

RESOLUTION NO. 30061

A RESOLUTION AUTHORIZING THE ADMINISTRATOR FOR THE DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT TO EXECUTE A RENEWAL AGREEMENT, IN SUBSTANTIALLY THE FORM ATTACHED, WITH CHATTANOOGA NEIGHBORHOOD ENTERPRISE, INC. FOR LOAN PORTFOLIO MANAGEMENT SERVICES BETWEEN JULY 1, 2019 THROUGH JUNE 30, 2020.

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BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, that it is hereby authorizing the Administrator for the Department of Economic and Community Development to execute a renewal agreement, in substantially the form attached, with Chattanooga Neighborhood Enterprise, Inc. for loan portfolio management services between July 1, 2019 through June 30, 2020.

ADOPTED: September 3, 2019

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**City of Chattanooga**

**PROFESSIONAL SERVICES CONTRACT**

THIS PROFESSIONAL SERVICES CONTRACT is made and entered into this \_\_\_\_\_, by and between the CITY OF CHATTANOOGA (“City”) and Chattanooga Neighborhood Enterprise, Inc., (hereinafter called “Subrecipient” or “CNE”) for the purpose of providing services to the City, as more specifically defined in the “Scope of Services” set forth below.

NOW THEREFORE, the City and Subrecipient, in consideration of the respective covenants, contracts, conditions, and terms, have agreed, and do hereby enter into this Contract according to the provisions set out herein, and in accordance with the City and Federal Regulations governing the operation of programs and activities pursuant to the appropriate act(s).

**I. BACKGROUND**

The operations of the Subrecipient involve using federal, state and local general funds from the City to provide loans and grants to eligible citizens and developers under a variety of affordable housing programs. Loans in the portfolio are originated for low-to-moderate income Chattanooga residents under the home improvement and down payment assistance programs that CNE operates in the capacity as a Subrecipient. Three different types of loans are originated—amortizing loans; deferred loans, and title transfer loans that are due upon transfer of title on the property.

Program activities have resulted in a loan portfolio containing over 597 loans worth approximately \$8.466 million. The City holds first and/or subordinate lien position on the loans.

The portfolio is classified as an asset on the City’s balance sheet. CNE originates new loans annually using funding sources that include, but are not limited to, the following:

- Community Development Block Grant funds (CDBG)
- HOME Investment Partnership funds (HOME)
- Tennessee Housing Development Agency (THDA) funds
- Neighborhood Stabilization Program (NSP) funds
- City General Funds

In compliance with federal requirements regarding the management and disposition of assets and property assisted in whole or part with federal funds, the City is ensuring proper management and protection of the loan portfolio and, to the greatest degree possible; the preservation and re-payments

such that generated proceeds can be used to meet other local housing and community development needs. Proper management requires, at minimum:

- Assisting in the financial, credit analysis and review of loan applications.
- Setting-up, maintaining and safeguarding the loan files.
- Corresponding with borrowers
- Sending out coupon books or monthly billing statements to each borrower.
- Collecting monthly principal and interest payments, along with taxes, insurance, or other escrow / impound payments, if applicable.
- Analyzing each loan account annually to ensure that an appropriate amount is collected for all escrow payments.
- Performing due diligence reviews of all loan files to ensure that all the required documents are contained in each.
- Providing adequately-staffed customer service to answer borrower inquiries via toll-free telephone, regular mail, e-mail, web-site, etc.
- Enforcing collection procedures as required to manage, mitigate and minimize delinquencies.
- Posting payments to each borrower's account, ensuring that appropriate amounts are applied to principal, interest, late charges, escrows, and others as appropriate.
- Communicating and corresponding with taxing authorities, insurance providers, and others needed.
- Producing a daily, weekly, or monthly trial balance for each client, with desired groupings.
- Preparing and mailing reminder notices, late notices, and delinquency notices.
- Producing monthly delinquency reports by loan type that group loans by the age of the delinquency (30 days, 60 days, 90 days, etc.).
- Processing loan assumption requests.
- Preparing amortization schedules as required.
- Preparing loan payoff statements.
- Preparing loan payoff documents, including the cancellation or satisfaction of security deed, or the UCC-3 form.
- Assuring that all collateral, including real property, that is securing a loan, is adequately insured to protect City's lien position in the event of a hazard.
- Preparing, filing, and mailing the annual IRS 1098 reports, and provide each borrower with a copy of their respective report.
- Reporting each borrower's payment record and history to national credit bureaus.
- Developing and implementing a comprehensive loss mitigation program, including structuring loan modification agreements and loan workout agreements.
- Managing and administering the foreclosure, bankruptcy, and repossession processes.
- Providing periodic (minimally on annual basis) performance reports on management of loan portfolio based on established benchmarks
- Maintaining records in accordance with City's and/or federal records retention policies
- Making available loan documentation and related transactions upon requests by City
- Making available records for independent audit

## **II. SCOPE OF SERVICES**

Under this Contract, CNE will serve as the loan servicing arm of the City of Chattanooga for loans originated through affordable housing programs with funds provided by the City. The goal of this activity is to encourage and assist borrowers, to keep their loans current, assist those borrowers who have fallen behind due to hardships, maintain effective management of the loan portfolio, and ultimately, reduce the portfolio delinquency rates. The portfolio consists of individual residential mortgage loans and developer residential mortgage loans.

