

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

DEPARTMENT: Community and Human Development

AGENDA DATE: April 27, 2010

CONTACT PERSON/PHONE: William Lilly/541-4643

DISTRICT(S) AFFECTED: All Districts

SUBJECT:

APPROVE a resolution / ordinance / lease to do what? OR AUTHORIZE the City Manager to do what? Be descriptive of what we want Council to approve. Include \$ amount if applicable.

Authorize the City Manager to sign a sub-recipient grant contract between the City and the El Paso Housing Finance Corporation in connection with the City's state-funded Neighborhood Stabilization Program (NSP), awarding an amount not to exceed \$1,483,771.00 for the purchase and rehabilitation/reconstruction of eligible foreclosed and abandoned properties within the target area, and resale to eligible income households. City Council is also asked to authorize the City Manager to execute assignments of purchase and sale contracts to HFC and any other documents related to HFC property acquisition.

BACKGROUND / DISCUSSION:

Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?

The Texas Department of Housing and Community Affairs (TDHCA) recently informed the City that it would require that a lien be placed on a NSP-acquired property. Section 7.9 of the City Charter states that, "City property of every nature, and its appurtenances, shall be exempt forever from City taxes, executions, attachments or forced sales." Staff recommends working with the El Paso Housing Finance Corporation so that the TDHCA NSP funds which have already been awarded may be spent to achieve the broader NSP goal of stabilizing neighborhoods with high foreclosure rates and neighborhoods that are likely to have such rates. TDHCA is aware of the proposed relationship between the City of El Paso and the El Paso Housing Finance Corporation as a way to achieve the City's goals.

PRIOR COUNCIL ACTION:

Has the Council previously considered this item or a closely related one?

On April 21, 2009, the City Council approved a resolution approving submission of the grant application for the Neighborhood Stabilization Program to the Texas Department of Housing and Community Affairs (TDHCA) and provided certain authorizations related to grant application submittal.

On November 18, 2008, City Council approved a resolution amending the 2005-2010 Consolidated Plan to add a Neighborhood Stabilization Program (NSP) component, amending the City's 2008-2009 Annual Action Plan to add NSP-funded activities, and approval of the International Building Code (IBC) definition of "blighted structure", and authorizing the City Manager to take any actions necessary to accomplish the intent of the resolution upon approval by the City Attorney's Office and Director of Community and Human Development.

AMOUNT AND SOURCE OF FUNDING:

How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?

This item will be funded through a Neighborhood Stabilization Program award from the Texas Department of Housing and Community Affairs (TDHCA).

Department 71150034

Fund 07902

Project/Grant: G71NSP - TDHCA

BOARD / COMMISSION ACTION:

Enter appropriate comments or N/A

N/A

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

LEGAL: (if required) _____ **FINANCE:** (if required) _____

DEPARTMENT HEAD: _____

(Example: if RCA is initiated by Purchasing, client department should sign also)
Information copy to appropriate Deputy City Manager

APPROVED FOR AGENDA:

CITY MANAGER: _____

DATE: _____

LEGAL

DEPAR

APPR

CITY

LEGAL

DEPAR

APPR

CITY

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 El Paso Housing Finance Corporation (HFC) in connection with the City's state-funded Neighborhood Stabilization Program (NSP) (Community Development), awarding an amount not to exceed \$1,483,771.00 for the purchase and rehabilitation/reconstruction of eligible foreclosed and abandoned properties within the target area, and resale to eligible income households; that City Manager to execute assignments of purchase and sale contracts to HFC and any other documents related to HFC property acquisition.

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

STATE OF TEXAS)
)
COUNTY OF EL PASO)

SUBRECIPIENT AGREEMENT

THIS AGREEMENT entered into this ____ day of _____, 2010, 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 the El Paso Housing Finance Corporation, a Texas nonprofit corporation organized pursuant to the terms of the Texas Housing Finance Corporation Act, Texas Local Government Code, Chapter 394, hereinafter referred to as "HFC".

RECITALS

WHEREAS, the City has been awarded Neighborhood Stabilization Program ("NSP") funds (Contract No. 77090000112) through the Texas Department of Housing and Community Affairs ("TDHCA"), originating from NSP funds allocated to TDHCA through Division B, Title III of the Housing and Economic Recovery Act of 2008 (Pub. L. 110-289)("HERA"); and

WHEREAS, the purpose of the City's TDHCA-funded Neighborhood Stabilization Program ("TDHCA-NSP") is to acquire and rehabilitation fourteen (14) foreclosed and abandoned residential properties for resale to qualified low-income households as affordable housing in El Paso; and

WHEREAS, the City is authorized to disburse NSP funds to eligible subrecipients for NSP eligible activities and intends to engage HFC, as a subrecipient, to assist the City in utilizing such funds and HFC desires to assist the City in creating additional affordable housing in El Paso; and

WHEREAS, HFC has agreed to use the allocated funds in an amount not to exceed \$1,483,771.00, for the purchase and rehabilitation/reconstruction of eligible foreclosed and abandoned properties within the target area, identified in Attachment 3, and resale to eligible low-income to moderate-income households in accordance with this Agreement, the City's NSP Manual, TDHCA requirements, and federal law, rules and regulations related to NSP implementation ("NSP rules and regulations"); and

WHEREAS, the City recognizes that it retains certain administrative duties and monitoring obligations to ensure compliance with NSP rules and regulations, both state and federal.

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

I. CONTRACT TERMS

SECTION A. TERM

This Agreement shall commence as of the date first written above and shall terminate on August 31, 2011, unless otherwise specifically provided by the terms of this Agreement.

