

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

DEPARTMENT: Community and Human Development Department

AGENDA DATE: May 23, 2006

CONTACT PERSON/PHONE: Patricia White 541-4341

DISTRICT(S) AFFECTED: ALL

SUBJECT:

A RESOLUTION TO AUTHORIZE THE CITY MANAGER TO SIGN A CONTRACT WITH AMERINATIONAL COMMUNITY SERVICES, INC. TO PERMIT IT TO ENTER INTO RESTRUCTURING AGREEMENTS ON DELINQUENT COMMUNITY DEVELOPMENT LOANS WHEN REQUESTED AND PAID FOR BY BORROWER AND OTHERWISE IN COMPLIANCE WITH COUNCIL RESOLUTION DATED 4/25/06 ON THE SUBJECT.

BACKGROUND / DISCUSSION:

On July 15, 2003, the City awarded a contract for best value procurement to AmeriNational Community Services, Inc. (ACS) headquartered in Downey, California. The original scope of services included loan portfolio management to set up and maintain loan account information on certain existing and to be created loans secured by real property originating by and through the Community and Human Development Department. This agreement was amended on April 25, 2006 to include delinquency follow-up management and was approved by Council concurrent with a delinquent account collections policy document. What is proposed here is a separate contract, with ACS, that will authorize it to enter into agreements with delinquent borrowers to bring delinquent accounts into current status within a set period of time and further provides that the Borrower who caused the delinquency bear all costs associated with such agreements.

PRIOR COUNCIL ACTION:

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

See above

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?

No City funding necessary

BOARD / COMMISSION ACTION:

Enter appropriate comments or N/A

N/A

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

LEGAL: (if required) _____

FINANCE: (if required) _____

DEPARTMENT HEAD:

Nathalie Puse

(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: _____

RESOLUTION

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

That the City Manager be authorized to sign a contract with AmeriNational Community Services, Inc. (ACS) thereby authorizing ACS to enter into and administer loan restructuring agreements on certain delinquent real property secured loans originally provided by and through the Community and Human Development Department and now serviced by ACS.

ADOPTED this 23rd day of May, 2006.

THE CITY OF EL PASO

ATTEST:

John F. Cook,
Mayor

Richarda Duffy Momsen, City Clerk

APPROVED AS TO FORM:



Matt Watson
Assistant City Attorney

APPROVED AS TO CONTENT



Nathalie Prise, Director
Community and Human Development

Development (“Director”). Further, Contractor shall enter into Restructuring Agreements of less than six months in duration, at Borrower request, when authorized by City, at no cost to City or Borrower. Finally, Contractor understands that all such Restructuring Agreements shall be in compliance with the City Council Resolution dated April 25, 2006 that pertains to delinquent loan accounts (Attachment “A”).

C. Verifications. Director shall be advised, in writing, each month, as to the status of Restructuring Agreements with terms of one year or less. The report should include verification of whether all amounts due each month are being paid on time, remaining payment schedule subject to the Restructuring Agreement, and any additional information the Director reasonably requires. All Restructuring Agreements providing for terms in excess of one year shall be serviced consistent with regular accounts not otherwise subject to a Restructuring Agreement.

Director shall be provided an executed copy of any authorized Restructuring Agreement entered into by Contractor on behalf of City. City may request and receive a copy of the full and complete file to include account payment history, etc. upon request, up to and including 6 months following contract termination, for any reason.

D. Authorization. Contractor is herein authorized to enter into Restructuring Agreements with Borrowers without signature of City. This authorization is, however, subject to the following:

1. Director must authorize, via email or other written communication, the Restructuring Agreement; and
2. Director, in consultation with the Office of the City Attorney, shall approve the form to be used for such Restructuring Agreements; and
3. Restructuring Agreements shall not exceed five (5) years in the case of an owner occupied property or three (3) years in the case of a non-owner occupied property, or the term of the loan, whichever duration is less; and
4. Contractor shall coordinate with City and verify receipt of payment of all amounts due and owing as required under Council resolution dated April 25, 2006 prior to executing any such agreement; and
5. Contractor shall not execute any Restructuring Agreement once it has been notified by City that the property has been posted for foreclosure sale.

E. Restructuring Agreements to be completed by City. It is herein understood that City is currently processing certain Restructuring Agreements with terms in excess of 12 months each. Contractor agrees to accept up to five such Restructuring Agreements completed by City at no additional charge so long as such Restructuring Agreements are forwarded to Contractor within 90 days of the date of execution of this Contract.

