CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM

DEPARTMENT: Community & Human Development

AGENDA DATE: April 20, 2010

CONTACT PERSON NAME AND PHONE NUMBER: William Lilly (541-4241)

DISTRICT(S) AFFECTED:

SUBJECT:
APPROVE a resolution that authorizes the City Manager to sign a sub-recipient grant contract between the City and the Non-Profit Enterprise Center in an amount not to exceed $105,900.00.

BACKGROUND / DISCUSSION:
Discussion and action that the City Manager be authorized to sign a sub-recipient grant contract between the City and the Non-Profit Enterprise Center in connection with the City's federally-funded HHS-ARRA Strengthening Communities Fund (Community Development, Neighborhood Services Division), awarding an amount not to exceed $105,900.00 to provide training and technical assistance to nonprofit faith-based and community organizations so they may better serve those in need and to increase nonprofit organizations' involvement in the nation's economic recovery.

PRIOR COUNCIL ACTION:
There has been no prior council action concerning signing this specific sub-recipient grant.

AMOUNT AND SOURCE OF FUNDING:
This item is funded through a $250,000 grant received by Neighborhood Services through the HHS-ARRA Strengthening Communities Fund.

BOARD / COMMISSION ACTION:
N/A

********************REQUIRED AUTHORIZATION*********************

DEPARTMENT HEAD: _____

(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

Information copy to appropriate Deputy City Manager

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager be authorized to sign a sub-recipient grant contract between the City and the Non-Profit Enterprise Center in connection with the City's federally-funded HHS-ARRA Strengthening Communities Fund (Community Development, Neighborhood Services Division), awarding an amount not to exceed $105,900.00 to provide training and technical assistance to nonprofit faith-based and community organizations so they may better serve those in need and to increase nonprofit organizations' involvement in the nation's economic recovery.

ADOPTED this _____ day of _____, 2010.

CITY OF EL PASO

_____
John F. Cook
Mayor

ATTEST:

_____
Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

_____
Marie A. Taylor
Assistant City Attorney

APPROVED AS TO CONTENT:

_____
William L. Lilly, Director
Community and Human Development

CHD/NS/Reso/10/HHS-ARRA/Strengthening Communities-NPEC
Document: #53732v2/MTAY

STATE OF TEXAS)
)
COUNTY OF EL PASO)

CONTRACT

THIS CONTRACT is entered into by and between the **CITY OF EL PASO**, a home-rule municipal corporation of El Paso County, Texas, hereinafter referred to as the "City", and **NONPROFIT ENTERPRISE CENTER**, a Texas non-profit corporation, hereinafter referred to as "Contractor."

WHEREAS, a grant has been made to the City through the United States Department of Health and Human Services ("HHS"), Administration for Children and Families, Office of Community Services, American Recovery and Reinvestment Act of 2009 (Public Law 111-5) ("ARRA") - Strengthening Communities Program federal funds, hereinafter referred to as the "Strengthening Communities Program"; and

WHEREAS, the City's federal grant under the Strengthening Communities Program is for the purpose of building the City's capacity to partner with community-based and faith-based non-profits and to provide training and technical assistance to help nonprofit faith-based and community organizations better serve those in need and to increase nonprofit organizations' involvement in the economic recovery; and

WHEREAS, this is an award of federal assistance (CFDA # 93.711) to the City and Contractor is considered to be a subrecipient of federal financial assistance; and

WHEREAS, the City desires to provide Strengthening Communities Program funds to Contractor to administer Contractor's **Strengthening Communities Capacity Building and Technical Assistance Program** as further described herein.

NOW, THEREFORE, the City and Contractor, in consideration of the terms, conditions, and covenants contained herein, hereby agree as follows:

SECTION 1. CONTRACT PERIOD

This Contract shall be effective from the date of its execution and it shall terminate on September 30, 2011, unless otherwise specifically provided by the terms of this Contract or terminated sooner in accordance with the terms and conditions of this Contract.

SECTION 2. PROJECT SCOPE

A. The Contractor shall perform all activities as specifically set forth in the Project Scope, attached hereto as **Exhibit "A"** and incorporated herein for all purposes, to be performed in the designated project area, as more specifically described in **Attachment 2**, attached hereto and incorporated herein for all purposes.

B. The City designates the Neighborhood Outreach Specialist, in the Neighborhood Services Division, Community and Human Development Department, as the Contractor's primary contact during the term of this Contract.

SECTION 3. CITY'S OBLIGATIONS

In consideration of full and satisfactory performance of the activities referred to in Section 2 and **Exhibit "A"** of this Contract, the City agrees to reimburse to Contractor certain Strengthening Communities Program funds in accordance with all applicable rules, regulations and guidelines for actual and reasonable costs incurred by Contractor during the term of this Contract for performances rendered by Contractor, subject to the terms, conditions, and limitations set forth in this Contract.

