

RFP		
Section	Attachment	Attachment Description
3.8.1	A	Form of Proposal and Bank Fee Proposal (Exhibit A)
3.8.2	B	Form HUD-5369-C (8/93), <i>Certifications and Representations of Offerors, Non-Construction Contract</i>
3.8.3	C	Profile of Firm Form
3.8.4	D	Section 3 Forms, including explanation
3.8.5	E	Form HUD-5369-B (8/93), <i>Instructions to Offerors, Non-Construction</i>
3.8.6	F	<i>HACB Instructions To Proposers &amp; Contractors</i>
3.8.7	G	HACB Sample Contract Form and Public Depository Certification (please note that this contract is being given as a sample only--the HACB reserves the right to revise any clause herein and/or to include within the ensuing contract any additional clauses that the HACB feels it is in its best interests to do so)
3.8.8	G-1	Form HUD-5370-C (10/2006), <i>General Conditions for Non-Construction Contracts Section I (With or without Maintenance Work)</i>
3.8.9	H	General Depository Agreement HUD Form 51999
3.8.10	I	Investment Policy (Appendix A, B & C)
3.8.11	J	Notice PIH 96-33

**FORM OF  
PROPOSAL**

(This Form must be fully completed and placed under Tab No. 1 of the “electronic submittal”)

Instructions: Unless otherwise specifically required, the items listed below must be completed and included in the proposal submittal. Please complete this form by marking an “X,” where provided, to verify that the referenced completed form or information has been included within the “hard copy” proposal submittal submitted by the proposer. Also, complete the Section 3 Statement and the Proposer’s Statement as noted below:

X=ITEM INCLUDED	SUBMITTAL ITEMS <i>(Three copies of each proposal, including one with original signatures)</i>
_____	Tab 1 Form of Proposal & Exhibit A Bank Fees (Attachment A)
_____	Tab 2 Form HUD-5369-C (Attachment B)
_____	Tab 3 Profile of Firm Form (Attachment C)
_____	Tab 4 Proposed Services, including Annual Audit Reports
_____	Tab 5 Managerial Capacity/Financial Viability, including resumes and Summary of Bank’s Condition
_____	Tab 6 Client Information
_____	Tab 7 Equal Employment Opportunity Statement
_____	Tab 8 Subcontractor/Joint Venture Information (Optional)
_____	Tab 9 Section 3 Business Preference Documentation (Optional; Attachment D)
_____	Tab 10 Other Information (Optional)

**SECTION 3 STATEMENT**

Are you claiming a Section 3 business preference? YES or NO. If “YES,” pursuant to the Section 3 portion within the Conditions and Specifications, and pursuant to the documentation justifying such submitted under Tab No. 9, which priority are you claiming?

\_\_\_\_\_.

**PROPOSER’S STATEMENT**

The undersigned proposer hereby states that by completing and submitting this Form and all other documents within this proposal submittal, he/she is verifying that all information provided herein is, to the best of his/her knowledge, true and accurate, and that if the HA discovers that any information entered herein to be false, such shall entitle the HA to not consider or make award or to cancel any award with the undersigned party.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Company

# EXHIBIT A

	<u>Bank Charge</u>	<u>Minimum Balance Required</u> <small>(if applicable)</small>	<u>Interest Rate Paid by Bank</u> <small>(if applicable)</small>	<u>Minimum Interest Rate Paid (Floor)</u> <small>(if applicable)</small>
Checking Account (Demand Deposit Accounts)				
Overdraft				
Direct Deposit				
Wire-Transfer				
Safety Deposit Box				
Certificates of Deposit (1 to 90 days)				
Certificates of Deposit (91 to 180 days)				

**EXHIBIT A**

	<b><u>Bank Charge</u></b>	<b><u>Minimum Balance Required</u></b> <i>(if applicable)</i>	<b><u>Interest Rate Paid by Bank</u></b> <i>(if applicable)</i>	<b><u>Minimum Interest Rate Paid (Floor)</u></b> <i>(if applicable)</i>
Certificates of Deposit (181 days to one year)				
Certificates of Deposit (over one year)				
Construction Loans				
Long Term Secured Notes				
Foreign and Domestic Exchange				
Research				
Other				

# Attachment B

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Form HUD 5369-C

# Certifications and Representations of Offerors

## Non-Construction Contract

U.S. Department of Housing and Urban Development  
Office of Public and Indian Housing

Public reporting burden for this collection of information is estimated to average 5 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

This form includes clauses required by OMB's common rule on bidding/offering procedures, implemented by HUD in 24 CFR 85.36, and those requirements set forth in Executive Order 11625 for small, minority, women-owned businesses, and certifications for independent price determination, and conflict of interest. The form is required for nonconstruction contracts awarded by Housing Agencies (HAs). The form is used by bidders/offers to certify to the HA's Contracting Officer for contract compliance. If the form were not used, HAs would be unable to enforce their contracts. Responses to the collection of information are required to obtain a benefit or to retain a benefit. The information requested does not lend itself to confidentiality.

### 1. Contingent Fee Representation and Agreement

(a) The bidder/offers represents and certifies as part of its bid/offer that, except for full-time bona fide employees working solely for the bidder/offers, the bidder/offers:

- (1)  has,  has not employed or retained any person or company to solicit or obtain this contract; and
- (2)  has,  has not paid or agreed to pay to any person or company employed or retained to solicit or obtain this contract any commission, percentage, brokerage, or other fee contingent upon or resulting from the award of this contract.

(b) If the answer to either (a)(1) or (a) (2) above is affirmative, the bidder/offers shall make an immediate and full written disclosure to the PHA Contracting Officer.

(c) Any misrepresentation by the bidder/offers shall give the PHA the right to (1) terminate the resultant contract; (2) at its discretion, to deduct from contract payments the amount of any commission, percentage, brokerage, or other contingent fee; or (3) take other remedy pursuant to the contract.

### 2. Small, Minority, Women-Owned Business Concern Representation

The bidder/offers represents and certifies as part of its bid/ offer that it:

- (a)  is,  is not a small business concern. "Small business concern," as used in this provision, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding, and qualified as a small business under the criteria and size standards in 13 CFR 121.
- (b)  is,  is not a women-owned small business concern. "Women-owned," as used in this provision, means a small business that is at least 51 percent owned by a woman or women who are U.S. citizens and who also control and operate the business.
- (c)  is,  is not a minority enterprise which, pursuant to Executive Order 11625, is defined as a business which is at least 51 percent owned by one or more minority group members or, in the case of a publicly owned business, at least 51 percent of its voting stock is owned by one or more minority group members, and whose management and daily operations are controlled by one or more such individuals.

For the purpose of this definition, minority group members are:

(Check the block applicable to you)

- |   |   |
|---|---|
| <input type="checkbox"/> Black Americans    | <input type="checkbox"/> Asian Pacific Americans  |
| <input type="checkbox"/> Hispanic Americans | <input type="checkbox"/> Asian Indian Americans   |
| <input type="checkbox"/> Native Americans   | <input type="checkbox"/> Hasidic Jewish Americans |

### 3. Certificate of Independent Price Determination

(a) The bidder/offers certifies that—

- (1) The prices in this bid/offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other bidder/offers or competitor relating to (i) those prices, (ii) the intention to submit a bid/offer, or (iii) the methods or factors used to calculate the prices offered;
- (2) The prices in this bid/offer have not been and will not be knowingly disclosed by the bidder/offers, directly or indirectly, to any other bidder/offers or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and
- (3) No attempt has been made or will be made by the bidder/offers to induce any other concern to submit or not to submit a bid/offer for the purpose of restricting competition.

(b) Each signature on the bid/offer is considered to be a certification by the signatory that the signatory:

- (1) Is the person in the bidder/offers's organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above; or
- (2) (i) Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above (insert full name of person(s) in the bidder/offers's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the bidder/offers's organization);
- (ii) As an authorized agent, does certify that the principals named in subdivision (b)(2)(i) above have not participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above; and

(iii) As an agent, has not personally participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above.

(c) If the bidder/offeror deletes or modifies subparagraph (a)2 above, the bidder/offeror must furnish with its bid/offer a signed statement setting forth in detail the circumstances of the disclosure.