SECTION B. PERFORMANCE

1. HFC shall conduct, in a satisfactory manner as determined by the City and TDHCA, one or more activities under the City's TDHCA-NSP and shall perform such activities in accordance with the terms of the Project Scope, hereinafter referred to as Attachment 1, attached and incorporated herein; the Project Budget hereinafter referred to as Attachment 2, attached and incorporated herein; the Applicable Laws and Regulations, hereinafter referred to as Attachment 4, attached and incorporated herein; the Certifications attached and hereinafter referred to as Addendum A; and with all other terms, provisions and requirements set forth in this Agreement.

2. Upon written approval from the City's Director of Community and Human Development ("Director"), Attachments 1 and 2, may be revised to change the substance of the Project Scope, including new activities or alteration or deletion of existing approved activities; extensions to the term of work performance for completion of project activities; and/or NSP activity budget changes among approved NSP funded budget items. The revision request(s) must be submitted in writing prior to the project modification.

SECTION C. CITY'S OBLIGATIONS

1. Disbursement of Funds

It is expressly agreed and understood that the total amount to be paid by the City under this Agreement shall not exceed \$1,483,771.00. Subject to release authorization by TDHCA, the City by or through the TDHCA shall issue funds to HFC for the payment of eligible expenses as specified in the Project Budget and in accordance with performance rendered by HFC, as specified in Section B. and all applicable NSP rules and regulations, subject to the limitations set forth in this Section.

a. It is expressly understood and agreed by the parties hereto that the City's obligations under this Section are contingent upon the actual receipt of adequate state funds to meet the City's obligations under this Agreement. The City anticipates that it will receive adequate state funds to meet the City's obligations under the Agreement, however, if adequate funds are not available to make payments under this Agreement, the City shall notify HFC in writing as soon as practicable after such fact is determined. The City shall thereupon terminate this Agreement and will not be liable for failure to make payments to HFC under this Agreement.

2. Excess Payments

HFC shall refund to the City any sum of money which has been paid to HFC by the City by or through TDHCA, which the City determines has resulted in overpayment to HFC, or which City determines has not been spent by HFC strictly in accordance with the terms of this Agreement. Such refund shall be made by HFC to the City within ten (10) working days after the City requests such refund.

3. Limitation on Payment Obligation

Notwithstanding any other provision of this Agreement, the total of all payments and other obligations incurred by the City under this Agreement shall not exceed the sum of \$1,483,771.00, which will be paid by the City, subject to all terms and conditions, as stated

herein, from only one funding source: TDHCA-NSP funds. The City shall in no way be held liable to pay any sums to HFC under the terms of this Agreement, except as specified in this Agreement, and from the source as specified directly above, and shall in no way be held liable to HFC to pay any such sums to HFC from general City revenue, or any other source, except as specified directly above.

4. Environmental Review

Prior to the commitment of any project funds, incurring any project costs, and state and City disbursement of funds, the City shall complete the environmental review procedures and requirements as set forth in 24 CFR Part 58 issued by the U.S. Department of Housing and Urban Development ("HUD"). Notwithstanding any provision of this Agreement, the parties hereto agree and acknowledge that this Agreement does not constitute a commitment of funds or site approval, and that such commitment of funds or approval may occur only upon satisfactory completion of environmental review and receipt by the City of a release of funds from TDHCA. The parties further agree that the provision of any funds to the project is conditioned on the City's determination to proceed with, modify or cancel the project, in whole or partially, based on the results of an environmental review.

5. Administration and Performance Activities

Except for those activities identified in Project Scope, Attachment 1, which are to be performed by HFC, the City shall be responsible for and shall perform all other administrative and programmatic activities associated with the City's TDHCA-NSP including compliance with applicable NSP rules and regulations thereto.

SECTION D. COMPENSATION, MONITORING, REPORTING, AND PROGRAM INCOME

1. HFC shall perform its services within the monetary limits contained in Attachment 2, entitled "Project Budget," attached hereto and incorporated by reference herein for all purposes. In no event shall compensation to the HFC exceed the lesser of HFC's costs attributable to the work performed, or the monetary limits described in the Project Scope, Attachment 1.

2. By the 5th day of each month during the term of this Agreement, HFC agrees to supply the City with a progress report detailing: progress toward goals and performance standards as set forth in Attachment 1; and expenditure details, which at a minimum shall include all previously requested expenditures and any estimated expenditures that HFC expects to incur within the next sixty (60) days on budgeted items. Reports shall be submitted in the format specified or agreed to by the City.

3. The City will monitor the performance of HFC against the goals and performance standards as set forth in Attachment 1. Substandard performance as determined by the City will constitute noncompliance with this Agreement. If action to correct such substandard performance is not taken by HFC within thirty (30) days after being notified of such by the City, the City will initiate suspension or termination of this Agreement.

4. HFC shall cooperate with the City in the City's preparation of any reporting required by TDHCA and HUD, including without limitation any requested documentation for auditing

purposes so that the City may comply with the requirements of OMB Circular A-133 and related NSP rules and regulations.

5. Except as otherwise provided, within ten (10) business days of receipt by HFC of any program income, as defined by HUD, HFC will remit to the City any program income (as defined at 24 CFR 570.500(a)) generated by activities carried out with NSP funds made available under this Agreement. Subject to TDHCA approval, the City may later reallocate program income to HFC pursuant to an amended Project Scope as approved by the Director.