### **Individual Residential Mortgage Loans (First and/or Subordinate Lien Positions)**

The mortgage loans are provided to individuals who are eligible as first-time homebuyers for the purchase of a housing unit and existing homeowners for the rehabilitation of their property. Eligible households fall within the low- to moderate income range and occupy the property as their primary residence.

### **Developer Residential Mortgage Loans**

These loans are typically made available to entities such as non-profit and for-profit housing developers, and/or quasi-governmental organizations for the development of single- and multi-family housing for homeownership opportunities.

### **Individual and Developer Forgivable Second Mortgage**

Utilizing its lending and loan servicing capabilities, CNE will provide loans to the developer and the homebuyer, naming the City as mortgagee or beneficiary with applicable loan position. CNE will also provide 8 hours of homeowner education to eligible homebuyers.

#### **A. Provide Loans to Developers**

Developers (private for-profit entities, or nonprofit entities) identified and approved by the City can receive a zero interest/zero payment loan, with no service fee, in an amount up to \$20,000. The loan will be available for acquisition and renovation of identified duplex units. The loan will be secondary to the primary construction loan obtained by the developer and will be repaid to CNE at closing when the property is sold to an eligible homebuyer.

CNE will:

1. Accept borrower's completed application package, reviewed by the City ECD Department, and confirm applicant's eligibility based on a review of the application, credit report information, and through communication with City staff and others involved in the loan process. CNE will obtain information and documents necessary to complete the mortgage loan approval process;

2. Prepare all required closing documents and closing instructions for the City's loans. The loan documents to be prepared by CNE will include all that are customary and appropriate to properly document, secure and make loans enforceable. Such documents include, but are not limited to, closing statement, promissory note, security instrument and/or agreement, rider, closing disclosure, and any UCC financing statement as required;
3. Submit an electronic copy to the City for review and approval.
4. Coordinate and schedule loan closing with the lender and closing attorney.
5. Deliver original closing documents and a check for the amount of the loan to the closing attorney for the scheduled closing.
6. Submit to ECD an electronic copy of the complete file after the closing has taken place to include all loan information and documents pertaining to the City's loan position;
7. Facilitate the process to receive repayment of the loan from the developer, and use those proceeds to provide homebuyer assistance to the purchaser, when the developer enters into a sales agreement to sell the renovated duplex.

B. Provide Loans to Buyers

For qualified homebuyers, the program will consist of the following:

- i. Provide second mortgage loans for down payment assistance, closing costs and buying down first mortgage
- ii. Loan terms will be 7-year forgivable at the end of seven (7) years
- iii. Assistance will be 20 percent (20%) of sales price, not to exceed \$20,000
- iv. Assistance will leverage first mortgage loans through local lenders

To receive assistance, the purchaser agrees, for seven (7) years, to maintain the duplex as a primary residence by living on one side of the duplex and renting the other unit to a household with an annual income that does not exceed 80 percent (80%) of the AMI. There are no income restrictions for the buyer/owner. The loan will be secondary to the primary mortgage obtained by the buyer. CNE will:

1. Accept borrower's completed application package that confirm applicant's eligibility, credit report, and approval;
2. Consult with City staff and others involved in the loan process to obtain information and documents necessary to complete the mortgage loan approval process;
3. Create a loan package that outlines, but is not limited to, loan terms, ratios, payments, and loan-to-value;
4. Prepare all required closing documents and closing instructions for the mortgage loans and deliver original closing documents to the closing attorney for the scheduled closing. The loan documents to be prepared by CNE will include all that are customary and appropriate to properly document, secure and make loans enforceable. Such documents include, but are not limited to, closing statement, promissory note, security instrument and/or agreement, rider, closing disclosure and any UCC financing statement as required;

5. Coordinate and schedule loan closing with the lender and closing attorney that outlines specific, but not limited to, loan terms, ratios, payments, and loan-to-value;
6. Will, if necessary, obtain legal counsel satisfactory to the City to provide opinions on the validity of liens or encumbrances on all property related to each loan;
7. Maintain a complete file to include all loan related information and documents after the closing has taken place;
8. Add developer and homebuyer loans to the loan portfolio it currently manages for the City;
9. Within 30 days after the closing of permanent financing, CNE shall properly record in the Hamilton County Register's Office, any mortgage, security agreement, financing statement, or similar document required by the City under this Contract (with all recording charges and recording taxes being paid by the Developer or homebuyer); and
10. Service loans according to the requirements outlined in this Contract.