3. NOTICES. All communications under this Contract shall be either hand-delivered or mailed, postage prepaid in the United States Postal Service, to the respective parties at the addresses shown below, unless either party is otherwise notified in writing:

City: City Manager
City of El Paso

2 Civic Center Plaza, 10th Floor
El Paso, TX 79901-1196

with copies to: Director
Department of Community and Human Development
2 Civic Center Plaza, 8th Floor
El Paso, TX 79901-1196

Contractor: AmeriNational Community Services, Inc.
Attention: President
8121 E. Florence Avenue
Downey, CA 90240

4. INDEPENDENT CONTRACTOR/AGENCY. It is expressly understood and agreed by and between the parties that Contractor is hired and engaged as an Independent Contractor and is not an officer, agent or employee of the City. Contractor and its officers, agents, assistants, or employees shall not be deemed agents or employees of the City, and City shall in no event be liable for the acts or defaults of Contractor, its agents, assistants, or employees.

5. INDEMNIFICATION. City shall not be subject to any obligations or liabilities of the Contractor incurred in the performance of this Agreement. Contractor expressly agrees to and shall indemnify and hold harmless and defend City, its officers, agents, and employees, from and against any and all claims, losses, damages, demands, causes of action, suits, and liability of every kind, including all expenses of litigation, court costs, and attorney's fees, for bodily injury, illness, physical or mental impairment to any person, or death of any person, or for destruction of or damage to any property, arising from or relating to any act(s) or omission(s) of the Contractor, its officers, agents, or employees or independent contractor in the performance of this Agreement.

6. INSURANCE. Contractor, at its sole cost and expense shall, throughout the term of this Agreement, provide and keep in force for the benefit of Contractor and City, comprehensive general liability insurance in an amount not less than Five Hundred Thousand Dollars (\$500,000) for damage arising out of any occurrence resulting in a claim for damages. Such insurance shall be written by an insurance company authorized to do business in the State of Texas and shall name the City as an additional insured. Such insurance shall also require that the City receive thirty (30) days advance notice, in writing, of intent to cancel or materially alter said insurance. A copy of the policy evidencing the above required insurance shall be provided to the Director prior to the Contractor beginning performance under this Contract.

7. MODIFICATIONS. This Agreement may only be modified by a written amendment approved by both parties.

8. TERMINATION. Termination hereunder shall be effected by either party's delivery to the other of a "Notice of Termination" specifying the extent to which performance under the Agreement is terminated and the date upon which such termination becomes effective. Such right of termination is in addition to and not in lieu of any other remedies that either party may have in law or equity. City may terminate this contract for any reason whatsoever, including but not limited

to convenience. Should City terminate this contract, it shall owe no further obligation of any sort and Contractor shall immediately return all files upon the request of City.

9. WAIVER. No claim or right arising out of a breach of this Agreement can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party.

10. CHOICE OF LAW AND VENUE. This Agreement is entered into in El Paso, El Paso County, Texas and shall be governed by the laws of the State of Texas and venue shall be in El Paso County, Texas.

11. INTERPRETATION: PAROL EVIDENCE. This writing is intended by the parties to be a final expression of their agreement and is intended also as a complete and exclusive statement of the terms of their agreement. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in this Contract. Acceptance or acquiescence in a course of performance rendered under this Contract shall not be relevant to determine the meaning of this Agreement even though the accepting or acquiescing party has knowledge of the performance and opportunity for objection.

12. RIGHT OF ASSURANCE. Whenever one party to this Contract in good faith has reason to question the other party's intent to perform, he may demand that the other party give written assurance of his intent to perform. In the event that a demand is made and no assurance is given within ten (10) calendar days, the demanding party may treat this failure as an anticipatory repudiation of the Contract.

13. CITY'S RIGHT TO ASSIGNMENT. City shall retain the right to assign its interests and obligations in this contract. The City Manager for the City of El Paso is herein authorized to effectuate such transfer when same is completed in writing with notice provided to Contractor.

14. MEDIATION REQUIRED. City and Contractor both agree that reasonable efforts will be made to aid and assist the other in accomplishing the objectives of this Contract. In the event of any dispute, claim, question, or disagreement arising from or relating to this Agreement or any breach thereof, City and Contractor shall use their best efforts to meet regularly and resolve the dispute, claim, question, or disagreement. To this effect, both hereby agree to consult and negotiate with each other in good faith. Each further agrees that should their efforts to resolve a dispute, claim, questions, or disagreement arising from this Contract fail, that before either party files suit against the other to enforce, or otherwise relating to, the terms of this Contract, it shall notify the other party of its intent to sue. Upon delivery and receipt of such notice, City and Contractor agree to submit the matter to be litigated to mediation before a mutually-agreed upon mediator and to diligently pursue a mediated settlement until such time as the parties mutually agree to terminate such mediation or the mediator declares an impasse. No lawsuit under this Contract by one party against the other may be filed until mediation of the issue has ended in accordance with the terms hereof.