SECTION E. SUSPENSION OR TERMINATION

1. The City may suspend or terminate this Agreement should HFC materially fail to comply with the terms of this Agreement. The City shall give the HFC ten (10) days written notice of the suspension or termination with the understanding that all services being performed under this Agreement shall cease upon the date specified in such notice.

2. The CITY or HFC may also, terminate this Agreement for convenience, at any time before the term period expires. The parties shall agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated.

3. If HFC breaches any term or condition of this Agreement, or if any change of circumstances renders it unlikely that the HFC will perform the services required hereunder, the CITY may take one or more of the following actions:

- a. Withhold further cash payments, either pending corrective action by the HFC, or permanently, if there is inadequate or no corrective action by the HFC;
- b. Disallow costs for all or part of the activity or action not in compliance;
- c. Wholly or partly suspend or terminate this Agreement;
- d. Withhold further contracts to the HFC; or
- e. Pursue any other remedies that are available at law or equity.

SECTION F. REVERSION OF ASSETS

Upon the expiration or termination of this Agreement, the HFC shall promptly transfer to the City: (1) any NSP funds on hand at the time of the expiration or termination; (2) all accounts receivable attributable to use of NSP funds; (3) any real property acquired with NSP funds that has not yet been resold as specified in the Project Scope, Attachment 1; (4) any remaining Program Income generated during the term of the Agreement; (5) any claims against third parties based upon NSP funds; and (6) any funds which the City determines have not been expended in accordance with the terms of this Agreement. Such refund shall be made by HFC to the City within ten (10) working days after the City requests such refund.

SECTION G. FORM, ACCESS TO AND RETENTION OF RECORDS, AUDIT

1. HFC shall maintain fiscal records and supporting documentation for all expenditures of funds made under this Agreement in a manner which conforms to OMB Circular A-87 or A-122,

as applicable, 24 CFR Section 570.490 of the Regulations in Attachment 4, and this Agreement. Such records must include data on the racial, ethnic, and gender characteristics of person who are applicants for, participants in, or beneficiaries of the funds provided under this Agreement. HFC shall retain such records, and any supporting documentation, for the greater of: (i) three years after close-out of the HUD grant to the state of Texas (not the closeout of this Agreement); (ii) if notified by TDHCA in writing, the date that the final audit is accepted with all audit issues resolved to TDHCA's satisfaction, or (iii) a date consistent with the period required by other applicable laws and regulations as described in 24 CFR 570.487 and 570.488.

2. HFC shall give the United States Department of Housing and Urban Development, the Inspector General, the General Accounting Department, the Auditor of the State of Texas, a Department or agency of the State of Texas, TDHCA, and the City of El Paso, or any of their duly authorized representatives, access to and the right to examine all books, accounts, records, reports, files, and other papers, things, or property belonging to or in use by HFC pertaining to this Agreement. Such rights to access shall continue as long as the records are retained by HFC. HFC agrees to maintain such records in an accessible location and to provide citizens reasonable access to such records consistent with the Texas Public Information Act.

3. HFC shall conduct, through an independent auditor acceptable to the City, a single audit of its activities hereunder when HFC expends \$500,000 or more in a year in Federal awards, in compliance with OMB Circular No. A-87 or A-122, as applicable. HFC's auditor shall prepare a "Certificate of Audit" to be provided to the City. Such Certificate of Audit, along with the corresponding management letter and HFC's responses thereto, must be submitted within nine months after the end of the HFC's fiscal year. Failure of HFC to provide the required Certificate of Audit to the City within the time period required herein shall constitute a breach of this Agreement and cause for termination of this Agreement by the City.

4. If HFC expends less than \$500,000 in a year in Federal awards, no single audit of HFC's activities hereunder shall be required by the City, and the funds received under this Agreement shall not be utilized for this purpose. However, HFC must still have an external audit of their financial statements conducted to ensure ability to demonstrate fiscal responsibility to the City.

5. HFC understands that acceptance of funds under this Agreement acts as acceptance of the authority of the State Auditor's Department, or any successor agency, to conduct an audit or investigation in connection with those funds. HFC further agrees to cooperate fully with the State Auditor's Department or its successor in the conduct of the audit or investigation, including providing all records requested. HFC will ensure that this clause concerning the authority to audit funds received indirectly subcontractors through HFC and the requirement to cooperate is included in any subcontract it awards.

SECTION H. MONITORING

1. The City reserves the right on its behalf, and on TDHCA, and on behalf of HUD to perform, or have their designees perform, a periodic on-site and desk audit monitoring of the HFC's compliance with the provisions of this Agreement. The monitoring shall be conducted in a reasonable time, place and manner by the City. The HFC 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, will perform periodic fiscal and programmatic monitoring reviews, including a review of the audit conducted by the HFC. The City, TDHCA, HUD, and/or their designees may request the copying, mailing, and/or electronic transmission of HFC's records in connection with an on-site or desk audit monitoring.

2. Monitoring reviews will include a written report to the HFC documenting findings and concerns that will require a written response to the City. An acceptable response must be received by the City within 30 days from the HFC's receipt of the monitoring report or audit review letter, or otherwise future payments will be withheld under this Agreement.

3. Failure of the HFC to take all actions necessary to resolve and close monitoring or audit findings within 30 days of receipt of the monitoring report or audit review letter are considered a breach of this Agreement and cause for termination of this Agreement by City. The Director shall have the discretion to extend the 30-day period for reasons the Director may judge to be extenuating circumstances.

SECTION I. FAITH-BASED ACTIVITIES

As applicable, HFC shall comply with the regulations promulgated by HUD on faith-based activities at 24 CFR 570.200(j).