C. Provide Homebuyer Education

1. CNE will provide a minimum of 8 hours of homeowner education to eligible homebuyers. Homebuyer education is the minimum requirement. Additional homebuyer counseling may be required for some clients. However it is not mandated by this Contract.
2. CNE should provide supportive services designed to sustain homeownership, if applicable.

Customers who successfully complete credit counseling are briefed by the homeownership specialist concerning documents to be brought to the pre-loan application session. The purpose of the mortgage loan counseling session is to make sure that all required documents, credit letters, federal income tax returns, necessary verifications, and other documents specific to the situation have been received. For clients who are receiving down payment assistance, this also serves as a pre-qualification for the assistance.

**Creation and Preservation of Affordable Housing**

CNE will pay delinquent taxes, interest, late fees and costs due on the following Affordable Housing Initiative properties:

1. 108 Southview Street, Map Section 117G, Block B, Lot Number 002
2. 2102 Raulston Street, Map Section 146F, Map H, Lot Number 013
3. 1104 South Greenwood Avenue, Map Section 146O, Map B, Lot Number 010
4. 5905 Clark Avenue, Map Section 148G, Map F, Lot Number 009
5. 1905 Huff Place, Map Section 156B, Map P, Lot Number 017
6. 3711 4<sup>th</sup> Avenue, Map Section 168B, Map A, Lot Number 010

**Loan Servicing Functions:**

As the loan servicing arm of the City, CNE will provide diligent and customary loan service which include, but is not limited to, the following functions:

1. **Cashiering** — This function consists of taking all customary and appropriate action to collect all loans when due on a monthly basis. This function includes receiving and posting payments (on-site, online, bank drafts, ACH and mail and any other industry standard deemed feasible by CNE), ensuring accurate application of the payments to the customers' accounts, the City's account, and the company's corporate accounts. Cashiering also includes payment processing for payoffs, daily system balancing, custodial accounting and research.
2. **Customer Service** — This function is associated with customer inquiry either via telephone or in person. Other duties of customer service include year-end processing, customer statements, updating customer records and handling assumptions, or non-default related modification requests.
3. **Escrow** — This function is associated with escrow analysis and payments associated with real estate taxes and insurance. Escrow analysis includes analyzing the borrower's escrow account to ensure that the payment is sufficient to pay all escrow items and handling escrow refunds. The tax function includes tax payments from escrow accounts, tax search for non-escrow accounts, tax service maintenance (check tax service reports, reconcile bills, and request payment), special assessments, and research. The insurance function includes insurance payments from escrow accounts, reviews for coverage on non-escrow accounts, force placing insurance when necessary, insurance claim processing, mail processing and research.

**Default** — This function includes collections, loss mitigation (forbearance, modification, deed-in-lieu, short sale), foreclosures, bankruptcy and real estate owned functions required under the servicing agreement with the City. The foreclosure function involves following state law. It also includes all claims processing. The bankruptcy function involves protecting the loan asset by monitoring bankruptcy actions, ensuring compliance with federal bankruptcy code, and ensuring preservation of the property involved in the bankruptcy action. The real estate owned function involves post-foreclosure sale activities, conveyance, property preservation and property management.

Through default and delinquency monitoring CNE will provide reports and notifications to the City related to delinquent loans. CNE will notify the City of all defaults and events of defaults by the borrower of which it is aware. This may include sale, transfer, loss and/or damage to collateral used to secure loan, failure to provide adequate coverage of mortgaged property, borrower's misuse of mortgaged property, and/or other violations by a borrower of his/her/their obligations under the executed loan documents.

5. **Delinquency Counseling, Repayment Plan and Forbearance Evaluations**  
The purpose of all collection efforts is to bring a delinquent mortgage current in as short a time as possible, to avoid foreclosures to the extent possible, and to minimize losses. A successful servicing strategy treats each delinquent mortgagor individually; and based on the circumstances involved, custom tailors a foreclosure prevention workout plan that will be successful in curing the delinquency and preventing a foreclosure. As a part of the Loan

Servicing Policies the Subrecipient will:

- a. Review each loan in default to determine which available loss mitigation strategy is appropriate;
- b. Work with borrowers to implement repayment plans for past due payments, generally no more than ninety (90) days past due and/or able to be brought current within 6-12 months. Send copies of letter agreements with borrowers to the City upon request;
- c. Work with borrowers to evaluate their financial situation, including budget and credit counseling, to formulate repayment plans or recommend loan modifications for borrowers more than ninety (90) days past due;
- d. Prepare Forbearance Evaluations and work with borrowers who have encountered hardships to recommend loan modification actions; and
- e. Upon the expiration of the 90-day demand letter, CNE will operate under the guidelines in the approved Loan Servicing Policies to proceed with further legal collection proceedings, including foreclosure.