#### 4. Organizational Conflicts of Interest Certification

(a) The Contractor warrants that to the best of its knowledge and belief and except as otherwise disclosed, it does not have any organizational conflict of interest which is defined as a situation in which the nature of work under a proposed contract and a prospective contractor's organizational, financial, contractual or other interest are such that:

- (i) Award of the contract may result in an unfair competitive advantage;
- (ii) The Contractor's objectivity in performing the contract work may be impaired; or
- (iii) That the Contractor has disclosed all relevant information and requested the HA to make a determination with respect to this Contract.

(b) The Contractor agrees that if after award he or she discovers an organizational conflict of interest with respect to this contract, he or she shall make an immediate and full disclosure in writing to the HA which shall include a description of the action which the Contractor has taken or intends to eliminate or neutralize the conflict. The HA may, however, terminate the Contract for the convenience of HA if it would be in the best interest of HA.

(c) In the event the Contractor was aware of an organizational conflict of interest before the award of this Contract and intentionally did not disclose the conflict to the HA, the HA may terminate the Contract for default.

(d) The Contractor shall require a disclosure or representation from subcontractors and consultants who may be in a position to influence the advice or assistance rendered to the HA and shall include any necessary provisions to eliminate or neutralize conflicts of interest in consultant agreements or subcontracts involving performance or work under this Contract.

#### 6. Conflict of Interest

In the absence of any actual or apparent conflict, the offeror, by submission of a proposal, hereby warrants that to the best of its knowledge and belief, no actual or apparent conflict of interest exists with regard to my possible performance of this procurement, as described in the clause in this solicitation titled "Organizational Conflict of Interest."

#### 7. Offeror's Signature

The offeror hereby certifies that the information contained in these certifications and representations is accurate, complete, and current.

\_\_\_\_\_  
Signature & Date:

\_\_\_\_\_  
Typed or Printed Name:

\_\_\_\_\_  
Title:

#### 5. Authorized Negotiators (RFPs only)

The offeror represents that the following persons are authorized to negotiate on its behalf with the PHA in connection with this request for proposals: (list names, titles, and telephone numbers of the authorized negotiators):

# Attachment C

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## Profile of Firm Form

**REQUEST FOR PROPOSALS (RFP) HACB No. 26-001, Bank Depository Services**

**PROFILE OF FIRM FORM  
(Attachment C)**

(This Form must be fully completed and placed under Tab No. 3 of the "electronic submittal")

- (1) Prime \_\_\_\_\_ Sub-contractor \_\_\_\_\_ (This form must be completed by and for each).
- (2) Name of Firm: \_\_\_\_\_ Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_
- (3) Street Address, City, State, Zip: \_\_\_\_\_
- (4) Please attach a brief biography/resume of the company, including the following information:  
 (a) Year Firm Established; (b) Year Firm Established in Brownsville, Texas; (c) Former Name and Year Established (if applicable); (d) Name of Parent Company and Date Acquired (if applicable).
- (5) Identify Principals/Partners in Firm (submit under Tab No. 5 a brief professional resume for each):

NAME	TITLE	% OF OWNERSHIP

- (6) Identify the individual(s) that will act as project manager and any other supervisory personnel that will work on project; please submit under Tab No. 5 a brief resume for each. (Do not duplicate any resumes required above):

NAME	TITLE

- (7) Proposer Diversity Statement: You must circle all of the following that apply to the ownership of this firm and enter where provided the correct percentage (%) of ownership of each:

Caucasian American (Male) \_\_\_\_\_%     
  Public-Held Corporation \_\_\_\_\_%     
  Government Agency \_\_\_\_\_%     
  Non-Profit Organization \_\_\_\_\_%

Resident- (RBE), Minority- (MBE), or Woman-Owned (WBE) Business Enterprise (Qualifies by virtue of 51% or more ownership and active management by one or more of the following:

Resident-Owned\* \_\_\_\_\_%     
  African American \_\_\_\_\_%     
  \*\*Native American \_\_\_\_\_%     
  Hispanic American \_\_\_\_\_%     
  Asian/Pacific American \_\_\_\_\_%     
  Hasidic Jew \_\_\_\_\_%     
  Asian/Indian American \_\_\_\_\_%

Woman-Owned \_\_\_\_\_%     
  Woman-Owned (Caucasian) \_\_\_\_\_%     
  Disabled Veteran \_\_\_\_\_%     
  Other (Specify): (MBE) \_\_\_\_\_%

WMBE Certification Number: \_\_\_\_\_

Certified by (Agency): \_\_\_\_\_

(NOTE: A CERTIFICATION/NUMBER NOT REQUIRED TO PROPOSE - ENTER IF AVAILABLE)

Signature \_\_\_\_\_ Date \_\_\_\_\_ Printed Name \_\_\_\_\_ Company \_\_\_\_\_

**PROFILE OF FIRM FORM  
(Attachment C)**

(This Form must be fully completed and placed under Tab No. 3 of the "electronic submittal")

- (8) Federal Tax ID No.: \_\_\_\_\_
- (9) City of Brownsville Business License No.: \_\_\_\_\_
- (10) State of Texas License Type and No.: \_\_\_\_\_
- (11) Worker's Compensation Insurance Carrier: \_\_\_\_\_  
Policy No.: \_\_\_\_\_ Expiration Date: \_\_\_\_\_
- (12) General Liability Insurance Carrier: \_\_\_\_\_  
Policy No. \_\_\_\_\_ Expiration Date: \_\_\_\_\_
- (13) Professional Liability Insurance Carrier: \_\_\_\_\_  
Policy No. \_\_\_\_\_ Expiration Date: \_\_\_\_\_
- (14) Debarred Statement: Has this firm, or any principal(s) ever been debarred from providing any services by the Federal Government, any state government, the State of \_\_\_\_\_, or any local government agency within or without the State of Texas? Yes  No   
If "Yes," please attach a full detailed explanation, including dates, circumstances and current status.
- (15) Disclosure Statement: Does this firm or any principals thereof have any current, past personal or professional relationship with any Commissioner or Officer of the HA? Yes  No   
If "Yes," please attach a full detailed explanation, including dates, circumstances and current status.
- (16) Non-Collusive Affidavit: The undersigned party submitting this proposal hereby certifies that such proposal is genuine and not collusive and that said proposer entity has not colluded, conspired, connived or agreed, directly or indirectly, with any proposer or person, to put in a sham proposal or to refrain from proposing, and has not in any manner, directly or indirectly sought by agreement or collusion, or communication or conference, with any person, to fix the proposal price of affiant or of any other proposer, to fix overhead, profit or cost element of said proposal price, or that of any other proposer or to secure any advantage against the HA or any person interested in the proposed contract; and that all statements in said proposal are true.
- (17) Verification Statement: The undersigned proposer hereby states that by completing and submitting this form he/she is verifying that all information provided herein is, to the best of his/her knowledge, true and accurate, and agrees that if the HA discovers that any information entered herein is false, that shall entitle the HA to not consider nor make award or to cancel any award with the undersigned party.

\_\_\_\_\_  
Signature                                      Date                                      Printed Name                                      Company

# Attachment D

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Certification for Business Concerns Seeking  
Section 3 Business Preference in Contracting and  
Demonstration of Capability

(Attachment D)

CERTIFICATION FOR BUSINESS CONCERNS SEEKING SECTION 3 BUSINESS PREFERENCE IN CONTRACTING AND DEMONSTRATION OF CAPABILITY

NAME OF BUSINESS: \_\_\_\_\_

ADDRESS OF BUSINESS: \_\_\_\_\_

TYPE OF BUSINESS:  Corporation  Partnership  Sole Proprietorship  Joint Venture

Attached is the following documentation as evidence of status:

For business claiming status as a Section 3 resident-owned Enterprise:

Copy of resident lease  Other evidence  Copy of evidence of participation in a public assistance program

For the business entity as applicable:

- Copy of Articles of Incorporation
- Assumed Business Name Certificate
- List of owners/stockholder and % of each
- Latest Board minutes appointing officers
- Organization chart with names and titles and brief functional statement
- Certificate of Good Standing
- Partnership Agreement
- Corporation Annual Report
- Additional documentation

For business claiming Section 3 status by subcontracting 25% of the dollar awarded to qualified Section 3 business:

List of subcontracted Section 3 business and subcontract amount

For business claiming Section 3 status, claiming at least 30% of their workforce are currently Section 3 residents or were Section 3 eligible residents within 3 years of date of first employment with the business:

- List of all current full time employees
- PHA Residential lease (less than 3 years from date of employment)
- List of all employees claiming Section 3 status
- Other evidence of Section 3 status (less than 3 years from date of employment)

Evidence of ability to perform successfully under the terms and conditions of the proposed contract:

- Current financial statement
- Statement of ability to comply
- List of owned equipment
- List of all contracts for the past 2 years with public policy

Corporate Seal

\_\_\_\_\_  
Authorizing Name and Signature

\_\_\_\_\_  
Notary

My term expires: \_\_\_\_\_

Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

(Attachment D)

SUGGESTED AFFIRMATIVE ACTION PLAN FOR UTILIZATION OF PROJECT AREA BUSINESSES

Number Of All Contracts Proposed: -  
 Name Of Company: -  
 Dollar Value Of All Contracts Proposed: -  
 Project: -

To The Greatest Extent Feasible, Contracts Will Be Awarded Through Negotiation Or Proposal To Qualified Project Area Businesses.