II. ADDITIONAL OBLIGATIONS

SECTION A. INDEMNIFICATION AND INSURANCE

THE PARTIES EXPRESSLY AGREE THAT NEITHER PARTY SHALL HAVE THE RIGHT TO SEEK INDEMNIFICATION OR CONTRIBUTION FROM THE OTHER PARTY FOR ANY LOSSES, COSTS, EXPENSES, OR DAMAGES DIRECTLY OR INDIRECTLY ARISING IN WHOLE OR PART FROM THIS AGREEMENT. IT IS THE INTENT OF BOTH PARTIES, AS GOVERNMENTAL ENTITIES, TO PRESERVE THEIR RESPECTIVE SOVEREIGN IMMUNITY TO THE MAXIMUM EXTENT ALLOWED. THE PARTIES THEREFORE ACKNOWLEDGE AND EXPRESSLY AGREE THAT, IN ALL THINGS RELATING TO THIS AGREEMENT, HFC AND THE CITY ARE PERFORMING GOVERNMENTAL FUNCTIONS, AS DEFINED BY THE TEXAS TORT CLAIMS ACT. FURTHER, NEITHER PARTY WAIVES ITS SOVEREIGN IMMUNITY TO SUIT OR LIABILITY IN ANY RESPECT BY EXECUTING THIS AGREEMENT OR ANY OTHER AMENDMENT, MODIFICATION OR AGREEMENT RELATED TO THIS AGREEMENT.

SECTION B. INDEPENDENT CONTRACTOR

The City and HFC understand that HFC is an independent contractor and that no term or provision hereof or act of HFC in performance of this Agreement shall be construed as making HFC an agent or employee of the City. All officers and employees of HFC shall be solely

responsible to HFC, and the City shall not have any authority, responsibility, or liability with respect thereto.

SECTION C. AUTHORITY TO CONTRACT

HFC represents and warrants that the person executing this Agreement and all documents related hereto has the authority to commit the HFC to the obligations, financial and otherwise, required by this Agreement.

SECTION D. DISCRIMINATION PROHIBITED

1. 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), religion, 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 the HFC pursuant to this Agreement, as set forth in Title VI of the Civil Rights Act of 1964 (42 U.S.C. Section 2000d) and implementing regulations at 24 CFR Part 1; Age Discrimination Act of 1975 (42 U.S.C. Sections 6101-07) and implementing regulations at 24 CFR Part 146; Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. Section 794) and implementing regulations at 24 CFR Part 8; and Title 1 of the Americans with Disabilities Act of 1990 (ADA) and implementing regulations at 28 CFR Part 35.

2. Furthermore, HFC shall comply with all the equal opportunity requirements in 24 CFR Section 5.105; the requirements of Executive Order 11246 (Equal Opportunity) and the implementing regulations at 41 CFR Chapter 60.

SECTION E. CONFLICT OF INTEREST

1. HFC shall ensure that no employee, Department, or agent of HFC shall participate in the selection, or in the award or administration of a subcontract supported by funds provided if a conflict of interest, real or apparent, would be involved. Such conflict of interest would arise when: 1) The employee, Department, or agent; 2) any member of his or her immediate family; 3) his or her partner; or, 4) any organization which employs, or is about to employ any of the above, has a financial or other interest in the firm or person selected to perform the subcontract. HFC shall comply with Chapter 171, Texas Local Government Code and 24 CFR 570.489(h) of the federal regulations.

2. In all cases not governed by subsection 1. of this Section, no persons specified in subsection 3. of this Section who exercise or have exercised any functions or responsibilities with respect to the activities assisted under this Contract or any other NSP contract or who are in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from the activity, or have an interest or benefit from the activity, or have any interest in any contract, subcontract or agreement with

respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties during their tenure or for one year thereafter.

3. The conflict of interest provisions of subsection 2. of this Section, apply to any person who is an employee, agent, consultant, Department, or elected official or appointed official of the City or of a subcontractor of the City, including without limitation, HFC.

SECTION F. HATCH ACT

Neither the funds advanced pursuant to this Agreement, nor any personnel that may be employed by the HFC with funds advanced pursuant to this Agreement 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 G. 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 Agreement between City and HFC or to any benefits arising there from.

SECTION H. POLITICAL AND LOBBYING ACTIVITIES PROHIBITED

1. None of the funds, materials, property or services provided directly or indirectly under this Agreement 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.

2. Employees of HFC connected with any activity which is financed in whole or in part by funds provided to HFC under this Agreement may not during the term of this Agreement:

- a. Use their official position or influence to affect the outcome of an election or nomination;
- b. Solicit contributions for political purposes; or
- c. Take an active part in political management or in political campaigns.

3. HFC hereby agrees to sign the Certification Regarding Lobbying, attached hereto and made a part of this Agreement as Addendum A, and if necessary, the Disclosure 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. HFC shall require the language of the Certification and disclosure be included in all subcontracts and that all sub-grantees shall certify and disclose accordingly.

SECTION I. ASSIGNMENT

HFC shall not assign or otherwise transfer this Agreement, either as to obligations or benefit, without the prior written consent of the City.

SECTION J. REQUIRED DOCUMENTATION

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

SECTION K. WARRANTY

HFC represents that the information furnished to the City, upon which City relied to make this Agreement, is correct and true.

SECTION L. ACKNOWLEDGMENT IN PRINTED MATERIALS

HFC is encouraged to acknowledge the City for its support of the provision of services under this Agreement in all appropriate printed materials. However, the City reserves the right to approve, in whole or in part, the form of such acknowledgments that the HFC proposes to include in any printed materials.