15. COMPLIANCE WITH LAW. Contractor shall comply with all applicable federal,

state, and local laws to include but not limited to Title 24 of the Code of Federal Regulations, Texas fair debt collection law including Chapter 392 of the Texas Finance Code, etc.. Further, should HUD, during the term of this Contract, issue policy directives which serve to establish, interpret, or clarify performance requirements under this contract, such policy directives shall have the effect of qualifying the terms of this Contract and shall be binding upon Contractor, as if written herein. Failure to comply with such laws or HUD directives in a manner which impairs the quality of Contractor's performance hereunder, affects the administration as provided for herein, or exposes City to penalties or to censure by HUD, shall constitute grounds for termination by City at which time the City shall be entitled to seek redress of any damage sustained.

16. COVENANTS.

A. Compliance With Laws. Contractor shall comply with all applicable federal, state, local laws, all City ordinances and all applicable codes and regulations. Failure to do so in any manner which materially impairs the quality of performance hereunder, or affects the administration of the funds provided hereunder shall constitute a material breach of this Contract.

B. Prohibited Acts. Contractor covenants during the term of this Contract as follows:

(1) *Conflict of Interest:* It has had no interest in, and shall not acquire any interest, direct or indirect, in any contract or subcontract which will conflict in any manner or degree with the performance of the services performed under this Agreement. Contractor further understands that the Charter of the City prohibits any officer or employee of the City from having financial interest, direct or indirect, in any contract with the City. Any violation of this paragraph, with knowledge express or implied, by the Contractor, shall render this Contract voidable by the City Manager of the City or by the City Council and shall entitle the City to appropriate reimbursement;

(2) *Discrimination:* No person in the United States has, on the grounds of race, creed, color, national origin, sex, disability or age been excluded from participation in, been denied the benefits of, or been subject to discrimination under, any program or activity funded in whole or in part with funds made available to the Contractor pursuant to the terms of this Contract;

(3) *Discriminatory Criteria:* Contractor may not utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination on the basis of race, creed color, sex, national origin, disability or age, or having the effect of defeating or substantially impairing accomplishment of the objects of any programs funded pursuant to this Contract with respect to individuals of a particular race, color, national origin, creed or sex, disability or age;

C. Subcontractors. None of the services covered by this Contract shall be subcontracted without the prior written consent of the City Manager or designee. If subcontracting is authorized, the Contractor shall be fully responsible to the City for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them.

IN WITNESS WHEREOF, the parties have executed this agreement in the City of El Paso on the _____ day of _____, 2006.

THE CITY OF EL PASO

Joyce A. Wilson,
City Manager

**CONTRACTOR: AMERINATIONAL
COMMUNITY SERVICES, INC.**

By: *Adrienne Ghoran*

Title: PRESIDENT

By: _____

Title: COO

APPROVED AS TO FORM:

Matt Watson
Matt Watson
Assistant City Attorney

APPROVED AS TO CONTENT:

Nathalie Prise
Nathalie Prise, Director
Community and Human Development

RESOLUTION

WHEREAS, Council passed a motion dated September 23, 2003 wherein it set forth standards regarding loan restructuring, loan foreclosure, and declaring certain loans uncollectible; and

WHEREAS, Council therein authorized a single restructuring agreement of up to five years for any delinquent account when the borrower paid a certain percentage of the delinquency as down payment; and

WHEREAS, The City's servicing contract with AmeriNational requires payment of certain fees associated with the preparation of such loan restructuring agreements; and

WHEREAS, the City incurs costs when non-judicial foreclosure proceedings are commenced as a result of borrower inaction following City requests for payment of delinquency; and

WHEREAS, Council has determined that the City should not be required to bear such costs associated with restructuring agreements and that such costs are more properly borne by the borrower that created the delinquency.

NOW THEREFORE, BE IT RESOLVED AS FOLLOWS:

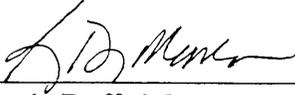
1. That the City Council of the City of El Paso hereby adopts Exhibit "A", entitled Community Development Loan Authorization, providing authorization to the City Attorney's Office and the Department of Community and Human Development, in connection with (1) Loan Restructuring in Lieu of Foreclosure, (2) Loan Foreclosure/Lawsuits and (3) Declaring Loans Uncollectible; and that the Director of Community and Human Development be authorized to take any and all action consistent with this resolution necessary to remedy such delinquencies.
2. That this resolution supersedes Council motion dated September 23, 2003.