Goal Of These Contracts For Project Area Businesses:

PROPOSED TYPE OF CONTRACT	APPROX. COST	PROPOSED TYPE OF CONTRACT	APPROX. COST

Outline The Program To Achieve These Goals For Economically And Socially Disadvantaged:

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NOTE: To Complete The Affirmative Action Plan, Follow Steps Outlines In Attached Exhibit.

(INSERT THIS DOCUMENT IN PROPOSAL DOCUMENTS AND WITH PROPOSAL)

DATE: \_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_

Printed Name \_\_\_\_\_

(Attachment D)

SUGGESTED AFFIRMATIVE ACTION PLAN FOR UTILIZATION OF PROJECT AREA BUSINESSES  
(cont'd)

SUGGESTED SECTION 3 PRELIMINARY WORKFORCE STATEMENT UTILIZATION OF LOWER INCOME PROJECT AREA RESIDENTS AS REGULAR, PERMANENT EMPLOYEES, TRAINEES, APPRENTICES.

COMPANY NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

PROJECT: \_\_\_\_\_

	PRESENT PERMANENT EMPLOYEES (At Time of Contract Signing)	SECTION 3 WORKFORCE PROJECTION (Residents)	TOTAL PROJECTED WORKFORCE INCREASE
TRAINEES			
APPRENTICES			
JOURNEYPERSONS			
LABORERS			
SUPERVISORY			
SUPERINTENDENT			
PROFESSIONAL			
CLERICAL			

**NOTE: RESIDENTS ARE THOSE LOWER INCOME PROJECT AREA RESIDENTS WHO HAVE BEEN QUALIFIED AS ELIGIBLE.**

Signature \_\_\_\_\_

Date \_\_\_\_\_

Printed Name \_\_\_\_\_

### SECTION 3 BUSINESS PREFERENCE CLAUSE (Attachment D)

*This contract is subject to the following conditions under Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3).*

- A. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- B. The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.
- C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor or organization or workers' representative of the contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- D. The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.
- E. The contractor will certify that any vacant employment positions, including training positions that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135.
- F. Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- G. With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprise. Parties to this contract that are subject to the provisions of Section 3 and Section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).

PREFERENCE FOR SECTION 3 BUSINESS CONCERNS IN CONTRACTING OPPORTUNITIES

(Attachment D)

The HA has established the following priority for preference when providing contracting opportunities to Section 3 Businesses:

Priority I

Category 1a Business

Business concerns that are 51 percent or more owned by residents of the housing development or developments for which the Section 3-covered assistance is expended.

Priority II

Category 1b Business

Business concerns whose workforce includes 30 percent of residents of the housing development for which the Section 3-covered assistance is expended, or within three (3) years of the date of first employment with the business concern, were residents of the Section 3-covered housing development.

Priority III

Category 2a Business

Business concerns that are 51 percent or more owned by residents of any other housing development or developments.

Priority IV

Category 2b Business

Business concerns whose workforce includes 30 percent of residents of any other public housing development or developments, or within three (3) years of the date of first employment with the business concern, were "Section 3" residents of any other public housing development.

Priority V

Category 3 Business

Business concerns participating in HUD Youth-build programs being carried out in the metropolitan area in which the Section 3-covered assistance is expended.

Priority VI

Category 4a Business

Business concerns that are 51 percent or more owned by Section 3 residents in the metropolitan area, or whose permanent, full-time workforce includes no less than 30 percent of Section 3 residents in the metropolitan area, or within three (3) years of the date of employment with the business concern, were Section 3 residents in the metropolitan area.

Priority VII

Category 4b Business

Business concerns that subcontract in excess of 25 percent of the total amount of subcontracts to Section 3 business concerns.

Eligibility for Preference

A business concern seeking to qualify for a Section 3 contracting preference shall certify or submit evidence that the business concern is a Section business concern.

(Attachment D)

HUD directs within 24 CFR 135 that the HA may make award to qualified Section 3 business concern with the highest priority ranking and with the lowest responsive proposal if that proposal is:

- (a) within the maximum total contract price established by the HA; or
- (b) not more than “X” higher than the total proposal price of the lowest responsive proposal from any responsible proposer. “X” is determined as follows:

“X” = LESSOR OF:	
When the lowest responsive proposal is less than \$100,000	10% of that proposal, or \$9,000.00
When the lowest responsive proposal is at least:	
\$100,000.00, but less than \$200,000.00	9% of that proposal, or \$16,000.00
\$200,000.00, but less than \$300,000.00	8% of that proposal, or \$21,000.00
\$300,000.00, but less than \$400,000.00	7% of that proposal, or \$24,000.00
\$400,000.00, but less than \$500,000.00	6% of that proposal, or \$25,000.00
\$500,000.00, but less than \$1,000,000.00	5% of that proposal, or \$40,000.00
\$1,000,000.00, but less than \$2,000,000.00	4% of that proposal, or \$60,000.00
\$2,000,000.00, but less than \$4,000,000.00	3% of that proposal, or \$80,000.00
\$4,000,000.00, but less than \$7,000,000.00	2% of that proposal, or \$105,000.00
\$7,000,000.00, or more	1.5% of the lowest responsive and responsible proposal with no dollar limit

# Attachment E

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Form HUD 5369-B

# Instructions to Offerors Non-Construction



## 1. Preparation of Offers

(a) Offerors are expected to examine the statement of work, the proposed contract terms and conditions, and all instructions. Failure to do so will be at the offeror's risk.

(b) Each offeror shall furnish the information required by the solicitation. The offeror shall sign the offer and print or type its name on the cover sheet and each continuation sheet on which it makes an entry. Erasures or other changes must be initialed by the person signing the offer. Offers signed by an agent shall be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to the HA.

(c) Offers for services other than those specified will not be considered.

## 2. Submission of Offers

(a) Offers and modifications thereof shall be submitted in sealed envelopes or packages (1) addressed to the office specified in the solicitation, and (2) showing the time specified for receipt, the solicitation number, and the name and address of the offeror.

(b) Telegraphic offers will not be considered unless authorized by the solicitation; however, offers may be modified by written or telegraphic notice.

(c) Facsimile offers, modifications or withdrawals will not be considered unless authorized by the solicitation.

## 3. Amendments to Solicitations

(a) If this solicitation is amended, then all terms and conditions which are not modified remain unchanged.

(b) Offerors shall acknowledge receipt of any amendments to this solicitation by

- (1) signing and returning the amendment;
- (2) identifying the amendment number and date in the space provided for this purpose on the form for submitting an offer,
- (3) letter or telegram, or
- (4) facsimile, if facsimile offers are authorized in the solicitation. The HA/HUD must receive the acknowledgment by the time specified for receipt of offers.

## 4. Explanation to Prospective Offerors

Any prospective offeror desiring an explanation or interpretation of the solicitation, statement of work, etc., must request it in writing soon enough to allow a reply to reach all prospective offerors before the submission of their offers. Oral explanations or instructions given before the award of the contract will not be binding. Any information given to a prospective offeror concerning a solicitation will be furnished promptly to all other prospective offerors as an amendment of the solicitation, if that information is necessary in submitting offers or if the lack of it would be prejudicial to any other prospective offerors.