SECTION M. DEBARMENT

By signing this Agreement, HFC certifies that it is not debarred, suspended or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549 and 24 CFR Part 24. Further, HFC is required to immediately report to the City and TDHCA if it is debarred, suspended or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549 and 24 CFR Part 24.

III. GENERAL PROVISIONS

SECTION A. TEXAS CORPORATION AND VENUE

HFC warrants that it is incorporated in and otherwise entitled to do business in the State of Texas. This Agreement is entered into in the City and County of El Paso, Texas and shall be governed and construed under the laws of Texas. Venue shall be in El Paso County, Texas.

SECTION B. WAIVER

Failure by either party on one or more occasions to exercise one or more of its rights hereunder shall not be construed as a waiver of such right or rights, and rights granted hereunder are in addition to those available under law and equity.

SECTION C. SEVERABILITY

All agreements, covenants or provisions contained herein are severable, and in the event any of them shall be held to be invalid by any competent court, this Agreement shall be interpreted as though such invalid agreement, covenant or provision was not contained herein.

SECTION D. CAPTIONS

The captions of various sections of the Agreement are for convenience of reference only, and shall not alter the terms and conditions of this Agreement.

SECTION E. NOTICES

All notices, communications and reports under this Agreement 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
Attn: Director
Two Civic Center Plaza, 8th Floor
El Paso, TX 79901-1196

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

copy to: Norman J. Gordon, Esq.
Mounce, Green, Myers, Safi, Paxson & Galatzan, P.C.
100 N. Stanton St., Ste. 1000
El Paso, Texas 79901

copy to: Adrian Duran,
Executive Director
El Paso Housing Finance Corporation
2 Civic Center Plaza, 2nd Floor
El Paso, TX 79901

copy to: Andrea Tirres,
Affordable Housing Finance Coordinator
Department of Community & Human Development
2 Civic Center Plaza, 8th Floor
El Paso, Texas 79901

SECTION F. ENTIRE AGREEMENT

This Agreement reflects the final, complete and exclusive understandings of the parties hereto, and may not be waived, altered or modified except by written agreement of both parties.

SECTION G. COUNTERPARTS

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

THE CITY OF EL PASO

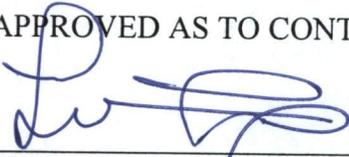
Joyce Wilson
City Manager

APPROVED AS TO FORM:



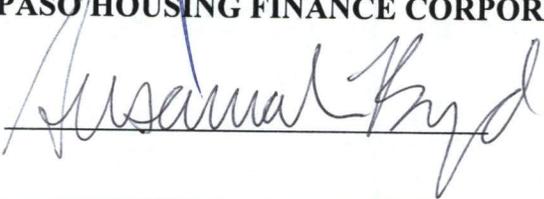
Marie A. Taylor
Assistant City Attorney

APPROVED AS TO CONTENT:



William Lilly, Director
Community and Human Development

EL PASO HOUSING FINANCE CORPORATION

By: 

(Printed Name/Title)

(The foregoing representative of HFC expressly represents that execution of this Agreement has been lawfully authorized by the HFC.)

ADDENDUM A

CERTIFICATION REGARDING LOBBYING

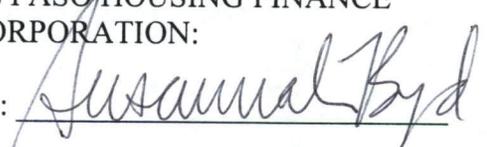
Certification for Agreements, Grants, Loans, and Cooperative Agreements

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 Agreement, 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 Agreement, 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 Agreement, 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 Agreements 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.

EL PASO HOUSING FINANCE
CORPORATION:

By: 

Title: _____

PROJECT SCOPE

The purpose of this Attachment 1 is to delineate the duties of HFC and the City under the **City's TDHCA-Funded Neighborhood Stabilization Program**.

I. Acquisition

(a) HFC shall serve as the acquiring entity in the purchase of fourteen (14) project-eligible foreclosed and abandoned residential properties in the designated area identified in Attachment 3, which, as determined by the City, meet the criteria established by the City under the NSP Manual for the Program.

(b) As the acquiring entity, HFC shall: (i) accept TDHCA funds as lender financing for the acquisition and rehabilitation of the properties and execute any required lien instruments and/or affordability covenants; (ii) accept assignment from the City of its rights under the Purchase and Sale contract and related documents with the property sellers for acquisition of the identified properties, or alternatively, execute original purchase and sale contracts and related documents with the property sellers for acquisition of the identified properties if assignment is prohibited; (iii) if necessary, complete forms required to participate in the National Community Stabilization Trust's acquisition program with major financial institutions; (iv) procure in its name title insurance policies on the properties, as an eligible reimbursable project cost; (v) procure in its name property insurance for each acquired property, as an eligible reimbursable project cost, naming the City of El Paso and TDHCA as co-insured on the properties; and (vi) complete other Program requirements that TDHCA determines are necessary and must be completed by the acquiring entity, in consultation with the City.

(c) Except as specified above, the City shall retain all other administrative and programmatic duties under the Program for acquisition, including without limitation: (i) initial selection of properties for acquisition based on established Program criteria; (ii) notification and communication with the property sellers and their agents; (iii) inspection, HUD environmental review and clearance; title investigation, appraisals, surveys, real estate closings, (iv) associated acquisition oversight activities, including compliance with all NSP rules and regulations, both federal and state; (v) execute form purchase and sale contracts and related documents with the property sellers for acquisition of the identified properties; and (vi) complete forms required to participate in the National Community Stabilization Trust's acquisition program with major financial institutions.