SECTION 4. COMPENSATION AND REPORTING

A. The City shall reimburse to Contractor an amount not to exceed ONE HUNDRED FIVE THOUSAND NINE HUNDRED AND 00/100 DOLLARS ($105,900.00), representing the cost for all services performed pursuant to this Contract, as further described in the Project Scope, attached hereto as **Exhibit "A"**.

B. Subject to the terms and conditions of this Contract, payment shall be made on a reimbursement basis and in accordance with the following requirements:

(1) Contractor shall submit to the City a reimbursement request and the requisite reports, as identified in **Exhibit "A"**, on a monthly basis for services performed and expenses incurred in the previous calendar month. All reimbursement requests submitted by Contractor must be supported and accompanied by valid invoices or other supporting documentation of financial liability acceptable to the City. Compensation shall be allowed on a reimbursement basis and only after expenditures have been incurred by Contractor in conformity with the approved budget in **Attachment 1**, attached hereto and incorporated by reference herein for all purposes.

(2) In no event shall compensation to Contractor exceed the lesser of Contractor's costs attributable to the work performed or the monetary limits described in **Attachment 1**, and nor shall the City pay for expenses or services which are or will be reimbursed by another funding source or for services which are not performed. However, Contractor may make transfers of funds between or among budget categories, as contained in **Attachment 1**, subject to the approval of the Director of Community and Human Development, hereinafter referred to as "Director", provided that:

a. The dollar amount of all transfers among existing categories is equal to or less than ten percent (10%) of the total amount of this Contract;

b. The transfer will not change the scope or objective of the services funded under this Contract; and

c. Contractor submits a Budget Revision Report to City, simultaneously with the submission of Contractor's Reimbursement Request

Report. Budget revisions must contain a complete explanation and justifications for the changes made, and are subject to the approval of the Director.

(3) Only those costs which are allowable under the terms of this Contract and the approved Budget shall be reimbursed. Budget line items (Attachment 1) represent the maximum amount which may be billed under each line item. A lesser amount may be billed by Contractor.

(4) All requests for reimbursement are subject to the approval of the Director and the City shall thereafter make payment of the approved amount within thirty days of receipt of the request for reimbursement.

C. It is understood and agreed by the parties that the City will not be obligated to pay for any services not contained in **Exhibit "A"** or elsewhere in this Contract and its attachments and that all costs related to completion of services shall meet all requirements of the Strengthening Communities Program.

Except as specifically set forth in this Contract and its attachments, all costs related to the completion of the services requested herein shall be borne by the Contractor and not passed on to the City or otherwise paid by the City, unless a written amendment to this Contract is executed by both parties allowing for additional costs.

SECTION 5. 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 Contract.

B. It shall obtain and pay for all licenses, permits and certificates required by any applicable statue, 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 this Contract. 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 Contract upon notice to the Contractor.

C. 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.

D. The Contractor is an independent contractor and is responsible for its respective acts or omission, and the City shall in no way be responsible as an employer to Contractor's employees, agents or subcontractors who perform service in connection with this contract.

E. Neither party hereto has authority to bind the other or to hold out to third parties that it has the authority to bind the other.

F. Contractor agrees to comply with all the financial and administrative requirements set forth in Title 45, Code of Federal Regulations Part 74 (for non-governmental entities), Division A of the ARRA, including reporting requirements outlined in Section 1512 of the ARRA, the data elements required to comply with the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), and **Attachment 3**, Department of Health and Human Services, Standard Terms and Conditions, American Recovery and Reinvestment Act of 2009, Division A Funds, attached hereto and made a part of this Contract for all purposes.

G. Contractor agrees to comply with the organizational audit requirements of OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations and the data collection and the federal award identification requirements specified in **Attachment 3**, as applicable.

H. Contractor understands and agrees that it cannot use any federal funds, either directly or indirectly, in support of the enactment, repeal, modification or adoption of any law, regulation or policy, at any level of government.

I. Contractor represents and warrants that the person executing this Contract and all documents related thereto has the authority to commit Contractor to the obligations, financial and otherwise, required by this Contract.

SECTION 6. 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's or its authorized representatives, right of access to records or other information under this Contract.

C. The confidentiality of records and any other records related to the performance of this Contract will be maintained in accordance with and subject to all applicable laws, including the Public Information Act, Chapter 552, Texas Government Code.

SECTION 7. FORM, ACCESS, AND RETENTION OF RECORDS

A. Contractor shall prepare and maintain files, books, and records, including property, personnel and financial records, as they pertain to costs incurred, audits, administration, activities and functions, and recordkeeping, in connection with the services to be performed under this Contract and shall document all transactions and services performed under this Contract. These records shall be maintained for a period of three (3) years after the termination or expiration of this Contract.

B. The City or any authorized representative shall have a right of access to make copies of and a right to examine all records, files, books, papers, or documents which are deemed pertinent to the performance of this Contract, as determined solely in the reasonable exercise of the City's or its authorized representative's discretion. Copying and auditing will be performed at a reasonable time and place, such as during Contractor's usual business hours, and at Contractor's principal place of business or office. This right shall continue for three (3) years after termination or expiration of this Contract. The City or its authorized representative may additionally request the copying, mailing and/or electronic transmission of records by Contractor.