6. **Foreclosure services**

If the City does not object to the initiation and completion of foreclosure on all collateral, including real and personal property, CNE will follow procedures outlined in the approved Loan Servicing Policies. The City shall approve the attorney chosen by CNE to represent the City, which approval shall not be unreasonably withheld.

7. **Bankruptcy Tracking** - CNE will track Chapter 7 and Chapter 13 Filings, file Proof of Claim or Reaffirmation Agreement, track pre- and post-petition payments and any other related tasks.

8. **New Loan Set Up** — This function includes entering new loans on the servicing system.

9. **Payoffs** — Payoffs include activities associated with payoffs and lien releases and all activities relating to discharge, satisfaction and/or re-conveyance of the mortgage/deed-of-trust upon payment in full of the mortgage loan.

10. **Servicing Technology** — This function includes personnel and all technology directly related to servicing, such as service bureau, vendor supported or proprietary systems. At minimum, systems will have capacity and capabilities to ensure efficient and accurate loan portfolio management and produce information, reports, data required by clients and City.

CNE will maintain a secure, complete and accurate loan data base of the borrower's accounts and keep all records in connection with the loans in a safe and secure environment. Files and portfolio information will be available, within twenty-four (24) hours' notice, for inspection during regular business hours, by City representatives, or other examiners/person lawfully and appropriately authorized by the City other governmental authorities.

11. **Administration** — Administration includes management and administrative staff who oversee the operations of the entire servicing department; record retention and retrieval; REO management; maintaining servicing policies and procedures; servicing compliance; and servicing performance measurement and strategy functions. At the time this Contract



is signed by both parties, CNE will provide the City with a copy of the entity's written Loan Servicing Policies and procedures. Performance reports will be submitted in a mutually agreed upon format and frequency

12. **City (Investor) Reporting** — This function includes accurately accounting for, reporting and remitting the payments to the City along with Portfolio Management Reports, on a monthly basis. CNE will provide monthly reports that include:

a. **REMITTANCE OF COLLECTIONS –PROGRAM INCOME**

Program income means *gross income* received by the subrecipient directly generated from the use of the federal funds and local funds. Re-payments (collections) from borrowers is considered program income and must be remitted to the City on a monthly basis, unless specified otherwise, in accordance with 24 CFR 570.500. Subrecipient agrees that any program income received, less eligible costs incidental to the generation of said income, shall be returned to the City.

Prior to remitting the program income to the City, Subrecipient may subtract the costs incidental to the generation of the program income, which include allowable activity (loan portfolio management) costs.

b. **SEPARATE TRACKING OF PROGRAM INCOME AND COSTS**

The loan portfolio contains loans originated from various funding sources. The gross program income and portfolio management costs must be tracked and reported separately for each funding source and eligible costs may only be subtracted from the loan producing the corresponding program income.

c. **ELIGIBLE COSTS**

Subrecipient must maintain a process to accurately track eligible costs. Eligible loan portfolio costs include but is not limited to (with prior approval for exceptions):

- 1) Salaries and benefits of employees administering the loan portfolio subject to limits established in offer submitted/accepted by the City during Budgeting for Outcomes process (annual budget);
- 2) Customary fees, accounting and legal costs related to portfolio technology, materials, supplies;
- 3) Postage; and
- 4) Occupancy, annual audit, and insurance costs.

To be eligible for billing under HOME, CDBG or THDA, costs must be directly related to management of the loan portfolio. These costs include:

- 1) Salaries of employees administering the loan portfolio;
- 2) Customary fees, accounting and legal costs related to portfolio technology, materials, supplies; and
- 3) Postage.

Remittance of collections will be submitted monthly and will include support documentation for actual collections received and deposited in the bank and charges against the remittance for eligible activity costs,

Loan Specific Costs

Loan specific costs incurred by the Subrecipient on behalf of the City, including; legal fees, lien release fees, recording fees, loan protector insurance, forbearance agreement/modification fees, and bankruptcy administration fees may also be deducted from the monthly remittance to the City. Such costs will not count toward the maximum compensation due the Subrecipient under this contract

d. REPORTING REQUIREMENTS

Subrecipient shall prepare and submit reports relative to this project to the City at the City's request. Subrecipient shall prepare and submit status and performance reports regarding the activities on a quarterly basis. Reports shall include the following information.

- 1) Loan portfolio detail by funding source (CDBG, HOME);
- 2) Number/details on payoffs;
- 3) Number/details on new loans added;
- 4) Number/details on loans more than 60 days delinquent;
- 5) Number/details on defaults;
- 6) Number/details on foreclosures;
- 7) Number/details on REO dispositions;
- 8) Performance based on established benchmarks; and
- 9) Any instances of non-compliance

At the City's discretion, other information/reports, relative to this activity, and deemed necessary, may also be requested.