## 5. Responsibility of Prospective Contractor

(a) The HA shall award a contract only to a responsible prospective contractor who is able to perform successfully under the terms and conditions of the proposed contract. To be determined responsible, a prospective contractor must -

- (1) Have adequate financial resources to perform the contract, or the ability to obtain them;

- (2) Have a satisfactory performance record;
- (3) Have a satisfactory record of integrity and business ethics;
- (4) Have a satisfactory record of compliance with public policy (e.g., Equal Employment Opportunity); and
- (5) Not have been suspended, debarred, or otherwise determined to be ineligible for award of contracts by the Department of Housing and Urban Development or any other agency of the U.S. Government. Current lists of ineligible contractors are available for inspection at the HA/HUD.

(b) Before an offer is considered for award, the offeror may be requested by the HA to submit a statement or other documentation regarding any of the foregoing requirements. Failure by the offeror to provide such additional information may render the offeror ineligible for award.

## 6. Late Submissions, Modifications, and Withdrawal of Offers

(a) Any offer received at the place designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it -

- (1) Was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of offers (e.g., an offer submitted in response to a solicitation requiring receipt of offers by the 20th of the month must have been mailed by the 15th);
- (2) Was sent by mail, or if authorized by the solicitation, was sent by telegram or via facsimile, and it is determined by the HA/ HUD that the late receipt was due solely to mishandling by the HA/ HUD after receipt at the HA;
- (3) Was sent by U.S. Postal Service Express Mail Next Day Service - Post Office to Addressee, not later than 5:00 p.m. at the place of mailing two working days prior to the date specified for receipt of proposals. The term "working days" excludes weekends and U.S. Federal holidays; or
- (4) Is the only offer received.

(b) Any modification of an offer, except a modification resulting from the HA's request for "best and final" offer (if this solicitation is a request for proposals), is subject to the same conditions as in subparagraphs (a)(1), (2), and (3) of this provision.

(c) A modification resulting from the HA's request for "best and final" offer received after the time and date specified in the request will not be considered unless received before award and the late receipt is due solely to mishandling by the HA after receipt at the HA.

(d) The only acceptable evidence to establish the date of mailing of a late offer, modification, or withdrawal sent either by registered or certified mail is the U.S. or Canadian Postal Service postmark both on the envelope or wrapper and on the original receipt from the U.S. or Canadian Postal Service. Both postmarks must show a legible date or the offer, modification, or withdrawal shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. or Canadian Postal Service on the date of mailing. Therefore, offerors should request the postal clerk to place a hand cancellation bull's-eye postmark on both the receipt and the envelope or wrapper.

(e) The only acceptable evidence to establish the time of receipt at the HA is the time/date stamp of HA on the offer wrapper or other documentary evidence of receipt maintained by the HA.

(f) The only acceptable evidence to establish the date of mailing of a late offer, modification, or withdrawal sent by Express Mail Next Day Service-Post Office to Addressee is the date entered by the post office receiving clerk on the "Express Mail Next Day Service-Post Office to Addressee" label and the postmark on both the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined in paragraph (c) of this provision, excluding postmarks of the Canadian Postal Service. Therefore, offerors should request the postal clerk to place a legible hand cancellation bull's eye postmark on both the receipt and the envelope or wrapper.

(g) Notwithstanding paragraph (a) of this provision, a late modification of an otherwise successful offer that makes its terms more favorable to the HA will be considered at any time it is received and may be accepted.

(h) If this solicitation is a request for proposals, proposals may be withdrawn by written notice, or if authorized by this solicitation, by telegram (including mailgram) or facsimile machine transmission received at any time before award. Proposals may be withdrawn in person by a offeror or its authorized representative if the identity of the person requesting withdrawal is established and the person signs a receipt for the offer before award. If this solicitation is an invitation for bids, bids may be withdrawn at any time prior to bid opening.

#### **7. Contract Award**

(a) The HA will award a contract resulting from this solicitation to the responsible offeror whose offer conforming to the solicitation will be most advantageous to the HA, cost or price and other factors, specified elsewhere in this solicitation, considered.

(b) The HA may

- (1) reject any or all offers if such action is in the HA's interest,
- (2) accept other than the lowest offer,
- (3) waive informalities and minor irregularities in offers received, and (4) award more than one contract for all or part of the requirements stated.

(c) If this solicitation is a request for proposals, the HA may award a contract on the basis of initial offers received, without discussions. Therefore, each initial offer should contain the offeror's best terms from a cost or price and technical standpoint.

(d) A written award or acceptance of offer mailed or otherwise furnished to the successful offeror within the time for acceptance specified in the offer shall result in a binding contract without further action by either party. If this solicitation is a request for proposals, before the offer's specified expiration time, the HA may accept an offer, whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award. Negotiations conducted after receipt of an offer do not constitute a rejection or counteroffer by the HA.

(e) Neither financial data submitted with an offer, nor representations concerning facilities or financing, will form a part of the resulting contract.

#### **8. Service of Protest**

Any protest against the award of a contract pursuant to this solicitation shall be served on the HA by obtaining written and dated acknowledgment of receipt from the HA at the address shown on the cover of this solicitation. The determination of the HA with regard to such protest or to proceed to award notwithstanding such protest shall be final unless appealed by the protestor.

#### **9. Offer Submission**

Offers shall be submitted as follows and shall be enclosed in a sealed envelope and addressed to the office specified in the solicitation. The proposal shall show the hour and date specified in the solicitation for receipt, the solicitation number, and the name and address of the offeror, on the face of the envelope.

It is very important that the offer be properly identified on the face of the envelope as set forth above in order to insure that the date and time of receipt is stamped on the face of the offer envelope. Receiving procedures are: date and time stamp those envelopes identified as proposals and deliver them immediately to the appropriate contracting official, and only date stamp those envelopes which do not contain identification of the contents and deliver them to the appropriate procuring activity only through the routine mail delivery procedure.

[Describe bid or proposal preparation instructions here:]

# Attachment F

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## Instructions to Proposers & Contractors (ITPC)

## Instructions To Proposers &amp; Contractors (ITPC)

(Attachment F)

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**1.0 GENERAL CONDITIONS:**

- 1.1 Applicability:** If referred to within the text of such, these ITPC shall be applicable to all Requests For Proposals (RFP) solicitations that the Housing Authority of the City of Brownsville (HACB) conducts and shall be applicable to any contract that HACB awards to or signs with any firm, agency or individual pursuant to that RFP. A copy of these ITPC shall be made available to any actual or prospective proposer, or contractor who does business with or intends to do business with HACB.
- 1.1.1** Unless otherwise specified within the RFP or contract documents, in the event that any provision in any document listed herein conflicts with any provision within these ITPC, the provision in the RFP or contract document shall govern. Further, in the case of any attached HUD forms (more specifically: HUD-5369-C (8/93); HUD-5369-B (8/93); and HUD-5370-C (10/2006), Section I and/or Section II), the information within such HUD form(s) shall govern any other information issued, especially that issued within any HACB-created forms that are issued as a part of this solicitation.
- 1.2 Definitions** (pertaining to all RFP documents issued by HACB pertaining to this RFP, including the attachments and the ensuing contract):
- 1.2.1** "Contracting Officer" (CO) when named within an RFP document shall refer to either the HACB Chief Executive Officer (CEO) or the person he/she has delegated such responsibilities to.
- 1.2.2** "Contract" refers to the fully executed written agreement that ensues from the RFP. Whereas all RFP documents are included, by reference, as a part of the ensuing contract, when "contract" is referred to within the RFP document, such is referring to both the RFP documents and the ensuing contract document.
- 1.2.3** "Contractor" and the term "successful proposer" may be used interchangeably.
- 1.2.4** "Days" unless otherwise directed, shall refer to calendar days.
- 1.2.5** "CEO" is the HACB Chief Executive Officer.
- 1.2.6** "HACB" is the Housing Authority of the City of Brownsville, Texas. Unless otherwise defined herein or within the ensuing contract, whenever the term "HACB" is used without clearly designating a responsible HACB staff person, the proposer(s) shall assume that responsibility for that item rests with the CO.
- 1.2.7** "HUD" is the United States Department of Housing and Urban Development. HUD is the Federal agency that HACB receives some funding from; however, pertaining to this RFP, correspondences, including proposal submittals, received from each proposer must exhaust all provisions contained herein prior to contacting HUD (i.e. in the case of a protest).