C. City reserves the right on its behalf, and on behalf of the HHS, to perform, or have their designees perform, a periodic on-site and desk audit monitoring of Contractor's compliance with the provisions of this Contract. The monitoring shall be conducted in a reasonable time, place and manner by the City. Contractor shall provide the assistance and information needed by the City in monitoring and evaluating the performance of the above-mentioned areas of accountability. It is understood that the City, or its designee, may perform periodic fiscal and programmatic monitoring reviews, including a review of any audit conducted by Contractor. The City, the HHS, and/or their designees may request the copying, mailing, and/or electronic transmission of Contractor's records in connection with an on-site or desk audit monitoring.

SECTION 8. NONDISCRIMINATION

No person in the United States shall, on the grounds of race, creed, color, national origin (including immigration status where an alien holds proper work authorization), sex, age or disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to segregation or discrimination in any way, shape or form in employment or under projects or activities funded in whole or in part with funds made available to Contractor pursuant to this Contract, as set forth in Title VI of the Civil Rights Act of 1964 (42 U.S.C. Section 2000d) and implementing regulations at Title 24 CFR Part 1; Age Discrimination Act of 1975 (42 U.S.C.

Sections 6101-07) and implementing regulations at Title 24 CFR Part 146; Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. Section 794) and implementing regulations at Title 24 CFR Part 8.

SECTION 9. CONFLICT OF INTEREST

Contractor covenants that during the term of this Contract, Contractor, its associates, officers and employees shall have no interest, direct or indirect, which will conflict in any manner with the performance of the services under this Contract and that none of its paid personnel shall be employees of the City or have any contractual relationship with the City. The conflict of interest provision herein applies to any person who is an employee, agent consultant, officer, or elected official or appointed official of the City, or any designated subcontractor which will receive funds under this Contract

SECTION 10. HATCH ACT

Neither the funds advanced pursuant to this Contract, nor any personnel who may be employed by Contractor with funds advanced pursuant to this Contract shall be in any way or to any extent engaged in any conduct or political activity in contravention of Chapter 15 of Title 5 of the United States Code.

SECTION 11. INTEREST OF CERTAIN FEDERAL OFFICIALS

No member of or delegate to the Congress of the United States, and no Resident Commissioners, shall be entitled to any share or part of this Contract between City and Contractor or to any benefits arising there from.

SECTION 12. POLITICAL AND LOBBYING ACTIVITIES PROHIBITED

A. None of the funds, materials, property or services provided directly or indirectly under this Contract shall be used for any partisan political activity or to further the election or defeat of any candidate for public office, or for publicity, lobbying, and/or propaganda purposes designed to support or defeat legislation pending before the Congress of the United States of America, the Legislature of the State of Texas, or the City Council of the City of El Paso.

B. Contractor hereby agrees to sign the Certification Regarding Lobbying, attached hereto and made a part of this Contract as **Addendum A**, and if necessary, the Disclosure of Lobbying Activities, attached hereto and made a part of the Certification Regarding Lobbying as **Addendum A**, and return said signed Certification and, if necessary, the completed Disclosure of Lobbying Activities, to City. Contractor shall require the language of the Certification and Disclosure be included in all subcontracts and that all subcontractors shall certify and disclose accordingly.

Contractor understands and agrees that:

1. No appropriated funds may be expended by the recipient of a Federal contract, grant, loan or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement.

2. Each person who requests or receives from an agency a Federal contract, grant, loan, or cooperative agreement shall file with that agency a certification, set forth in **Addendum A**, attached hereto and made a part hereof, that the person has not made, and will not make, any payment prohibited by this Section.

3. Each person who requests or receives from an agency a Federal contract, grant, loan, or cooperative agreement shall file with that agency a disclosure form, set forth in Addendum A, attached hereto and made a part hereof, if such person has made or has agreed to make any payment using non-appropriated funds (to include profits from any covered Federal action), which would be prohibited under this Section if paid for with appropriated funds.

SECTION 13. NON-RELIGIOUS ACTIVITIES

A. Organizations that are religious or faith-based are eligible, on the same basis as any other organization, to participate in the Strengthening Communities Program. Neither the Federal government nor a State or local government receiving funds under the Program shall discriminate against an organization on the basis of the organization's religious character or affiliation.

B. Organizations that are directly funded under the Program may not engage in inherently religious activities, such as worship, religious instruction, or proselytization, as part of the assistance funded under the applicable Code sections for this Program. If an organization conducts such activities, the activities must be offered separately, in time or location, from the assistance funded under the applicable Code sections for this Program, and participation must be voluntary for the beneficiaries of the assistance provided. Regulations pertaining to the Equal Treatment for Faith-Based Organizations, which includes the prohibition against Federal funding of inherently religious activities, can be found at the HHS website at: http://www.hhs.gov/fbci/waisgate21.pdf.