(d) There are budgeted NSP funds available to support the acquisition and rehabilitation costs for the fourteen residential properties to be acquired under the City's TDHCA-funded Program.

II. Rehabilitation

(a) HFC shall hold title to the acquired properties under the Program as a temporary owner for a period not to exceed twelve (12) months following acquisition and rehabilitation. As applicable for any given property, the City shall pay contractor(s) for the completion of any rehabilitation work needed on the acquired properties to fulfill property standard requirements

under the Program. HFC will be responsible for procuring the contractor(s) for the rehabilitation, with the parties' intent being that HFC participate in the Harris County Department of Education Purchasing Cooperative.

(b) If required by TDHCA, HFC shall accept additional financing from TDHCA for receipt of NSP funds for property rehabilitation work and execute any required lien instruments or related documents.

(c) Except as specified above, the City shall retain all other administrative and programmatic duties under the Program for rehabilitation, including without limitation: payment of rehabilitation contractor(s), construction oversight and inspections, contractor payments, acceptance of construction improvements, and compliance with all NSP rules and regulations, both federal and state.

III. Disposition/Resale

(a) Within twelve (12) months from the date of acquisition and rehabilitation, HFC shall convey each of the acquired properties to an eligible low-income homebuyer located by the City and upon such terms and conditions as determined by the City in accordance with the NSP Manual for the Program and TDHCA. The City shall have the responsibility to ascertain and determine the qualifications of the homebuyer pursuant to the NSP Manual for the Program and TDHCA.

(b) As the selling entity, HFC shall: (i) execute purchase and sale contracts and related written documents with eligible homebuyers, to be identified by the City; (ii) execute conveyance documents (deeds) and related Program documents as may be required by TDHCA or the City, including transfer of any vendor's lien(s)/affordability covenants; (iii) participate in closings for conveyance of the properties acquired under the Program; (iv) complete other Program requirements that TDHCA determines are necessary and must be completed by the selling entity, in consultation with the City; and (v) remit to the City as program income generated through the acquisition and disposition of the acquired properties (the recapture of funds to TDHCA) if such income is not converted into permanent financing at the close of an eligible homebuyer purchase.

(c) Except as specified above, the City shall retain all other administrative and programmatic duties under the Program for disposition, including without limitation: marketing of the Program, identification of eligible homebuyers and income verification, determining the maximum sales price for the propert(ies); coordination of property closings, and arranging for mortgage financing for eligible homebuyers.

PROJECT BUDGET

Acquisition/Disposition	\$1,130,534
Rehabilitation/Reconstruction	\$ 353,237

HFC Legal Fees – not to exceed \$7,500

Accounting Software – to be approved in advance by the Director of Community and Human Development

Single Audit – to be approved in advance by the Director of Community and Human Development

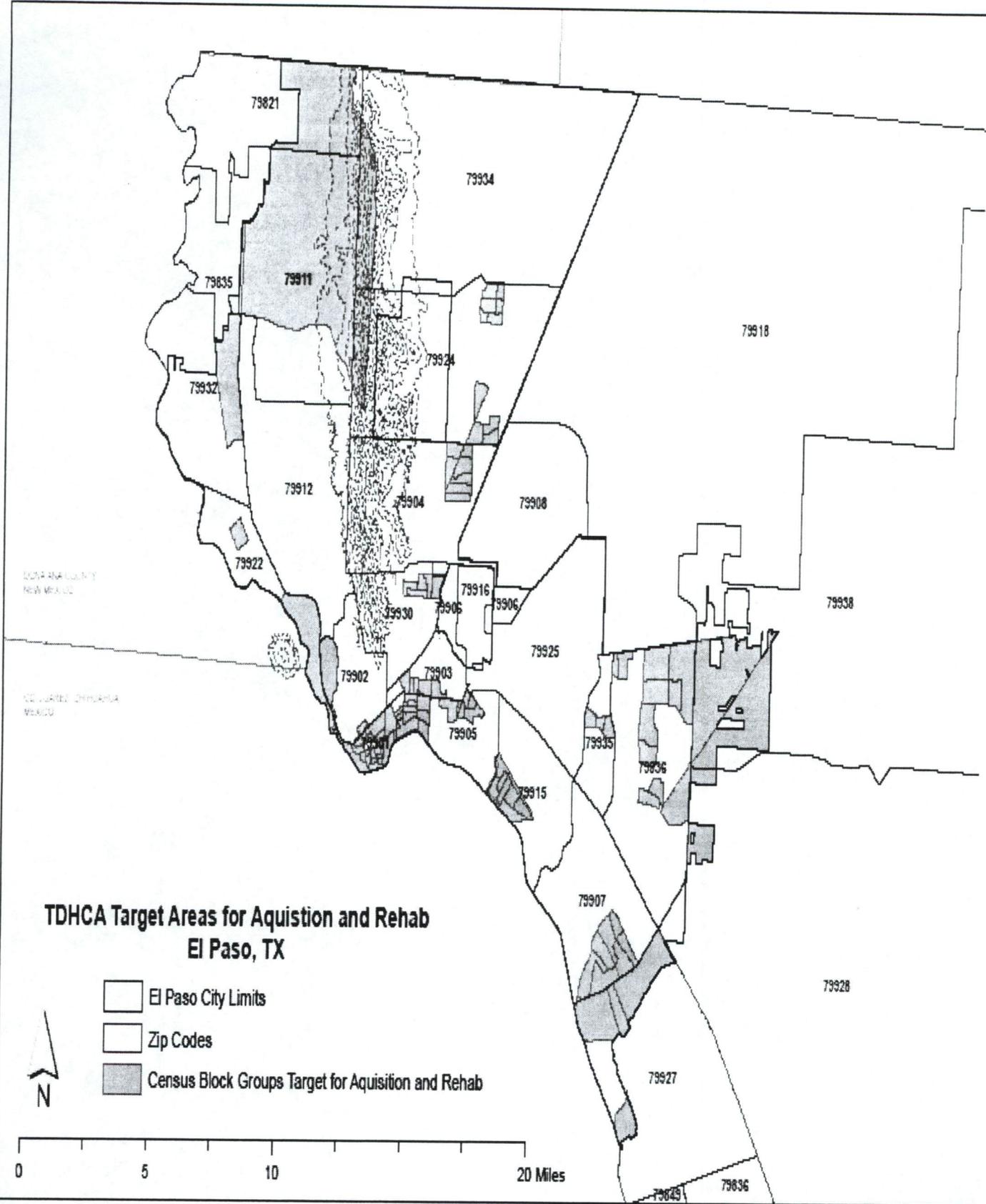
Any other expenses not specifically mentioned above shall be submitted in advance, reviewed and approved or declined by the Director of Community and Human Development.