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- 1.2.8 "Herein" shall refer to all documents issued pursuant to the noted RFP, including the RFP documents and the attachments.
- 1.2.9 "Offer" is the proposal submittal referred to within the following Section 1.2.14 that the proposer delivers to HACB in response to the RFP.
- 1.2.10 "Offeror" or "Offerors" are the proposer or proposers.
- 1.2.11 "Parties" - When "the parties," "both parties" or "either party" is stated within the RFP documents or the contract, such refers to HACB and the successful proposer(s).
- 1.2.12 "Proposal" and/or "Proposal Submittal" is the "the electronic document" that the proposer is required to, as detailed within the RFP document, upload to the Housing Marketplace Agency <https://ha.internationaleprocurement.com>.
- 1.2.13 "Protestant" is a prospective proposer or proposer who feels that he/she has been treated inequitably by HACB and wishes HACB to correct the inequitable condition or situation. To be eligible to file a protest with HACB pertaining to an RFP or contract, the protestant must have been involved in the RFP process in some manner as a prospective proposer (i.e. registered and received the RFP documents).
- 1.2.14 "Prospective Proposer" or "Proposer" - A prospective proposer is a firm or individual who has been notified of the RFP solicitation and/or who has requested and/or received the RFP documents and is considering responding with a proposal; a proposer is a firm or individual who has submitted a proposal in response to the RFP. All terms and conditions shall apply equally to all prospective proposers as well as proposers, though prospective proposers may not, after the deadline set for receiving proposals, receive further notices pertaining to that RFP--meaning, certain notices (such as the Notice of Results of Evaluation) are typically only delivered to proposers and not to all prospective proposers.
- 1.2.15 "Request For Proposals" (RFP) is the competitive proposal process allowed by HUD, especially as defined within Chapter 7 of HUD Procurement Handbook 7460.8 REV 2.
- 1.2.16 "RFP Document(s)" - Whether stated in the singular or the plural, such refers to the body of documents, including attachments that HACB makes available to all prospective proposers wherein is detailed HACB's requirements.
- 1.2.17 "Solicitation" or "Competitive Solicitation" is the RFP process detailed herein.

## 2.0 CONDITIONS TO PROPOSE:

- 2.1 **Pre-Qualification of Proposers:** Prospective proposers will not be required to pre-qualify in order to submit a proposal. However, all proposers will be required to

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submit adequate information showing that the proposer is qualified to perform the required work (i.e. Profile of Firm Form and required resumes). Failure by the prospective proposer to provide the requested information may, at the HACB's discretion, eliminate that proposer from consideration, provided that all proposers were required to submit the same information (in the case of a successful proposer(s), these requirements shall also apply in the context of the successful proposer or proposers).

## 2.2 RFP Forms, Documents, Specifications and Drawings:

2.2.1 It shall be each prospective proposer's responsibility to, prior to submitting a proposal in response to the RFP, examine carefully and, as may be required, properly complete and submit all documents issued pursuant to this RFP through the Marketplace Housing Agency <https://ha.internationaleprocurement.com>.

2.2.2 Unless otherwise instructed, specifications and drawings (if provided) do not purport to show all of the exact details of the work. They are intended to illustrate the character and extent of the performance desired under the proposed contract and may be supplemented or revised from time to time.

2.2.3 HACB shall reserve the right to, prior to award, revise, change, alter or amend any of the instructions, terms, conditions, and/or specifications identified within the RFP documents issued, within any attachment or drawing, or within any addenda issued; such notice shall be delivered in writing to each prospective and/or actual proposer. Such changes that are issued before the deadline for receipt of proposals shall be binding upon all prospective proposers. Such changes that are issued after the receipt of proposals, but prior to award shall be binding upon all parties that have submitted proposals; however, such parties shall be allowed to reject such changes by, within 5 days of receipt of such written notice, withdrawing his/her proposal. Such withdrawal must be delivered, in writing, to the CO within the 5-day deadline period.

## 2.3 Proposal Preparation, Submission and Receipt by the HACB:

2.3.1 **Required Forms:** All required forms furnished by HACB as a part of the RFP document issued shall, as instructed, be fully completed and submitted by the proposer electronically through the Housing Marketplace Agency <https://ha.internationaleprocurement.com>.

2.3.2 **Manner of Submission:** The proposal submittal shall be submitted in the manner detailed within the RFP document. Failure to submit the proposal in the manner specified may result at the discretion of the CO, eliminate that proposer from consideration for award.

2.3.3 **Time for Receiving Proposals:** Proposals will not be opened prior to the time set as the deadline for the receipt by HACB. The CO, whose duty it is to open such proposals, will decide when the specified time has arrived. No proposal

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received after the designated deadline shall be considered, except as detailed within Clause No. 6 of Form HUD-5369-B (8/93), *Late Submissions, Modifications and Withdrawal of Offers*.

- 2.3.3.1** Proposers are cautioned that all proposal submittals shall be done prior to the RFP deadline specified.
- 2.3.4** **No Public Opening of Proposals:** Pursuant to the competitive proposals or RFP process, proposals are not publicly opened, but will be reviewed for completeness once HACB determines that the specified time has arrived. The proposals are then electronically opened in private by the CO (or his/her designee) and are, pursuant to the evaluation plan, examined for minimal responsiveness (i.e. minimum compliance with the requirements of the RFP).
- 2.3.5** **Withdrawal of Proposals:** Proposals may be withdrawn as detailed within Clause No.6(h) of Form HUD-5369-B (8/93), *Late Submissions, Modifications and Withdrawal of Offers*. Negligence on the part of the proposer in preparing his/her proposal confers no right of withdrawal or modification of his/her proposal after such proposal has been received and opened.
- 2.3.6** **Conflicting Conditions:** Any provisions detailed within any of the RFP documents which may be in conflict or inconsistent with any of the paragraphs in any of the other RFP documents, including attachments, shall be void to the extent of any such conflict or inconsistency. Further, as stated within Section 1.1.1 of this ITP, unless otherwise specified within the RFP or contract documents, in the event that any provision in any document listed herein conflicts with any provision within this ITP, the provision in the RFP or contract document shall govern.
- 2.3.7** **Interpretations:** No official oral interpretation can be made to any proposer as to the meaning of any instruction, condition, specifications drawing (if any), or any other document issued pertaining to this RFP. Every request for an official interpretation shall be made by the prospective proposer, in writing, pursuant to the schedule set within the RFP document issued and as directed by HACB. Official interpretations will be issued in the form of addenda, which will be delivered to each proposer; but it shall be the prospective proposer's responsibility to make inquiry as to addenda issued. All such addenda shall become a part of the RFP documents and the proposed contract with the successful proposer,

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and all proposers shall be bound by such addenda, whether or not received by the prospective or successful proposer(s).

**2.4 Exceptions to Specifications:**

**2.4.1** A proposer may take exception to any of the proposal documents or any part of the information contained therein, by submitting, in writing to the CO, at least 10 days prior to the proposal deadline, a complete and specific explanation as to what he/she is taking exception to. Proposed alternate documents or information must also be included. A response by HACB will be issued in writing within 5 days of receipt of such exception request. HACB reserves the right to agree with the prospective proposer and issue a revision to the applicable RFP requirements, or may reject the prospective proposer's request.

**2.4.2** When taking exception, prospective proposers must propose services that meet the requirements of the RFP documents. Exceptions to the specification and/or approved "equal" requests may be discussed at the scheduled pre-proposal conference (if scheduled). All verbal instructions issued by HACB officers not already listed within the RFP documents shall only become official when issued as addenda or as a written answer issued pursuant to receipt of a written question.

**2.5 Lump Sum Cost Breakdown (LSCB):**

**2.5.1** HACB reserves the right to, at any time, request and receive from any or all proposers a LSCB of any or all of the costs proposed. The proposal documents constitute an outline of the work to be completed by the proposer. These documents are intended to include all major items, and the lump sum cost breakdown computed therefrom will be the maximum compensation for all work and materials whatsoever furnished by the proposer in order to comply with the proposal documents in their present form, whether or not indicated in the approximate quantities or pertaining to the items of work as listed.

**2.5.1.1** The purpose of this LSCB will serve HACB in two distinct areas:

**2.5.1.1.1** **Prior to award of proposals:** HACB may request a LSCB for any or all items reflected within the RFP document as "lump sum" for the purpose of determining an unbalanced cost proposal. The CO, using acceptable methods dictated by the industry, shall conduct the analysis.

**2.5.1.1.2** **After award:** HACB may request a LSCB for any or all items reflected within the RFP document as "lump sum" for the purpose of making partial payments to the successful proposer.