C. A religious organization that participates in the Program will retain its independence from Federal, State, and local governments, and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, provided that it does not use direct Program funds to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, faith-based organizations may use space in their facilities, without removing religious art, icons,

scriptures, or other religious symbols. In addition, a Program-funded religious organization retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

D. An organization that participates in the Program shall not, in providing program assistance, discriminate against a Program beneficiary or prospective Program beneficiary on the basis of religion or religious belief.

SECTION 14. ADDITIONAL FUNDING RESTRICTIONS

A. Without limitation, the following costs or services are not allowable activities or expenditures under the Strengthening Communities Program:

1. Costs of organized fund raising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions;
2. Construction;
3. The purchase of real property;
4. Direct social service provision or direct client services;
5. Sub-grants or other financial assistance to other agencies or organizations; and
6. Cost of the augmentation or supplanting of direct services.

B. Strengthening Communities Program funds may not be used to provide contracts to organizations that provide the City with a cost share match. If such a relationship is proposed, Contractor must demonstrate that there is an arms-length nature to the two separate agreements or that they are not otherwise dependent upon each other.

SECTION 15. REQUIRED DOCUMENTATION

Contractor hereby agrees to provide any and all documentation necessary to fulfill any and all grants (federal, state, or local) requirements pertaining hereto.

SECTION 16. LIABILITY

Contractor shall be liable to the City for the full amount of any funds received pursuant to the terms of this Contract, which Contractor knowingly accepts or disburses in violation of the terms and conditions herein.

SECTION 17. 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.

SECTION 18. GRATUITIES

The City may, by written notice to the Contractor, cancel this Contract 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.

SECTION 19. INDEMNIFICATION AND INSURANCE OBLIGATIONS

A. THE CITY SHALL NOT BE SUBJECT TO ANY OBLIGATIONS OR LIABILITIES OF THE CONTRACTOR INCURRED IN THE PERFORMANCE OF THIS CONTRACT. THE CONTRACTOR, AND/OR ITS INSURER, EXPRESSLY AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND THE CITY, ITS OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, SUITS, ACTIONS, DEMANDS, LIABILITIES AND OBLIGATIONS OF ANY KIND AND NATURE, INCLUDING INJURY OR DEATH OR PROPERTY DAMAGE MADE UPON THE CITY, INCIDENT TO, OR ARISING OUT OF, OR IN CONNECTION WITH THE CONTRACTOR'S PERFORMANCE UNDER THIS CONTRACT, INCURRED DUE TO CONTRACTOR'S NEGLIGENCE, ANY OF CONTRACTOR'S NEGLIGENT ACTS, OR ANY OMISSION TO ACT, ANY BREACH OF CONTRACT, OR ANY ACTIONS OF THE CONTRACTOR OUTSIDE THE SCOPE OF THIS CONTRACT, INCLUDING ANY ACT OR OMISSION OR NEGLIGENCE BY THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS WHILE THIS CONTRACT EXISTS, ALL WITHOUT HOWEVER WAIVING ANY GOVERNMENT IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW. THIS INDEMNITY SHALL COVER ATTORNEY'S FEES, COURT COSTS, WITNESS EXPENSES, AND ALL OTHER RELATED COSTS, INCLUDING AWARDS AND SETTLEMENTS AND ANY INTEREST THEREON.

B. The Contractor agrees to maintain for the life of this Contract, a liability insurance policy in the minimum amounts of $250,000.00 for each person and $500,000.00 for each single occurrence covering bodily injury or death and $100,000.00 for each single occurrence of damage to or destruction of property. Such insurance shall name the City as an additional

insured on the policy with regard to all suits, actions, demands, claims and liabilities arising out of, occasioned by or relating to this Contract or the activities carried out hereunder. It shall also contain a provision that it may not be canceled or lapse without 30-days' prior written notice to City. The Contractor shall produce a copy of its liability insurance policy, which shall be completed by an agent authorized to bind the named underwriter(s) to the coverage limits, and terms and provisions shown thereon, incorporating the above requirements, to the City prior to the effective date of this Contract.

1. CITY SHALL HAVE NO DUTY TO PAY OR PERFORM UNDER THIS CONTRACT UNTIL SUCH CERTIFICATE HAS BEEN DELIVERED TO THE DIRECTOR, AND NO OFFICER OR EMPLOYEE SHALL HAVE AUTHORITY TO WAIVE THIS REQUIREMENT.

2. The City reserves the right to review the insurance requirements of this section during the effective term of this Contract and to adjust insurance coverages and their limits when deemed necessary and prudent based upon changes in statutory law, court decisions, or the claims history of the industry, if applicable, as well as the claims history of the Contractor.

