage is provided with respect to City's Claims, then the total liability, in the aggregate, of Contractor to City and anyone claiming by, through, or under City for any and all such uninsured City's claims shall not exceed \$250,000.00 per person or \$500,000.00 per incident with property damage liability limited to \$100,000.00 per incident, \$1,000,000.00 in the aggregate.

## **XII. SUBCONTRACTOR'S INDEMNITY**

Contractor shall require all of its subcontractors to include in their subcontracts indemnity in favor of the City in substantially the same form as above.

## **XIII. TERMINATION OF CONTRACT**

This Agreement may be terminated in whole or in part under any one of the following circumstances:

- A. **TERMINATION BY MUTUAL CONSENT:** The parties may terminate this Agreement by mutual consent upon such terms as they may agree in writing.
- B. **TERMINATION FOR CAUSE:** Either party may terminate its performance under this Agreement in the event of default by the other party and a failure by that party to cure such default after receiving notice thereof, all as provided in this Section. Default shall occur if a party fails to observe or perform any of its duties under this Agreement. Should such a default occur, the injured party may deliver a written notice to the defaulting party describing such default and the proposed date of termination. Such proposed date of termination may not be sooner than the 30<sup>th</sup> day following receipt of the notice. The injured party, at its sole option, may extend the proposed date of termination to a later date. If prior to the proposed date of termination, the defaulting party cures such default, then the proposed termination shall be ineffective. If the defaulting party fails to cure such default prior to the proposed date of termination, then the injured party may terminate its performance under this Agreement as of such date.

#### **XIV. RIGHT OF ASSURANCE**

Whenever one party to this Agreement in good faith has reason to question the other party's intent to perform, it may demand that the other party give written assurance of its intent to perform. In the event that a demand is made and no assurance is given within five (5) calendar days, the demanding party may treat this failure as an anticipatory repudiation of the Agreement.

#### **XV. ASSIGNMENT**

No party may assign its rights or obligations under this Agreement without the prior written consent of the other party hereto. Any attempted assignment or delegation by either party shall be wholly void and totally ineffective for all purposes unless made in conformity with this paragraph.

#### **XVI. SUBCONTRACTORS**

The Contractor may subcontract with other competent entities to provide services required to be performed under this Agreement. Any work or services approved for subcontracting hereunder, however, shall be contracted only by written contract and agreement and, unless specific waiver is granted in writing by the City, shall be subject by its terms to each and every provision of this Agreement. Compliance by subcontracts with this Agreement shall be Contractor's responsibility. Contractor shall submit a list, identifying the subcontractors who will perform services under this Agreement, within ten (10) days of the effective date of this Agreement. However, all subcontractors must be accepted and approved by the City in writing, and such consent shall not be unreasonably withheld.

Despite City approval of a subcontract or subcontractor, the City shall in no event be obligated to any third party, including any subcontract of Contractor, for performance of work or

services, nor shall City funds ever be used for payment of work or services performed prior to the date of Agreement execution or extending beyond the expiration date of this Agreement.

#### **XVII. SURVIVAL**

Contractor shall remain obligated to the City under all clauses of this Agreement that expressly or by their nature extend beyond the expiration or termination of this Agreement, including but not limited to the Indemnification provisions hereof.

#### **XVIII. AMENDMENT AND WAIVER**

The parties may amend this Agreement at any time by mutual consent of the parties. Unless otherwise provided herein, this Agreement may be amended only by written instrument duly executed on behalf of the City and Contractor. No claim or right arising out of a breach of this Agreement can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party.

#### **XIX. ENTIRE AGREEMENT**

This Agreement, together with the **Exhibit "A"** attached hereto, constitutes the entire agreement between the parties hereto relating to the Agreement. There exists no other written or oral understanding, agreements or assurances with respect to such matters except as are set forth herein. Unless expressly stated, this Agreement confers no rights on any person(s) or business entity(s) that is not a party hereto. This Agreement shall not be construed against or unfavorably to any party because of such party's involvement in the preparation or drafting of this Agreement.

#### **XX. APPLICABLE LAW AND VENUE**

This Agreement shall be governed by the laws of the State of Texas along with any applicable provisions of Federal law or the City Charter or any ordinance of the City of El Paso. Both parties agree that venue for any litigation arising from this contract shall lie in El Paso, El Paso County, Texas.

#### **XXI. ADVERTISING BY CONTRACTOR**

The Contractor shall not advertise or public, without the City's prior consent, the fact that the City has entered into this contract, except to the extent necessary to comply with proper requests for information from an authorized representative of the federal, state, or local government.

#### **XXII. LEGAL CONSTRUCTION**

Every provision of this Agreement is severable, and if any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this Agreement. Where the context of the Agreement require, the singular shall include the plural and the masculine gender shall include feminine.

### XXIII. NOTICES

All notices required or permitted hereunder shall be in writing and shall be deemed delivered when actually received or, if earlier, on the third day following deposit in a United States Postal Service post office or receptacle with proper postage affixed (certified mail, return receipt requested) addressed to the respective other party at the address prescribed in the preamble of this Agreement or at such other address as the receiving party may have theretofore prescribed by written notice to the sending party.