City staff for the Program will determine the eligible acquisition and rehabilitation costs in accordance with federal and state guidelines for each property that is purchased/rehabilitated and that determination will serve as the basis for the acquisition cost total and rehabilitation cost total for each property acquired.

ATTACHMENT 3

List and Map of TDHCA NSP Targeted Census Tracts -- Acquisition and Rehabilitation

Census Tract	Block Group	Census Tract	Block Group	Census Tract	Block Group
000101	2	002600	1	010208	2
000107	1	002600	2	010208	2
000107	2	002600	3	010208	2
000107	3	002600	4	010208	3
000107	4	002600	5	010208	3
000107	5	002800	1	010208	2
000107	6	002800	2	010208	1
000206	1	002800	3	010208	2
000206	2	002800	4	010209	1
000206	3	002800	5	010209	1
000301	1	002800	6	010209	1
000301	2	002900	1	010307	4
000301	3	002900	2	010307	5
000301	4	002900	3	010307	6
000301	5	003200	1	010311	3
000404	1	003200	2	010311	4
000404	2	003200	3	010313	1
000800	1	003200	4	010313	2
000800	2	003200	5	010313	3
000800	3	003200	6	010313	4
000800	4	003701	1	010314	1
000800	5	003701	2	010315	1
001302	3	003701	3	010315	1
001400	1	003701	4	010315	1
001400	1	003702	1	010320	4
001400	2	003702	4	010320	1
001700	1	003702	5	010320	2
001700	2	003702	6	010320	4
001700	4	003902	1	010320	1
001700	5	003902	2	010320	2
001800	1	004002	1	010321	1
001800	2	004002	2	010403	1
001900	1	004002	3	010403	2
001900	2	004002	4	010403	3
001900	3	004002	1	010403	4
001900	4	004002	3	010403	5
001900	5	004002	4	010403	1
002000	1	004104	1	010403	1
002000	2	004104	2	010403	2
002000	3	004104	3	010403	3
002000	4	004104	4	010208	2
002000	5	004104	5	010208	2
002100	1	004314	1	010208	2
002100	2	004315	4	010208	3
002100	3	004316	1	010208	3



APPLICABLE LAWS AND REGULATIONS

HFC shall comply with all federal, state, and local laws and regulations applicable to the activities and performances rendered by HFC under this Agreement including but not limited to the laws, and the regulations promulgated thereunder specified in Section I through VII of this Attachment 4, as applicable.

I. CIVIL RIGHTS

Title VI of the Civil Rights Act of 1964 (42 U.S.C. Section 2000d et seq.); 24 CFR Part I, "Nondiscrimination in Federally Assisted Programs of the Department of Housing and Urban Development - Effectuation of Title VI of the Civil Rights Act of 1964";

Title VIII of the Civil Rights Act of 1968, "the Fair Housing Act of 1968" (42 U.S.C. Sec 3601 et seq.), as amended;

Executive Order 11063, as amended by Executive Order 12259, and 24 CFR Part 107, "Nondiscrimination and Equal Opportunity in Housing under Executive Order 11063". The failure or refusal of the Contractor to comply with the requirements of Executive Order 11063 or 24 C.F.R. Part 107 shall be a proper basis for the imposition of sanctions specified in 24 CFR 107.60;

The Age Discrimination Act of 1975 (42 U.S.C. sec 6101 et seq.);

Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. Sec. 794) and "Nondiscrimination Based on Handicap in Federally-Assisted Program and Activities of the Department of Housing and Urban Development", 24 CFR Part 8. By signing this Contract, the Contractor understands and agrees that the activities funded shall be operated in accordance with 24 CFR Part 8; and the Architectural Barriers Act of 1968 (42 U.S.C. Sec. 4151 et seq.), including the use of a telecommunications device for deaf persons (TDDs) or equally effective communication system.

II. LABOR STANDARDS

The Davis-Bacon Act, as amended (40 U.S.C. Secs. 276a-276a-5);

The Contract Work Hours & Safety Standards Act (40 U.S.C. 327 et seq.);

The Copeland "Anti-Kickback" Act (18 U.S.C. Sec 874).