3. The City shall be entitled, upon request, and without expense, to receive copies of the policies and all endorsements thereto and may make any reasonable request for deletion, revision or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties thereto or the underwriter of any such policies). Upon such request by City, Contractor shall exercise reasonable efforts to accomplish such changes in policy coverage, and shall pay the cost thereof. Contractor remains responsible for procuring any other types of insurance not listed above, but required by law, necessary for performing its duties.

4. Notwithstanding any suspension or termination hereof, Contractor shall not be relieved of any liability to the City for damages or indemnification due to City by virtue of breach of this Contract by Contractor by virtue of this Section. City may withhold payments to Contractor until such time as the exact amount of damages due to the City from Contractor is agreed upon or is otherwise determined.

SECTION 20. TERMINATION

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

TERMINATION FOR CONVENIENCE: Either party may terminate this Contract upon written notice, provided such notice specifies an effective date for cancellation of not less than thirty (30) calendar days from the date such notice is received. Such right of termination is in addition to and not in lieu of rights of the City set forth herein. In the event of termination by the City, the Contractor shall not be entitled to lost or anticipated profits. The end of the term of contract, unless extended, is pursuant to provisions of the Contract.

TERMINATION FOR CAUSE: Either party may terminate its performance under this Contract 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 Contract. 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 30th 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 Contract as of such date.

FORCE MAJEURE: By reason of Force Majeure, either party hereto shall be rendered unable wholly or in part to carry out its obligations under this Contract then such party shall give notice and full particulars of such Force Majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied upon, and the obligation of the party giving such notice, so far as it is affected by such Force Majeure, shall be suspended for only thirty (30) days during the continuance of the inability then claimed, except as hereinafter provided, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch. The term Force Majeure, as employed herein, shall mean acts of God, strikes, lockouts, or other industrial disturbances, act of public enemy, orders of any kind of government of the United States or the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquake, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines, or canals. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty. If a party is unable to comply with the provisions of this Contract by reason of Force Majeure for a period beyond 30 days after the event or cause relied upon, then upon written notice after the thirty (30) days, the City reserves the right to cancel this Contract without any further liability.

EFFECTS OF TERMINATION: All duties and obligations of the City and the Contractor shall cease upon termination or expiration of this Contract, except that:

All provisions of this Contract that expressly or impliedly contemplate or require payment or performance after the expiration or termination of this Contract shall survive such expiration or termination. Any unpaid obligation due and owing, by either party, as of the date of termination, shall continue to be due and payable.

SECTION 21. RIGHT OF ASSURANCE

Whenever one party to this Contract 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 Contract.

SECTION 22. ASSIGNMENT

Neither party may assign its rights or obligations under this Contract 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.

SECTION 23. SUBCONTRACTORS

The Contractor may subcontract with other competent entities to provide services required to be performed under this Contract. 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 Contract. Compliance by subcontracts with this Contract shall be Contractor's responsibility. Contractor shall submit a list, identifying the subcontractors who will perform services under this Contract, within ten (10) days of the effective date of this Contract. 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 the 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 Contract execution or extending beyond the expiration date of this Contract.

SECTION 24. SURVIVAL

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

SECTION 25. AMENDMENT & WAIVER

The parties may amend this Contract at any time by mutual consent of the parties. Unless otherwise provided herein, this Contract may be amended only by written instrument duly executed on behalf of the City and the Contractor. No claim or right arising out of a breach of this Contract 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.

SECTION 26. ENTIRE CONTRACT

This Contract, together with the Exhibits attached hereto, constitutes the entire agreement between the parties hereto relating to the Contract. 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 Contract confers no rights on any person(s) or business entity(s) that is not a party hereto. This Contract shall not be construed against or unfavorably to any party because of such party's involvement in the preparation or drafting of this Contract.

SECTION 27. APPLICABLE LAW & VENUE

This Contract 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.

SECTION 28. ADVERTISING BY CONTRACTOR

The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into this Contract.

SECTION 29. LEGAL CONSTRUCTION

Every provision of this Contract 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 Contract. Where the context of the Contract require, the singular shall include the plural and the masculine gender shall include feminine. The captions of various sections of the Contract are for convenience of reference only, and shall not alter the terms and conditions of this Contract.

SECTION 30. NOTICES

All notices, communications and reports under this Contract shall be either hand delivered or mailed postage prepaid in the United States Postal Service, to the respective parties at the respective addresses shown below, unless and until either party is notified in writing:

CITY: City of El Paso
Department of Community and Human Development
c/o Mr. William Lilly, Director
Two Civic Center Plaza, 8th Floor
El Paso, TX 79901-1196

CONTRACTOR: Nonprofit Enterprise Center
1359 Lomaland Dr., Suite 507
El Paso, TX 79935
ATTN: Azuri Ruiz, Board Chairperson

SECTION 31. COUNTERPARTS

This Contract 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.