Reports, Copies of correspondence should be mailed to:

City of Chattanooga  
Department of Economic and Community Development  
101 East 11<sup>th</sup> Street  
Suite 200  
Chattanooga, TN 37402  
Attention: Community Development Manager

And

**City of Chattanooga**  
Administrator, City Finance Officer  
101 E. 11<sup>th</sup> Street, City Hall  
Chattanooga, TN 37402

**III. COMPENSATION AND METHOD OF PAYMENT:**

No payment will be made until the contract is approved by the Chattanooga City Council and has been fully executed by all parties.

- A. The Subrecipient shall be compensated for work done according to the scope of services described herein in an amount not to exceed Four Hundred Twenty Thousand Dollars and 00/100 (\$420,000.00), as detailed below:

Funding Source		Maximum
City General Funds		\$170,000.00
*City Capital Funds		\$100,000.00*
Loans Re-payments		
HOME Funded Loans	\$88,500.00	
CDBG Funded Loans	\$54,000.00	
THDA Funded Loans	\$7,500.00	
NSP Funded Loans	\$000.00	*\$150,000.00
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TOTAL		<u>\$420,000.00</u>

**\*With consent of both parties, amounts are subject to change with total not exceeding maximum of \$150,000.00.**

- B. Charges totaling to the maximum amounts detailed at III (1) may be made over a twelve month period. All costs relative to the management of the loan portfolio must be properly documented and be clearly identified in regards to the source of funds costs are being charged against.

Eligible, documented costs will be deducted by Subrecipient from HOME, CDBG and THDA loan collections prior to remitting the balances to the City, on a monthly basis. Subrecipient must include support documentation, with monthly remittances, for all costs deducted from collections.

City General Funds must be requested, in writing. Requests may be made as frequently as monthly but must include documentation to support costs included in the request. Monthly reports must include gross income, eligible costs (those subject to max compensation and those not subject separately and net remittance to the City for proper accounting.

All Remittances and invoices shall be mailed to:  
 City of Chattanooga  
 Department of Economic and Community Development  
 101 East 11<sup>th</sup> Street Suite 200  
 Chattanooga, TN 37402  
 Attention: Community Development Manager

1. The Subrecipient agrees to pay all federal, state, and local taxes incurred in the performance of this Contract.

#### IV. TERM OF CONTRACT

The parties acknowledge that the Subrecipient shall provide services pursuant to this Contract from July 1, 2019, through June 30, 2020, unless earlier terminated pursuant to the provisions of this Contract.

**V. STANDARD TERMS AND CONDITIONS**

- A. The City is not bound by this Contract until it is approved by the Chattanooga City Council and executed by the appropriate officials as indicated on the signature page of this Contract;
- B. This Contract may be modified only by written amendment, which has been executed and approved by the appropriate parties as indicated on the signature of this Contract;
- C. The City may terminate the Contract by giving the Subrecipient at least thirty (30) days written notice before the effective termination date. The Subrecipient shall be entitled to receive equitable compensation for satisfactory completion of services as of the termination date authorization;
- D. If the Subrecipient fails to properly perform any obligation under this Contract or violates any terms of this Contract, the City shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. The Subrecipient shall not be relieved of liability to the City for damages sustained by virtue of any breach of this Contract by the Subrecipient;
- E. The Subrecipient shall not assign this Contract without obtaining prior written approval of the City;
- F. Prior to engaging the services of any subcontractors to provide any portion of the services to be provided hereunder, the Subrecipient will seek prior written approval from the City. If the City approves such subcontractors, the Contract shall contain the subcontractor's contract to comply with the provisions of this Contract.
- G. Subrecipient agrees to comply with 2 CFR 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred, whether charged on a direct or indirect basis.
- H. No person on the grounds of handicap, age, race, color, religion, sex, national origin, or any other classification protected by federal and/or Tennessee State constitutional and/or statutory law shall be excluded from participation in, or be denied benefit of, or be otherwise subjected to discrimination in the performance of this Contract. The Subrecipient, shall, upon request, show proof of such non-discrimination, and shall post in conspicuous places, available to all employees and applicants, notices of non-discrimination; and
- I. The Subrecipient shall comply with all applicable federal and state laws and

regulations in the performance of this Contract.