III. EMPLOYMENT OPPORTUNITIES

Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. Sec 1701u).

IV. LEAD-BASED PAINT

Section 302 of the Lead-Based Pain Poisoning Prevention Act (42 U.S.C. Sec 4831(b)) and the procedures established by the Department thereunder.

V. ENVIRONMENTAL LAW AND AUTHORITIES

Environmental Review Procedures for Recipients assuming HUD Environmental Responsibilities, 24 CFR Part 58, as amended.

In accordance with the provisions of law cited in §58.1(b), the responsible entity must assume the environmental responsibilities for projects under program cited in §58.1(b), and in doing so must comply with the provisions of the National Environmental Policy Act of 1969, as amended and the Council on Environmental Quality regulations contained in 40 CFR parts 1500 through 1508. This includes responsibility for compliance with the applicable provisions and requirements of the Federal laws and authorities specified in §58.5 [below]. The responsible entity must certify that it has complied with the requirements that would apply to HUD under these laws and authorities and must consider the criteria, standards, policies and regulations of these laws and authorities.

(a) Historic Properties

(1) The National Historic Preservation Act of 1966 as amended (16 U.S.C. 470 et seq.), particularly sections 106 and 110 (16 U.S.C. 470 and 470h-2), except as provided in §58.17 for Section 17 projects.

(2) Executive Order 11593, Protection and Enhancement of the Cultural Environment, May 13, 1971 (36 FR 8921), 3 CFR 1971-1975 Comp., p. 559, particularly section 2(c).

(3) Federal historic preservation regulations as follows:

(i) 36 CFR part 800 with respect to HUD programs other than Urban Development Action Grants (UDAG) and

(ii) 36 CFR part 801 with respect to UDAG.

(4) The Reservoir Salvage Act of 1960 as amended by the Archeological and Historic Preservation Act of 1974 (16 U.S.C. 469 et seq.), particularly section 3 (16 U.S.C. 469a-1).

(b) Floodplain management and wetland protection

(1) Executive Order 11988, Floodplain Management, May 24, 1977 (42 FR 26951), 3 CFR 1977 Comp., p. 117, as interpreted in HUD regulations at 24 CFR part 55, particularly section 2(a) of the order (For an explanation of the relationship between the decision-making process in 24 CFR part 55 and this part, see §55.10 of this subtitle A).

(2) Executive Order 11990, Protection of Wetlands, May 24, 1977 (42 FR 26961), 3 CFR 1977 Comp., p. 121 particularly sections 2 and 5.

(c) Coastal Zone Management

(1) The Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.), as amended, particularly sections 307(c) and (d) (16 U.S.C. 1456(c) and (d)).

(d) Sole source aquifers

(1) The Safe Drinking Water Act of 1974 (42 U.S.C. 201, 300(f) et seq., and 21 U.S.C. 349) as amended; particularly section 1424(e) (42 U.S.C. 300h-3(e)).

(2) Sole Source Aquifers (Environmental Protection Agency- 40 CFR Part 149).

(e) Endangered Species

(1) The Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) as amended, particularly section 7 (16 U.S.C. 1536)

(f) Wild and scenic rivers

(1) The Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et seq.) as amended, particularly sections 7(b) and (c) (16 U.S.C. 1278(b) and (c)).

(g) Air quality

(1) The Clean Air Act (42 U.S.C. 7401 et seq.) as amended, particularly sections 176(c) and (d) (42 U.S.C. 7506(c) and (d)).

(2) Determining Conformity of Federal Actions to State or Federal Implementation Plans (Environmental Protection Agency- 40 CFR parts 6, 51, and 93).

(h) Farmland protection

(1) Farmland Protection Policy Act of 1981 (7 U.S.C. 4201 et seq.) particularly sections 1540(b) and 1541 (7 U.S.C. 4201(b) and 4202).

(2) Farmland Protection Policy (Department of Agriculture -7 CFR part 658).

(i) HUD environmental standards

(1) Applicable criteria and standards specified in HUD environmental regulations (24 CFR part 51) other than the runway clear zone and clear zone notification requirement in 24 CFR 51.303(a)(3).

(2) HUD Notice 79-33, Policy Guidance to Address the Programs Posed by Toxic Chemicals and Radioactive Materials, September 10, 1979. All properties that are being proposed for use must be free of hazardous materials, contamination, toxic chemicals and gases, and radioactive substances, where a hazard could affect the health and safety of occupants or conflict with the intended utilization of the property. The environmental review of non-residential property, (or multi-family housing with five or more dwelling units, including leasing) must include the evaluation of previous uses of the site or other evidence of contamination on or near the site, to ensure that the occupants of proposed sites are not adversely affected by any hazards. Particular attention must be given to any proposed site on or in the general proximity of such areas as dumps, landfills, industrial sites, or other locations that contain, or may have contained hazardous wastes. The Contractor shall use current techniques by qualified professionals to undertake investigations determined necessary.

(j) Environmental justice

(1) Executive Order 12898 of February 11, 1994---Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629), 3 CFR, 1994 Comp., p. 859.

(k) Other requirements- See 24 CFR Part 58.6.

VI. ACQUISITION/RELOCATION

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. Sec. 4601 et seq.), 24 CFR part 42, and 24 CFR Section 570.606.

VII. FAITH-BASED ACTIVITIES

Executive Order 13279 of December 12, 2002- Equal Protection of the Laws for Faith-Based and Community Organizations, (67 FR 77141).