IN WITNESS WHEREOF, the parties hereto have executed this Contract on this

_____ day of _____, 2010.

CITY OF EL PASO:

_____
Joyce A. Wilson
City Manager

APPROVED AS TO FORM:

_____
Marie A. Taylor
Assistant City Attorney

APPROVED AS TO CONTENT:

_____
William L. Lilly, Director
Community and Human Development

CONTRACTOR:
NONPROFIT ENTERPRISE CENTER

By: _____
Azuri Ruiz, Board Chairperson

EXHIBIT "A"

PROJECT SCOPE

The purpose of the Exhibit is to delineate the program requirements for the **Strengthening Communities Capacity Building and Technical Assistance Program**, hereinafter referred to as "Program", for the ARRA Strengthening Communities Fund (through September 30, 2011).

I. Contractor shall provide the following services:

A. Conduct outreach to area nonprofit agencies to promote program opportunities presented through the ARRA Strengthening Communities grant and the Capacity Building and Technical Assistance Program.

B. Conduct organizational pre-assessments for no less than eleven (11) nonprofit agencies.

C. Conduct an organizational pre-assessment of the Neighborhood Services Division of the City of El Paso.

D. Conduct no less than eight (8) Nonprofit Collaborative Meetings

E. Conduct no less than ten (10) full day, capacity building workshops for area nonprofit agencies. Identified Historically Underutilized Businesses (HUBs) shall be allowed to participate in the workshops as well.

F. Conduct no less than 384 hours of technical assistance for no less than five (5) area nonprofits.

G. Conduct no less than five (5) post-assessments at the completion of all services stated above, and no sooner than 90 days before the contract termination date.

H. Generate and submit to the City a final program report with a comparative analysis of the pre-assessments and post-assessments for each of the nonprofits for which assessments were conducted, and for the City's Neighborhood Services Division.

II. Records and Reports

A. The following reports shall be provided by Contractor on the required forms by the twentieth (20^{th}) day of each month and shall describe the previous month's Program activities and expenditures. Upon receipt of the reports, the City's Community Development staff will review the reports for accuracy and if acceptable, authorize the City Financial Services Department to transfer funds to the appropriate account. Fund transfers will be performed on a monthly basis. All reports attributable to the Program must be submitted by October 20, 2011 or they will not be considered.

Attachment 3A: Reimbursement Report – An accurate financial account of the use of the funds requested for reimbursement under this contract (must include backup documentation);

Attachment 3B: Scope of Services Report – A report of the program's monthly service activities, progress, and number of person/organizations served each month; accurately reporting information pertaining to the scope of services provided (must include backup documentation);

Attachment 3C: Monthly Time Report (must include backup documentation)showing Technical Assistance time;

Attachment 3D: Budget Revision Report – A request for alteration of budget line items. (This report should only be submitted when a transfer is needed);

Attachment 3E: Outcome Report – (only to be submitted with the final report).

B. Additional informative materials may be attached to the above reports.

ADDENDUM A

CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

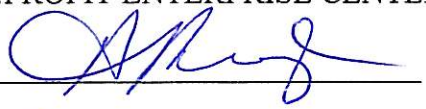
(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-ILL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this Certification be included in the award documents for all subawards at all tiers (including subcontractors, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of the certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

CONTRACTOR:
NONPROFIT ENTERPRISE CENTER

By: 

Title: PRESIDENT NPEC

ATTACHMENT 1

PROJECT BUDGET

STRENGTHENING COMMUNITIES CAPACITY BUILDING AND TECHNICAL ASSISTANCE PROGRAM BUDGET

Do not include In-Kind Contributions in line item totals

COST COMPONENT	FUNDING REQUEST	OTHER CASH RESOURCES	VALUE OF IN-KIND CONTRIB U-TIONS	TOTAL PROJECT COST (no In-Kind)
Salaries				
Fringe Benefits				
Mileage				
Professional Services/Consultants	$78,000.00	$10,444.000		$88,444.00
Facility Rental	$6,000.00	$5,000.00		$11,000.00
Telephone	$2,600.00			$2,600.00
Postage/Shipping				
Rental/Maintenance of Equipment				
Local Confer/Mtgs./Conventions				
Printing/Publications				
Office Supplies				
Equipment				
Other (specify)				
Translation of Outreach Materials	$12,000.00			$12,000.00
Oral Translation Services	$3,300.00			$3,300.00
Marketing of Workshops	$4,000.00	$2,000.00		$6,000.00
Program Reports		$5,000.00		$5,000.00
TOTAL OPERATING BUDGET	$105,900.00	$22,444.00	$0.00	$128,344.00

BUDGET DETAIL

Grant Funded:

A. Organizational Pre-Assessments 11 assessments @ $1,000/assessment	$11,000.00
B. Full Day Capacity Building Workshops 10 workshops @ $2,000/workshop	$20,000.00
C. Technical Assistance 384 hours of technical assistance @ $125/hr	$48,000.00
D. Translation of Outreach Materials	$12,000.00
E. Paging Services	$2,600.00
F. Facility Rental	$6,000.00
G. Marketing for Workshops	$4,000.00
H. Translation Services	$3,300.00
I. 5 Organization Post-Assessments	$5,000.00
TOTAL OF ALL GRANT FUNDED CATEGORIES	**$105,900.00**