## **VI. AUDIT PROVISION**

- A. The City or its assign may audit all financial and related records (including digital) associated with the terms of the contract or agreement including timesheets, reimbursable out of pocket expenses, materials, goods, and equipment claimed by the Subrecipient. The City may further audit any Subrecipient records to conduct performance audits (to identify waste and abuse or to determine efficiency and effectiveness of the contract or agreement) or to identify conflicts of interest;
- B. The Subrecipient shall at all times during the term of the contract or agreement and for a period of seven (7) years after the end of the Contract, keep and maintain records of the work performed pursuant to this Contract. This shall include proper records of quotations, contracts, correspondence, invoices, vouchers, timesheets, and other documents that support actions taken by the Subrecipient. Documents shall be maintained by the Subrecipient necessary to clearly reflect all work and actions taken. All such records shall be maintained in accordance with generally accepted accounting principles. The Subrecipient, shall at its own expense, make such records available for inspection and audit (including copies and extracts of records as required) by the City at all reasonable times and without prior notice;
- C. Subrecipients expending over \$750,000 in federal funds from all sources hereby agrees to have an annual agency audit conducted in accordance with current City policy concerning Grantee audits and 2 CFR 200.501. The appropriate CFDA number must be used in the Schedule of Expenditures of Federal Awards, 14.239 for HOME, 12.218 for CDBG.
- D. The obligations of this Section shall be explicitly included in any subcontracts or agreements formed between the Subrecipient and any Sub-Consultants or suppliers of goods or services to the extent that those subcontracts or agreements relate to fulfilment of the Subrecipient's obligations to the City;
- E. Costs of any audits conducted under the authority of this section and not addressed elsewhere will be borne by the City unless the audit identifies significant findings that would benefit the City. The Subrecipient shall reimburse the City for the total costs of an audit that identifies significant findings that would benefit the City; and
- F. This Section shall not be construed to limit, revoke, or abridge any other rights, powers, or obligations relating to audit which the City may have by Federal, State, or Municipal law, whether those rights, powers, or obligations are express or implied.

## **VII. INSURANCE**

At no additional cost to the City, Subrecipient will procure and maintain for the duration of this Contract insurance of the types and in the amounts described below against claims for injuries to persons or damages to property which may arise from or in connection with the performance of this Contract by Subrecipient, its agents, representatives, employees, volunteers, or subcontractors.

A. COMMERCIAL GENERAL LIABILITY INSURANCE.

Subrecipient agrees during the term of this Contract to maintain occurrence version commercial general liability insurance or equivalent form with a limit of not less than two million dollars (\$2,000,000) each occurrence for bodily injury, personal injury and property damage. If such insurance contains a general aggregate limit, it will apply separately to this Contract, or be no less than two (2) times the occurrence limit. Subrecipient agrees to provide the insurance policies at its sole expense, with commercially reasonable increases in coverage, but in no event shall the insurance coverage be less than the limits set by the Tennessee Governmental Tort Liability Act, as may be amended. Such insurance will:

- i. Contain or be endorsed to contain a provision that includes the City, its officials, officers, and employees as insured's with respect to liability arising out of work or operations performed by or on behalf of Subrecipient including materials, parts, or equipment furnished in connection with such work or operations. The coverage will contain no special limitations on the scope of protection afforded to the above listed insured's. Liability coverage can be provided in the form of an endorsement to Subrecipient's insurance or as a separate owner's policy; and
- ii. For any claims related to this Contract, be primary insurance as respects the City, its officials, officers and employees. Any insurance or self-insurance programs covering the City, its officials, officers and employees will be in excess of insurance and will not contribute with it.

B. WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY INSURANCE.

Subrecipient shall maintain workers' compensation insurance with statutory limits as required by the State of Tennessee and employers' liability insurance with limits of not less than two million dollars (\$2,000,000). Subrecipient shall require each of its subcontractors to provide workers' compensation for all of the subcontractor's employees to be engaged in such work unless such employees are covered by Subrecipient's workers' compensation insurance coverage.

C. PROFESSIONAL LIABILITY INSURANCE.

Subrecipient shall maintain in full force and effect through the term of this Contract and any renewals thereof Professional Liability Insurance coverage appropriate to the subrecipient's profession of not less than Two Million Dollars (\$2,000,000.00) for each claim and Two Million Dollars (\$2,000,000.00) policy aggregate limit.

D. AUTOMOBILE INSURANCE.

Subrecipient shall maintain automobile liability insurance for owned vehicles, hired and non-owned vehicles, with a policy limit of not less than one million dollars (\$1,000,000.00), combined single limits, per occurrence and aggregate.

E. **ADDITIONAL INSURANCE REQUIREMENTS.**

Subrecipient shall include the City as additional insured on all property insurance. Proof of said insurance shall be provided to City prior to commencement of services. Subrecipient shall:

- i. Prior to commencement of services, furnish City with original certificates of insurance and any amendatory endorsements effecting coverage required by this Section, and provide that such insurance will not be cancelled, allowed to expire, or be materially reduced in coverage except on thirty (30) days' prior written notice to the City Attorney;
- ii. If requested by City, provide certified copies of endorsements and policies in lieu of or in addition to certificates of insurance;
- iii. Replace certificates, policies and endorsements for any such insurance expiring prior to completion of services;
- iv. Maintain such insurance from the time services commence until services are satisfactorily completed, and note that failure to maintain or renew coverage or to provide evidence of renewal may be treated by City as a breach of contract;
- v. Place such insurance with an insurer that is licensed to do business in Tennessee and has an A.M. Best Company rating of no less than AV; and
- vi. Require all subcontractors to maintain during the terms of this Contract, Commercial General Liability insurance, Business Automobile Liability insurance and Workers' Compensation/Employers' Liability insurance (unless subcontractor's employees are covered by Subrecipient's insurance) in the same manner as specified for Subrecipient, and furnish subcontractor's certificates of insurance to City prior to the commencement of work.
- vii. Furthermore, any deductibles or self-insured retentions must be declared to and approved by City.