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2.5.1.1.3 Under no circumstances, may any cost item reflected as "lump sum" be increased/decreased as a result of the LSCB analysis.

### 3.0 PROPOSAL EVALUATION:

3.1 **Proposal Opening Results:** It is understood by all proposers/prospective proposers that the proposals received are not publicly opened and the results will typically not be a matter of public record until HACB has concluded all evaluations, has chosen a final top-rated proposer, has completed the award and is ready to issue such results. When HACB issues such notice, HACB will inform all proposers as to each proposers placement as a result of the evaluation (i.e. 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, etc.).

3.1.1 All proposal documents submitted by the proposers are not necessarily a matter of public record and as a matter of normal course, the proposals submitted by each proposer will not, until after award has been completed, be available to be viewed by any interested parties except as approved by HACB Legal Counsel (i.e. a proposer will not, prior to completion of award, be allowed to challenge an apparent top-rated proposer by inspecting the proposal that the apparent top-rated proposer submitted). HACB shall, however, upon request, verify that the proposal documents submitted are/were acceptable.

3.2 **Award of Proposal(s):** The successful proposer shall be determined by the top-rated responsive and responsible proposer as determined by the evaluation process detailed within the RFP document issued, provided his/her proposal is reasonable, he/she is able to deliver the specified items in a timely manner and it is, in the opinion of HACB, to the best interests of HACB to accept the proposal. All proposers will be notified in a timely manner of the results of the evaluation after award has been completed.

### 3.3 Rejection of Proposals:

3.3.1 HACB reserves the right to at any time during the proposal process, reject any or all proposals received. In the case of rejection of all proposals, HACB reserves the right to advertise for new proposals or to proceed to do the work otherwise, if in the judgment of HACB, the best interest of HACB will be promoted.

3.3.2 Prospective proposers acknowledge by downloading and receiving the RFP documents and/or by submitting an electronic proposal that the submission of a proposal to HACB is not a right by which to be awarded that proposal, but merely an offer by the prospective proposer to perform the requirements of the RFP documents in the event HACB decides to consider an award to that proposer.

3.4 **Cancellation of Award:** HACB reserves the right to, without any liability cancel the award of any proposal(s) at any time before the execution of the contract documents by all parties.

### 3.5 Mistake in Proposal Submitted:

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- 3.5.1** A request for withdrawal of a proposal due to a purported error need not be considered by HACB unless the same is filed in writing by the proposer within 48 hours after the proposal deadline (proposers may of their own volition withdraw a proposal prior to the submittal deadline). Any such request shall contain a full explanation of any purported error and shall, if requested by HACB, be supported by the original calculations on which the proposal was computed, together with a certification and notarization thereon that such computation is the original and prepared by the proposer or his/her agent, who must be identified on the notarized form. The foregoing shall not be construed that such withdrawal will be permitted, as HACB retains the right to accept or reject any proposal withdrawal for a mistake.
- 3.5.2** Unless otherwise prohibited within the RFP documents, a mistake in the cost unit pricing that does not affect the total cost sum submitted may, at HACB's discretion, be corrected by submitting a corrected cost form, together with a complete explanation in writing, of how the mistake occurred, to the CO, for his/her review. This mistake must be corrected before the issuance of contract documents.
- 3.6 Irregular Proposal Submittal:** A proposal shall be considered irregular for any one of the following reasons, any one or more of which may, at HACB's discretion, be cause for rejection:
- 3.6.1** If the forms furnished by HACB are not used or are altered or if the proposed costs are not submitted as required and where provided.
- 3.6.2** If all requested completed attachments do not accompany the proposal submitted.
- 3.6.3** If there are unauthorized additions, conditional or alternate proposals, or irregularities of any kind which may tend to make the proposal incomplete, indefinite or ambiguous as to its meaning or give the proposer submitting the same a competitive advantage over other proposers.
- 3.6.4** If the proposer adds any provisions reserving the right to accept or reject any award or to enter into a contract pursuant to an award.
- 3.6.5** If the individual Pricing Items submitted by a specific proposer are unbalanced in the sense that the listed price of any cost item departs by more than 25% from HACB's cost estimate for that item.
- 3.7 Disqualification of Proposers:** Any one or more of the following shall be considered as sufficient for the disqualification of a proposer and the rejection of his/her proposal:
- 3.7.1** Evidence of collusion among prospective proposers. Participants in such collusion will receive no recognition as bidders or proposers for any future work of HACB until such participant shall have been reinstated as a

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qualified proposer or proposer. The names of all participants in such collusion shall be reported to HUD and any other inquiring governmental agency.

- 3.7.2 More than one proposal for the same work from an individual, firm, or corporation under the same or different name(s), unless such was specifically allowed by HACB within the proposal documents issued, including by addendum.
- 3.7.3 Lack of competency, lack of experience and/or lack of adequate machinery, plant and/or other resources.
- 3.7.4 Documented unsatisfactory performance record as shown by past work for the HACB or with any other local, State or Federal agency, judged from the standpoint of workmanship and progress.
- 3.7.5 Incomplete work, which in the judgment of HACB, might hinder or prevent prompt completion of additional work, if awarded.
- 3.7.6 Failure to pay or satisfactorily settle all bills due on former contracts still outstanding at the time of letting.
- 3.7.7 Failure to comply with any qualification requirement of HACB.
- 3.7.8 Failure to list, if required, all subcontractors (if subcontractors are allowed by HACB) who will be employed by the successful proposer(s) to complete the work of the proposed contract.
- 3.7.9 As required by the RFP documents, failure of the successful proposer to be properly licensed by the City of Brownsville, Texas and/or the State of Texas and/or to be insured by a general liability and/or worker's compensation policy.
- 3.7.10 Any legal reason to be determined, in good faith, to be in the best interests of HACB.

- 3.8 **Burden of Proof:** If requested by HACB, it shall be the responsibility of the proposer(s) to furnish HACB with sufficient data or physical samples, within a specified time, so that HACB may determine if the goods or services offered conform to the Specifications.

#### 4.0 Right to Protest:

- 4.1 **Rights:** Any prospective or actual proposer, offeror, or contractor who is allegedly aggrieved in connection with the solicitation of a proposal or award of a contract, shall have the right to protest. An alleged aggrieved protestant claiming this right is hereby informed that these regulations do not provide for administrative appeal as a matter of right for that alleged aggrieved protestant.

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- 4.1.1** An alleged aggrieved "protestant" is a prospective or actual proposer who feels that he/she has been treated inequitably by HACB and wishes HACB to correct the alleged inequitable condition or situation. To be eligible to file a protest with HACB pertaining to an RFP or contract, the alleged aggrieved protestant must have been involved in the RFP process in some manner as a prospective proposer (i.e. registered and received the RFP documents) when the alleged situation occurred. HACB has no obligation to consider a protest filed by any party that does not meet these criteria.
- 4.2** **Administrative Powers:** It is totally within the administrative powers of the CEO to grant or deny any requests for administrative appeal. If, in the opinion of the CEO, the alleged aggrieved protestant merits an administrative review, the CEO shall direct that alleged aggrieved protestant to submit additional data.
- 4.3** **Procedure to Protest:** An alleged aggrieved protestant shall comply with the following protest procedures, and failure to comply in the manner prescribed shall automatically relieve HACB from accepting or considering that protest:
- 4.3.1** The alleged aggrieved protestant must file, in writing, to the CO the exact reason for the protest, attaching any supportive data. The protestant must state within the written protest document specifically (not by inference) what action by HACB or condition is being protested as inequitable, making, where appropriate specific reference to the RFP documents issued. The protest document must also state the corrective action requested. Failure by the alleged aggrieved protestant to fully submit such information shall relieve HACB from any responsibility to consider the protest and take any corrective action.
- 4.3.2** The written instrument containing the reason for the protest must be received by the CO within 10 days after the occurrence of any of the following:
- 4.3.2.1** the deadline for receiving proposals;
- 4.3.2.2** receipt of notification of the results of the evaluation or the award; or
- 4.3.2.3** the alleged aggrieved protestant knows or should have known the facts.
- 4.3.3** In any case, protests shall be filed no more than 10 days after any of the above (unless the occurrence being protested occurred in its entirety after the proposal deadline). Protests received after these dates shall not be considered.
- 4.3.4** The CO shall review the written protest and supportive data, if any. He/she shall, within 10 days after receipt of the written protest, issue a written opinion and decision. This document shall state the reasons for the action taken as well as inform the alleged aggrieved protestant of the right of further administrative review. A copy of this written opinion and decision shall be forwarded to the CEO.