CITY:

Attn: City Manager  
2 Civic Center Plaza  
El Paso, Texas 79901

Copy to:

Attn: Project Manager, Adrian Duran, Executive Director  
El Paso Housing Finance Corporation  
2 Civic Center Plaza, 2<sup>nd</sup> Floor  
El Paso, Texas 79901

HFC:

El Paso Housing Finance Corporation  
Attn: President  
100 N. Stanton St., Ste. 1700  
El Paso, Texas 79901

Copy to:

Norman J. Gordon, Esq.  
Mounce, Green, Myers, Safi, Paxson & Galatzan, P.C.  
100 N. Stanton St., Ste. 1700  
El Paso, Texas 79901

Contractor:

Attn: Linda Young, Research Manager  
Center for Neighborhood Technology  
2125 W North Ave  
Chicago, IL 60647

### XXIV. COUNTERPARTS

This Agreement may be executed in one or more counterparts; signature pages may be detached from such separately executed counterparts and reattached to other counterparts, each of which counterparts when executed and delivered shall be an original and all of which shall together constitute one and the same instrument. Each party may deliver a counterpart signature page by facsimile transmission.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first written above.

**CITY OF EL PASO:**

\_\_\_\_\_  
Joyce A. Wilson  
City Manager

**APPROVED AS TO FORM:**

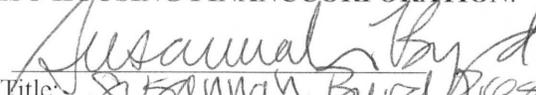
  
Marie A. Taylor  
Assistant City Attorney

**CENTER FOR NEIGHBORHOOD TECHNOLOGY:**

By: 

Name: Kathryn Tholin  
Title: Chief Executive Officer

**EL PASO HOUSING FINANCE CORPORATION:**

By:   
Name/Title: Susannah Byrd President

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Name (printed) \_\_\_\_\_  
Title \_\_\_\_\_

## EXHIBIT "A"

### SCOPE OF SERVICES

The Contractor will analyze housing and transportation costs for the El Paso, Texas Metropolitan Statistical Area, using the Housing + Transportation Affordability Index; specifically, the Contractor will perform the following services:

1. The Contractor will acquire and use publicly available datasets from the U.S. Census 2000 to analyze the combined costs of housing and transportation at the census block group level for the defined study area;
2. The Contractor will acquire, with the assistance of the project manager, publicly available data from City's Sun Metro and any other local transit agencies for the locations of fixed bus routes and stops, inter-city rail routes and stops (if applicable), and the frequency of these services for the purpose of calculating a Transit Connectivity Index score specific to each block group in the study area;
3. The Contractor will prepare a written report, including analyses of combined housing and transportation costs for both the Area Median Income and 80% of the Area Median Income, maps illustrating these findings and summary data tables; and
4. The Contractor will add this data for the study region to the Contractor's official H+T Affordability Index website and map server, <http://htaindex.cnt.org> (version developed March 2008), to enable public access and map generation.

JOHN COOK  
MAYOR



CITY COUNCIL  
ANN MORGAN LILLY, DISTRICT 1  
SUSANNAH M. BYRD, DISTRICT 2  
EMMA ACOSTA, DISTRICT 3  
MELINA CASTRO, DISTRICT 4  
RACHEL QUINTANA, DISTRICT 5  
EDDIE HOLGUIN JR., DISTRICT 6  
STEVE ORTEGA, DISTRICT 7  
BETO O'ROURKE, DISTRICT 8

JOYCE WILSON  
CITY MANAGER

## MAYOR AND COUNCIL

# MEMORANDUM

**TO:** Mayor and Council  
**FROM:** Susie Byrd, City Representative, District #2  
**DATE:** January 15, 2009  
**RE:** Regular Agenda Item – Back up

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As El Paso continues to grow and develop, we as a council have engaged in long debates on the best way for our city to continue to expand, and we have enacted policies that strive to guide that expansion in a responsible manner.

In my research into these issues, I came across the Center for Neighborhood Technology, a Chicago-based company that specializes in issues of urban and community development.

One service provided by the company is the Housing + Transportation Affordability Index, which evaluates a community on two criteria: the cost of housing and the cost of transportation in a neighborhood. Currently, HUD guidelines state that a family should spend no more than 30-percent of its income on housing in order for it to be considered affordable. The H + T index, though, gives a more accurate account of housing affordability by taking into account what is spent on housing and transportation.

Once the research is completed, the information is added to the company's database and is available for all interested parties to view and analyze. I urge all of you to visit CNT's Web site at [www.cnt.org](http://www.cnt.org) and to explore the H + T index at <http://htaindex.cnt.org>. You will see that Dallas, Austin and Houston metropolitan areas have participated in the same program, as have the communities of Phoenix and Las Vegas.

The total cost of the contract for the index is \$5,000. I will contribute one-third of the cost from District 2 discretionary funds, City Manager Joyce Wilson will contribute one-third through the contractual services account with OMB, and the HFC will reimburse to the city the remaining one-third of the cost.

This research will provide us with a valuable tool to use as we continue to increase the availability of affordable housing, and it will allow us to craft sound public policy for development and transportation.