**VIII. FIDELITY BOND.**

Subrecipient shall provide City a Fidelity Bond providing coverage for all officers and other employees of subrecipient in an amount not less than Two Hundred Fifty Thousand Dollars (\$250,000.00) with a deductible not to exceed Twenty-Five Thousand Dollars (\$25,000.00).

**IX. REPRESENTATIONS OF SUBRECIPIENT.**

Subrecipient represents and warrants that it holds all licenses required to perform the services covered by this Contract and that it will, without reliance upon City, keep informed of all current laws and regulations governing the conduct of Subrecipient's business and comply with all applicable laws and regulations at all times during its performance of this Contract. Without limiting Subrecipient's other obligations under this Contract, Subrecipient shall be responsible for the payment of any fees and for any penalties that may result from Subrecipient's violation of any regulatory or legal requirement or other laws, to the extent the imposition of such fees or penalties do not arise out of the actions of City.

## **X. DEFAULT.**

The following constitute events of default or a material change in circumstances for which the parties may terminate this Contract:

- A. Any material breach of the term of this Contract which is not cured by the breaching party within twenty (20) days after receipt of notice of such breach from the other party;
- B. The discovery by City of the falsity of any representation or warranty made to City by Subrecipient;
- C. The levying of any attachment, execution or any process against Subrecipient which is not promptly cured or the filing of any bankruptcy petition by Subrecipient or the appointment of any receiver or equivalent to take suggestion of Subrecipient's property which is not set aside or terminated within ten (10) days from the occurrence thereof;
- D. Subrecipient being merged with, acquired by, or otherwise absorbed by any individual, corporation or other business entity; or
- E. Subrecipient undergoing significant changes of personnel or other changes to its business that City reasonably believes may affect Subrecipient's ability to provide the services by this Contract.

The failure of the party to declare a default upon the occurrence of an event constituting a default shall not waive that party's right to declare a default for such occurrence or any subsequent occurrence.

## **XI. INDEMNIFICATION**

Subrecipient agrees to protect, defend, indemnify, and hold City and its officers, employees, and agents free and harmless from and against any and all losses, penalties, damages, settlements, costs, charges, professional fees or other expenses or liabilities of every kind and character arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings or causes of action of every kind and character, including reasonable attorney's fees and court costs, in connection with the performance of the services provided by Subrecipient, its agents, servants, employees or subcontractors, or anyone directly employed by any of them for his acts any of them may be liable. This indemnification shall survive the expiration or sooner termination of this Contract.

## **XII. INDEPENDENT CONTRACTOR**

Subrecipient agrees to provide the services enumerated in (II) hereinabove as an independent contractor and not as an employee of City. It is understood and agreed that City will not withhold



any amount for payment of taxes from the compensation of Subrecipient hereunder. Subrecipient shall not represent to be or hold itself out or any of its employees to be an employee of City.

- A. The City is not obligated to third parties, and the City shall not be obligated or liable hereunder to any party other than the Subrecipient.
- B. If any provision of this Contract is determined to be unenforceable or invalid, such determination shall not affect the validity of other provisions contained in this contract. Failure to enforce any provision of this Contract does not affect the rights of the parties to enforce such provision in another circumstance, nor does it affect the right of the parties to enforce any of the provision of this Contract at any time.
- C. This Contract shall be governed and construed in accordance with the laws of the State of Tennessee.
- D. This Contract shall be binding upon and shall inure to the benefit of Subrecipient and City and to their respective successors and assigns.
- E. This Contract forms the entire agreement between the City and the Subrecipient. Any prior representations, promises, agreements, or otherwise, between the parties, which are not embodied in this writing, will be of no force and effect.