- 4.3.5 Administrative Appeal:** If the alleged aggrieved protestant does not agree with the written opinion and decision issued by the CO, the alleged aggrieved protestant may, after receipt of the written opinion and decision issued by the CO request an administrative appeal hearing be granted (such request must be delivered in writing to the CO within 5 days of receipt of the written opinion and decision; failure to do so within such 5 days shall relieve HACB of any responsibility to consider such request). The following procedures must be complied with in the manner prescribed; failure by the alleged aggrieved protestant to comply shall automatically relieve HACB from accepting or acting on that request for administrative hearing:
- 4.3.5.1** The alleged aggrieved protestant must file, in writing, his/her request for an administrative hearing, to the CEO, within 5 days of receipt of the written opinion and decision and failure to do so within such 5 days shall relieve HACB of any responsibility to consider such request.
  - 4.3.5.2** The request for an administrative appeal hearing must contain the specific reasons for the appeal and all supporting data for those reasons.
  - 4.3.5.3** It shall be within the administrative powers of the CEO to, after review of the request submitted, grant or deny any request for administrative appeal.
  - 4.3.5.4** If the CEO, after complete review of the alleged aggrieved protestant's written request and supporting data, decides that the request does not merit further consideration, he/she shall render his/her decision in writing to the alleged aggrieved protestant. A decision rendered under this paragraph shall be made within 10 days after the receipt of the alleged aggrieved protestant's request for an administrative hearing. This decision shall be final without further administrative recourse.
  - 4.3.5.5** If the CEO, after review of the alleged aggrieved protestant's written request, decides that the request merits further consideration, he/she shall forward the protestant's written request, along with a cover letter explaining why it merits further consideration and with a recap of all proposals submitted and a copy of the original written protest, to HACB Legal Counsel for consideration. HACB Legal Counsel shall issue to the alleged aggrieved protestant a decision, in writing, within 10 days of his/her receipt of such documents.
  - 4.3.5.6** Such written decision delivered to the alleged aggrieved protestant shall exhaust HACB internal protest and

## REQUEST FOR PROPOSALS (RFP) HACB No. 26-001, Bank Depository Services

administrative appeal process available to the alleged aggrieved protestant.

**5.0 Disputed Billings (Charges):**

- 5.1 Procedures:** As detailed within Clause No. 7, Form HUD-5370-C (10/2006), *General Conditions for Non-Construction Contracts, Section I—(With or without Maintenance Work)*, attached thereto.

**6.0 Additional Considerations:****6.1 Right of Joinder Pursuant to NRS 332.195:**

**6.1.1** Any political subdivision within the State of Texas may be granted the privilege of joining the awarded contract, only at the option of the successful proposer. If the successful proposer so grants such a privilege, the terms and conditions of the RFP documents, including the ensuing contract, may be passed on to the joining political subdivision by the successful proposer.

**6.1.2** The successful proposer shall retain the unilateral right to allow or disallow any political subdivision the privilege of joining the awarded contract. In the event the successful proposer allows another political subdivision to join HACB contract, it is expressly understood that HACB shall in no way be liable for the joining political subdivision obligations to the successful proposer in any manner whatsoever.

**6.2 Non-Escalation:** Unless otherwise specified within the RFP documents, the unit prices reflected on the contract shall remain firm with no provision for price increases during the term of the contract.

**6.3 Funding Restrictions and Order Quantities:** HACB reserves the right to reduce or increase estimated or actual quantities in whatever amount necessary without prejudice or liability to HACB, if:

**6.3.1** funding is not available;

**6.3.2** legal restrictions are placed upon the expenditure of monies for this category of service or supplies; or,

**6.3.3** HACB's requirements in good faith change after award of the contract.

**6.4 Required Permits:** Unless otherwise stated in the RFP documents, all local, State or Federal permits which may be required to provide the services ensuing from award of this RFP, whether or not they are known to either HACB or the proposers at the time of the proposal submittal deadline or the award, shall be the sole responsibility of the successful proposer and any costs submitted by the proposer shall reflect all costs required by the successful proposer to procure and provide such necessary permits.

## REQUEST FOR PROPOSALS (RFP) HACB No. 26-001, Bank Depository Services

- 6.5 Taxes:** All persons doing business with HACB are hereby made aware that HACB is exempt from paying Texas State Sales and Use Taxes and Federal Excise Taxes. A letter of Tax Exemption will be provided upon request.
- 6.6 Government Standards:** It is the responsibility of the prospective proposer to ensure that all items and services proposed conform to all local, State and Federal laws concerning safety (OSHA) and environmental control (EPA and State of Texas Pollution Regulations) and any other enacted ordinance, code, law or regulation. The successful proposer shall be responsible for all costs incurred for compliance with any such possible ordinance, code, law or regulation. No time extensions shall be granted or financial consideration given to the successful proposer for time or monies lost due to violations of any such ordinance, code, law or regulations that may occur.
- 6.7 Freight on Bill and Delivery:** All costs submitted by the successful proposer shall reflect the cost of delivering the proposed items and/or services to the location(s) specified within the RFP documents or within the contract.
- 6.7.1** The successful proposer agrees to deliver to the designated location(s) on or before the date as specified in the finalized contract. Failure to deliver on or before the specified date constitutes an event of default by the successful proposer. Upon default, the successful proposer agrees that HACB may, at its option, rescind the finalized contract under the default clause herein and seek compensatory damages as provided by law.
- 6.8 Communication:** If during the period of the contract, it is necessary that HACB place toll or long distance telephone calls or telegrams in connection therewith (for complaints, adjustments, shortages, failure to deliver, etc.), it is understood that the successful proposer will bear the charge or expense for all such calls and/or telegrams.
- 6.9 Work on HACB Property:** If the successful proposer's work under the contract involves operations by the successful proposer on HACB premises, the successful proposer shall take all necessary precautions to prevent the occurrence of any injury to persons or property during the progress of such work and, except to the extent that any such injury is caused solely and directly by HACB's negligence, shall indemnify HACB, and their officers, agents, servants and employees against all loss which may result in any way from any act or omission of the successful proposer, its agents, employees, or subcontractors.
- 6.10 Estimated Quantities:** Unless otherwise stated within the RFP documents, the quantities reflected within the RFP documents, to the best of HACB's knowledge, reflect projected consumption data. These quantities are not meant to infer or imply actual consumption figures or quantities that will be purchased by HACB under the finalized contract; but, pursuant to all RFP documents, these quantities will be used as calculation figures to determine the successful proposer.
- 6.11 Warranty:**

REQUEST FOR PROPOSALS (RFP) HACB No. 26-001, Bank Depository Services

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- 6.11.1** The services provided under the contract shall conform to all information contained within the RFP documents as well as applicable Industry Published Technical Specifications, and if one of the above mentioned Specifications contains more stringent requirements than the other, the more stringent requirements shall apply.
- 6.11.2** The liability of the successful proposer to HACB (except as to title) arising out of the furnishing of the services or of its use under the terms of the contract shall not exceed the correcting of the defect(s) in the services as provided under the contract, and upon expiration of the warranty period all such liability shall terminate except under the warranty for merchantability and the warranty of fitness for a particular purpose.
- 6.12 Official, Agent and Employees of HACB Not Personally Liable:** It is agreed by and between the parties hereto that in no event shall any official, officer, employee, or agent of HACB in any way be personally liable or responsible for any covenant or agreement herein contained whether expressed or implied, nor for any statement, representation or warranty made herein or in any connection with this agreement.
- 6.13 Subcontractors:** Unless otherwise stated within the RFP documents, the successful proposer may not use any subcontractors to accomplish any portion of the services described within the RFP documents or the contract without the prior written permission of the HACB CO.
- 6.14 Salaries and Expenses Relating to the Successful Proposers Employees:** Unless otherwise stated within the RFP documents, the successful proposer shall pay all salaries and expenses of, and all Federal, Social Security taxes, Federal and State Unemployment taxes, and any similar taxes relating to its employees used in the performance of the contract. The successful proposer further agrees to comply with all Federal, State and local wage and hour laws and all licensing laws applicable to its employees or other personnel furnished under this agreement.
- 6.15 Attorney's Fees:** In the event that litigation is commenced by one party hereto against the other in connection with the enforcement of any provision of this agreement, the prevailing party shall be paid by the losing party all court costs and other expenses of such litigation, including attorneys' fees, in a reasonable amount, to be determined by the court. The amount so allowed as attorneys' fees shall be taxed to the losing party as costs of the suit, unless prohibited by law.
- 6.16 Independent Contractor:** Unless otherwise stated within the RFP documents or the contract, the successful proposer is an independent contractor. Nothing herein shall create any association, agency, partnership or joint venture between the parties hereto and neither shall have any authority to bind the other in any way.
- 6.17 Severability:** If any provision of this agreement or any portion or provision hereof applicable to any particular situation or circumstance is held valid, the remainder of this agreement or the remainder of such provision (as the case may be), and the application thereof to other situations or circumstances shall not be affected thereby.