APPROVED this 25th day of April 2006



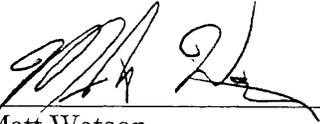
John F. Cook,
Mayor

ATTEST:



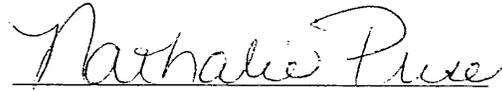
Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Matt Watson
Assistant City Attorney

APPROVED AS TO CONTENT:



Nathalie Prise, Director
Community and Human Development

EXHIBIT "A"

**COMMUNITY DEVELOPMENT LOAN AUTHORIZATION PASSED AND
APPROVED ON APRIL 25, 2006**

GENERAL:

It is necessary for the City Council of the City of El Paso to set policy and provide authorization with respect to Department of Community and Human Development ("Department") provided rehabilitation, new construction, reconstruction, and first time homebuyer loans, hereinafter collectively referred to as "Loan(s)", in order to promote efficiency, consistency, and expediency in the administration and collection of the Loans.

RESTRUCTURING OF LOAN IN LIEU OF FORECLOSURE AUTHORIZATION:

Restructuring of the Loan(s) in Lieu of Foreclosure shall be authorized under the following circumstances:

- (1) In the case of an owner-occupied Loan: if the Borrower(s) makes an initial good faith Loan payment in the amount of 10% of the total delinquency of the Loan and otherwise complies with (3) through (5) below, the Loan shall be restructured to increase the monthly payment due from Borrower(s) to bring the Loan account current within five (5) years/60 months, with regular Loan payments (in the original Loan payment amount) to resume by Borrower(s) until Loan Maturity. Loans maturing in less than five (5) years shall contain a shorter restructuring period to ensure that the loan is paid in full by the original loan maturity date.
- (2) In the case of an investor-owner Loan: if the Borrower(s) makes an initial good faith Loan payment in the amount of 20% of the total delinquency of the Loan and otherwise complies with (3) through (5) below, the Loan shall be restructured to increase the monthly payment due from Borrower(s) to bring the Loan account current within three (3) years/36 months, with regular Loan payments (in the original Loan payment amount) to resume by Borrower(s) until Loan Maturity. Loans maturing in less than three (3) years shall contain a shorter restructuring period to ensure that the loan is paid in full by the original loan maturity date.
- (3) With regard to (1) and (2) noted above, only one restructuring agreement shall be permitted during the life of the loan except when additional restructuring agreements are authorized by a loan servicing company under contract with the City. Further, borrower shall bear all costs associated with creating and entering into a restructuring agreement provided by any entity the City of El Paso contracts with for loan servicing as well as any costs associated with collections activities up to and including preparation for non-judicial foreclosure instituted by outside counsel prior to authorization of any loan restructuring agreement. Such document creation or reimbursement of collection costs shall be in addition to delinquency down payments

of 10% for owner occupied loans and 20% for investor-owner loans provided for above.

- (4) Restructuring agreements discussed in (1), (2), or (3) above shall not be permitted once the property securing the delinquent loan has been posted for non-judicial foreclosure in accordance with §51.002.B of the Texas Property Code.
- (5) In the event that the Borrower(s) does not comply in accordance with (1) through (4) noted above, as applicable, the Department shall direct the City Attorney's Office to proceed as outlined under the Foreclosure/Lawsuit Authorization immediately below.

FORECLOSURE/LAWSUIT AUTHORIZATION:

Foreclosure and/or a Lawsuit relating to the Loan and the City's lien securing the Loan shall be authorized under the following circumstances:

After the Borrower(s) has been notified in writing that the Loan is in default and given an opportunity to cure and the Borrower(s) does not:

- (1) pay the entire Loan delinquency within thirty days of the City's forwarding of the notice of default and continue making the regularly required monthly Loan payment as required by the Loan documents; or
- (2) agree to and comply with the Restructuring of the Loan as outlined and authorized herein.

UNCOLLECTIBLE LOAN AUTHORIZATION:

Declaring the Loan uncollectible shall be authorized under the following circumstances:

Following due diligence conducted by the Department concerning the Loan and the City's lien securing the same, it is determined by the Department that:

- (1) The City's lien has been extinguished by a foreclosure of a lien in a superior lien position and there is a new owner of record on the property, or the original Borrower(s) on the Loan cannot be located; or
- (2) An Order of Discharge has been entered by a United States Court of Bankruptcy discharging the Borrower(s) from the obligation of the Loan and/or the Court of Bankruptcy has ordered a Trustee's Sale of the Property and there are no excess or insufficient proceeds from the sale to satisfy the Loan; or

- (3) Given the individual factual circumstances concerning the Loan and the City's Lien securing the Loan, the estimated costs of collection on the Loan exceed the anticipated amount to be recovered on the Loan.