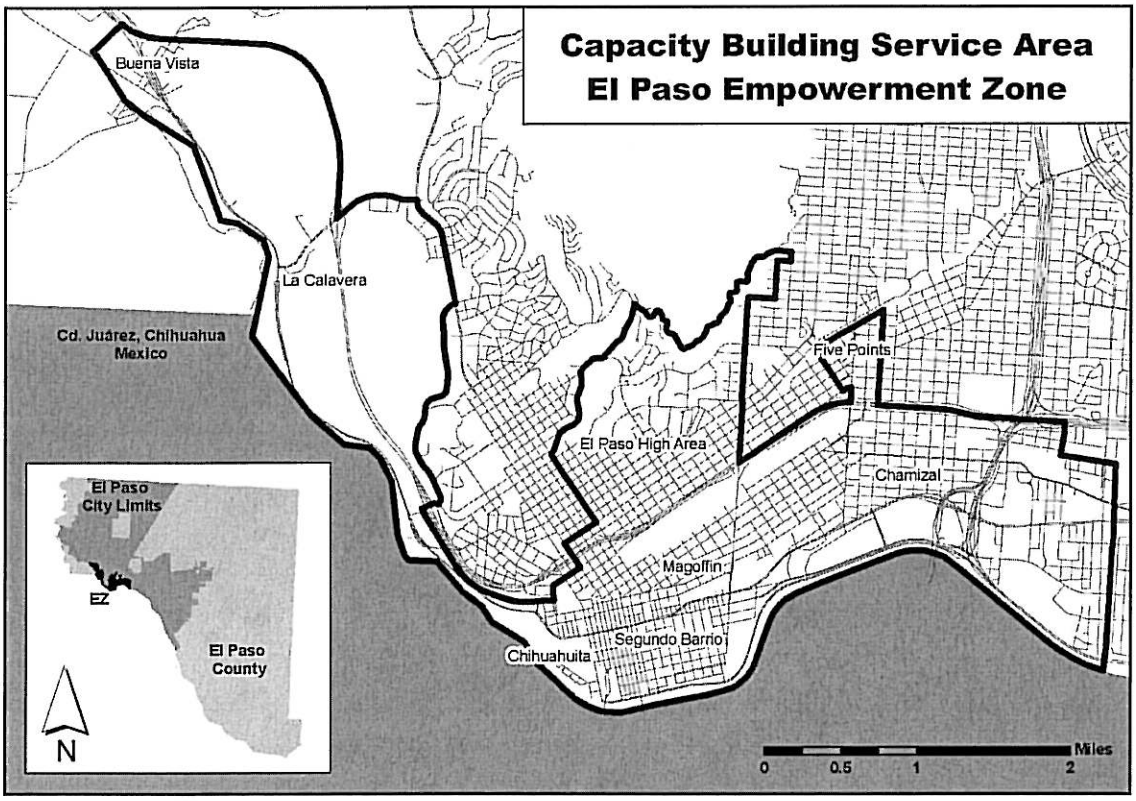
Matching Funds from Contractor:

A. Organizational Post-Assessments 11 assessments @ $1,000/assessment	$0
B. Full Day Capacity Building Workshops 3 workshops @ $2,000/workshop	$6,000.00
C. Technical Assistance	$0
D. Collaborative Meeting Facilitation 12 meetings @ $300/meeting	$4,444.00
E. Paging Services	$0
F. Facility Rental	$5,000.00

G. Marketing for Workshops	$2,000.00
H. Translation Services for Meetings	$0
I. Final Program Report Generation	$5,000.00
TOTAL OF ALL MATCHING FUND CATEGORIES	**$22,444.00**
TOTAL PROJECT BUDGET	**$128,344.00**

ATTACHMENT 2

Chamizal Neighborhood Strengthening Communities Site Map



ATTACHMENT 3

Department of Health and Human Services, Standard Terms and Conditions
American Recovery and Reinvestment Act of 2009, Division A Funds

[ATTACHED]

Department of Health and Human Services
Standard Terms and Conditions
American Recovery and Reinvestment Act of 2009
Division A Funds
Revised July 6, 2009

1. NIH Standard Terms and Conditions

All standard terms and conditions referenced on each NIH Notice of Award (see: http://grants.nih.gov/grants/policy/awardconditions.htm) apply unless they conflict or are superseded by the following terms and conditions implementing the American Recovery and Reinvestment Act of 2009 (ARRA) requirements below. In addition to the standard terms and conditions of award, recipients receiving funds under Division A of ARRA must abide by the terms and conditions set out below. The terms and conditions below concerning civil rights obligations and disclosure of fraud and misconduct are reminders rather than new requirements, but the other requirements are new and are specifically imposed for awards funded under ARRA. Recipients are responsible for contacting their HHS grant/program managers for any needed clarifications. Names and contact information of these individuals are provided in Section V of each award.