### **XIII. OTHER REQUIREMENTS**

- A. **Dissolution of Organization**  
In the event the Subrecipient should cease to be a nonprofit entity, liquidate, dissolve, or cease to operate, the Subrecipient agrees to assign and transfer to the City all its rights, title and interest in real property that was acquired and / or improved using CDBG, HOME Investment Act and ESG funds.
- B. **Sub-Agreements and Contracts**  
The obligations of this Contract shall be explicitly included in any subcontracts or agreements formed between the Subrecipient and any subcontractors or suppliers of goods or services to the extent that those subcontracts or agreements relate to fulfillment of the Subrecipient's obligations to the City.
- C. **Fair Housing**  
Subrecipient agrees that it will conduct and administer activities in conformity with Pub. L. 88-352, "Title VI of the Civil Rights Act of 1964", and with Pub. L. 90-284 Fair Housing Act, and that it will affirmatively further fair housing. One suggested activity is to use the fair housing symbol and language in Subrecipient publications and/or advertisements.
- D. **Non-Discrimination**  
Subrecipient agrees to comply with 24 CFR Part I, which provides that no person shall on the ground of race, color, national origin, or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under,

any program or activity funded in whole or in part with federal funds made available pursuant to the Act.

E. Non-Discrimination in Employment

Subrecipient agrees to comply with Executive Order 11246 and 12086 and the regulations issued pursuant thereto (41 CFR 60) which provide that no person shall be discriminated against on the basis of race, color, religion, sex or national origin in all phases of employment during the performance of Federal or Federally assisted construction contracts. The Subrecipient will in all solicitations or advertisements for employees placed by or on behalf of the Subrecipient; state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin or familial status.

F. Section 504 Compliance

No otherwise qualified individual with handicaps shall, solely by reason of his or her handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. This includes, but is not limited to, programs and/or activities related to housing, employment, and the delivery of services.

G. Affirmative Action

Subrecipient will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, or familial status. The grantee will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, national origin, or familial status. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or advertising; lay-off or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship. Subrecipient agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City setting forth the provisions of this nondiscrimination clause. Subrecipient agrees to make efforts to encourage the use of minority and women-owned business enterprises in connection with CDBG activities and to comply with the City's Minority and Women Owned Business Outreach Plan. As used in this contract, the term "minority and female business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are African-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians. The Subrecipient may rely on written representation by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.

H. Non-Discrimination and Residential Property

Subrecipient agrees, in accordance with Executive Order 11063 and 12259 that it will not discriminate because of race, color, religion, sex, or national origin in the sale, leasing, rental or other disposition of residential property and related facilities, or in the use of occupancy thereof, if such property and related facilities are, among other things, provided in whole or in part with the aid of loans, advances, grants, or contributions agreed to be made by the Federal Government.

- I. Labor Matters  
No person employed in the work covered by this contract shall be discharged or in any way discriminated against because he or she has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable hereunder to his or her employer.
  
- J. Conflict of Interest  
Subrecipient agrees to comply with the conflict of interest provisions contained in 24 CFR 85.36, 570.611, and 24 CFR part 84.42 (Revised OMB Circular A-110) as appropriate. No member of the governing body of the Subrecipient, City, County, State, or Federal Government who exercises any functions or responsibilities in connection with the carrying out of the project, to which this contract pertains, shall have any personal interest, direct or indirect, in the contract for services performed pursuant to this contract. All personnel required hereunder to perform any repairs specified herein shall be fully qualified and shall be authorized or permitted under applicable Federal, State and local law to perform such services. No person who is serving sentence in a penal or correctional institution shall be employed or work under this contract.
  
- K. Drug Free Workplace  
In accordance with 24 CFR part 24, subpart F, Subrecipient agrees to administer a policy to provide a drug-free workplace that is free from illegal use, possession, or distribution of drugs or alcohol by its beneficiaries as required by the Drug Free Workplace Act of 1988.
  
- L. Debarred, Suspended, or Ineligible Contractor  
Subrecipient agrees to comply with 24 CFR part 24 with regard to the direct or indirect use of any contractor during any period of debarment, suspension, or placement in ineligibility status.

**XIV. NOTICES.**

All notices, requests and other communications concerning this Contract from either party to the other shall be in writing and delivered either personally or by Certified Mail, return receipt requested. Any such notice, request or other communication shall be deemed to have been given on the date of personal delivery, or, if mail, on the date of receipt. All communications shall be addressed as follows:

To the City: City of Chattanooga Economic and Community Development  
101 E. 11<sup>th</sup> Street  
Chattanooga, TN 37402

Copy to: City Attorney's Office  
100 E. 11<sup>th</sup> Street, Suite 200  
Chattanooga, TN 37402

To CNE: Chattanooga Neighborhood Enterprise, Inc.

1500 Chestnut Street, Suite A  
Chattanooga, TN 37402

IN WITNESS WHEREOF, the parties have by their duly authorized representatives set their signatures.

**CITY OF CHATTANOOGA**

**CHATTANOOGA NEIGHBORHOOD  
ENTERPRISE, INC.**

By: \_\_\_\_\_  
\_\_\_\_\_

By:  \_\_\_\_\_

Printed Name: Donna C. Williams

Printed Name: Martina Guilfoil

Title: Administrator, Dept. of ECD

Title: President & CEO

Date: \_\_\_\_\_

Date: August 13, 2019