2. Recipient Reporting

Reporting and Registration Requirements under Section 1512 of the American Recovery and Reinvestment Act of 2009, Public Law 111-5

(a) This award requires the recipient to complete projects or activities which are funded under the American Recovery and Reinvestment Act of 2009 ("Recovery Act") and to report on use of Recovery Act funds provided through this award. Information from these reports will be made available to the public.

(b) The reports are due no later than ten calendar days after each calendar quarter in which the recipient receives the assistance award funded in whole or in part by the Recovery Act.

(c) Recipients and their first-tier recipients must maintain current registrations in the Central Contractor Registration (www.ccr.gov) at all times during which they have active federal awards funded with Recovery Act funds. A Dun and Bradstreet Data Universal Numbering System (DUNS) Number (www.dnb.com) is one of the requirements for registration in the Central Contractor Registration.

(d) The recipient shall report the information described in section 1512(c) using the reporting instructions and data elements that will be provided online at www.FederalReporting.gov and ensure that any information that is pre-filled is corrected or updated as needed.

3. Preference for Quick Start Activities

In using funds for this award for infrastructure investment, recipients shall give preference to activities that can be started and completed expeditiously, including a goal of using at least 50 percent of the funds for activities that can be initiated not later than 120 days after the date of the enactment of ARRA. Recipients shall also use grant funds in a manner that maximizes job creation and economic benefit. (ARRA Sec. 1602)

4. Limit on Funds

None of the funds appropriated or otherwise made available in ARRA may be used by any State or local government, or any private entity, for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool. (ARRA Sec. 1604)

5. ARRA: One-Time Funding

Unless otherwise specified, ARRA funding to existent or new awardees should be considered one-time funding.

6. Civil Rights Obligations

While ARRA has not modified awardees' civil rights obligations, which are referenced in the NIH Grants Policy Statement, these obligations remain a requirement of Federal law. Recipients and subrecipients of ARRA funds or other Federal financial assistance must comply with Title VI of the Civil Rights Act of 1964 (prohibiting race, color, and national origin discrimination), Section 504 of the Rehabilitation Act of 1973 (prohibiting disability discrimination), Title IX of the Education Amendments of 1972 (prohibiting sex discrimination in education and training programs), and the Age Discrimination Act of 1975 (prohibiting age discrimination in the provision of services). For further information and technical assistance, please contact the HHS Office for Civil Rights at (202) 619-0403, OCRmail@hhs.gov, or **http://www.hhs.gov/ocr/civilrights/.**

7. Disclosure of Fraud or Misconduct

Each recipient or sub-recipient awarded funds made available under the ARRA shall promptly refer to the HHS Office of Inspector General any credible evidence that a principal, employee, agent, contractor, sub-recipient, subcontractor, or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving those funds. The HHS Office of Inspector General can be reached at http://www.oig.hhs.gov/fraud/hotline/

8. Responsibilities for Informing Sub-recipients

Recipients agree to separately identify to each sub-recipient, and document at the time of sub-award and at the time of disbursement of funds, the Federal award number, any special CFDA number assigned for ARRA purposes, and amount of ARRA funds.

9. Recovery Act Transactions listed in Schedule of Expenditures of Federal Awards and Recipient Responsibilities for Informing Sub-recipients

(a) To maximize the transparency and accountability of funds authorized under the American Recovery and Reinvestment Act of 2009 (Public Law 111-5)(Recovery Act) as required by

Congress and in accordance with 45 CFR 74.21 and 92.20 "Uniform Administrative Requirements for Grants and Agreements", as applicable, and OMB A-102 Common Rules provisions, recipients agree to maintain records that identify adequately the source and application of Recovery Act funds.

(b) For recipients covered by the Single Audit Act Amendments of 1996 and OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," recipients agree to separately identify the expenditures for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by OMB Circular A-133. This shall be accomplished by identifying expenditures for Federal awards made under Recovery Act separately on the SEFA, and as separate rows under Item 9 of Part III on the SF-SAC by CFDA number, and inclusion of the prefix "ARRA-" in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF-SAC.

(c) Recipients agree to separately identify to each sub-recipient, and document at the time of sub-award and at the time of disbursement of funds, the Federal award number, CFDA number, and amount of Recovery Act funds. When a recipient awards Recovery Act funds for an existing program, the information furnished to sub-recipients shall distinguish the sub-awards of incremental Recovery Act funds from regular sub-awards under the existing program.

(d) Recipients agree to require their sub-recipients to include on their SEFA information to specifically identify Recovery Act funding similar to the requirements for the recipient SEFA described above. This information is needed to allow the recipient to properly monitor sub-recipient expenditure of ARRA funds as well as oversight by the Federal awarding agencies, Offices of Inspector General and the Government Accountability Office.