- 6.18 Waiver of Breach:** A waiver of either party of any terms or condition of this agreement in any instance shall not be deemed or construed as a waiver of such term or condition for the future, or of any subsequent breach thereof. All remedies, rights, undertakings, obligations, and agreements contained in this agreement shall be cumulative and none of them shall be in limitation of any other remedy, right, obligation or agreement of either party.
- 6.19 Time of the Essence:** Time is of the essence under this agreement as to each provision in which time of performance is a factor. Failure to meet timeframes may be considered a material breach, and HACB may pursue compensatory and/or liquidated damages under the contract.
- 6.20 Limitation of Liability:** In no event shall HACB be liable to the successful proposer for any indirect, incidental, consequential or exemplary damages.
- 6.21 Indemnity:**
- 6.21.1** The successful proposer shall protect, indemnify and hold HACB, its officers, employees, agents, consulting engineers and other retained consultants harmless from and against any and all claims, damages, losses, suits, actions, decrees, judgments, attorney's fees, court costs and other expenses of any kind or character which HACB, its officers, employees, agents, consulting engineers or other retained consultants may suffer, or which may be sought against, recovered from or obtainable against HACB, its officers, employees, agents, consulting engineers or other retained consultants such as:
- 6.21.1.1** as a result of, or by reason of, or arising out of, or on account of, or in consequence of any act or failure to act on the part of the successful proposer, its subcontractors or agents, or anyone directly or indirectly employed by any subcontractor or agent, in the fulfillment or performance of the terms, conditions or covenants that are contained in this contract or agreement, regardless of whether or not the occurrence which gave rise to such claim, damage, loss, suit, action, judgment or expense was caused, in part, by any party indemnified hereunder; or
- 6.21.1.2** as a result of, or by reason of, or arising out of, or on account of, or in consequence of, any neglect in safeguarding the work; or
- 6.21.1.3** through the use of unacceptable materials or products, or both, which may be defective or manufactured, designed or installed so as to give rise to a claim; or
- 6.21.1.4** because of any claim or amount recovered, which claim or recovery arose out of or is attributable to any act or failure to act on the part of the successful proposer in the fulfillment or performance of the terms, conditions and covenants that are contained in this contract. Any money due by the successful

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proposer under and by virtue of this contract which is considered necessary by HACB for such purpose, may be retained by HACB for its protection; or in case no money is due, its surety may be held until all such claims, damages, losses, suits, actions, decrees, judgments, attorney's fees and court costs and other expenses of any kind or character as aforesaid shall have been settled and suitable evidence to that effect furnished to HACB provided, however, that money due the successful proposer will not be withheld when the successful proposer produces satisfactory evidence that it is adequately protected by public liability and property damage insurance, if required.

- 6.21.2** In this connection, it is expressly agreed that the successful proposer shall, at its own expense, defend HACB, its officers, employees, agents, consulting engineers and other retained consultants, against any and all claims, suits or actions which may be brought against them, or any of them, as a result of, or by reason of, or arising out of, or on account of, or in consequence of any act or failure to act the consequences of which the successful proposer has indemnified HACB, its officers, employees, agents, consulting engineers and other retained consultants against, and if the successful proposer shall fail to do so, HACB shall have the right, but not the obligation, to defend the same and to charge all direct and incidental costs of such defense to the successful proposer including attorney's fees and court costs; provided, however, that if the forum in which such claim suit or action is heard determines that the occurrence that gave rise to the same was caused, in whole or in part, by any party who is indemnified hereunder, HACB shall reimburse the successful proposer for all, or the indemnified party's proportionate share, as the case may be, of the costs of such defense.
- 6.21.3** Reimbursement to the successful proposer by HACB, in whole or in part, for the costs of protecting traffic shall not serve to relieve the successful proposer of its responsibility as set forth in the RFP documents.
- 6.21.4** The successful proposer guarantees the payment of all just claims for materials, supplies and labor, and all other just claims against it or any subcontractor, in connection with the contract.
- 6.22 Lobbying Certification:** By proposing to do business with HACB or by doing business with HACB, each proposer certifies the following:
- 6.22.1** No Federal appropriated funds have been paid or will be paid, by or on behalf of the proposer, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of an Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into any cooperative agreement, and the extension, continuation,

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renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.

- 6.22.2** 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 an Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form -LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.
- 6.22.3** The successful proposer shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontractors, subgrants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.
- 6.22.4** This clause is a material representation of fact upon which reliance was placed when the award was made or entered into. The signing of a contract or acceptance of award certifies compliance with this certification, which is a prerequisite for making or entering into a contract, which is imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certifications shall be subject to civil penalty of not less than \$10,000.00 and not more than \$100,000.00 for each such failure.
- 6.23 24 CFR 85.36(i), Procurement:** Pursuant to this CFR, as issued by the Office of the Secretary, HUD, HACB and the contractor each agree to comply with the following provisions and agree that any contract that ensues as a result of this RFP will include the following clauses, whether actually inserted or by reference:
- 6.23.1 Remedies for Contractor Breach:** Pertaining to contract-related issues, it is the responsibility of both HACB and the contractor to communicate with each other in as clear and complete a manner as possible. If at any time during the term of this contract HACB or the contractor is not satisfied with any issue, it is the responsibility of that party to deliver to the other party communication, in writing, fully detailing the issue and corrective action (please note that HACB has the right to issue unilateral addendums to this contract, but the contractor does not have the same right). The other party shall, within 10 days, respond in writing to the other party (however, HACB shall retain the right to, if conditions warrant, require the contractor to respond in a shorter period of time). Further, HACB shall, at a minimum, employ the following steps in dealing with the contractor as to any performance issues:
- 6.23.1.1** If the contractor is in material breach of the contract, HACB may promptly invoke the termination clause detailed within Clause No. 3, form HUD-5370-C (10/2006), *General Conditions for Non-Construction Contracts, Section I—(With or without Maintenance Work)*, which is attached hereto, and terminate

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the contract for cause. Such termination must be delivered to the contractor in writing and shall fully detail all pertinent issues pertaining to the cause of and justification for the termination.

- 6.23.1.2** Prior to termination, HACB may choose to warn the contractor, verbally or in writing, of any issue of non-compliant or unsatisfactory performance. Such written warning may include placing the contractor on probation, thereby giving the contractor a certain period of time to correct the deficiencies or potentially suffer termination. HACB shall maintain in the contract file a written record of any such warning detailing all pertinent information. If the contractor does not agree with such action, the contractor shall have 10 days to dispute or protest, in writing, such action; if he/she does not do so within the 10-day period, he/she shall have no recourse but to accept and agree with HACB's position on the issue. The written protest must detail all pertinent information pertaining to the dispute, including justification detailing HACB's alleged incorrect action(s).
- 6.23.1.3** After termination, if the contractor does not agree with HACB's justification for the termination, the contractor shall have 10 days to dispute, in writing, such action; if he/she does not do so within the 10-day period, he/she shall have no recourse but to accept and agree with HACB's position on the issue. The written protest must detail all pertinent information pertaining to the dispute, including justification detailing HACB's alleged incorrect action(s).
- 6.23.1.4** The response to any protest received shall be conducted in accordance with Section No. 4.0 of this document.
- 6.23.2** **Termination For Cause and Convenience:** As detailed within Clause No. 3, Form HUD-5370-C (10/2006), *General Conditions for Non-Construction Contracts, Section I—(Within or without Maintenance Work)*, attached hereto.
- 6.23.3** **Executive Order 11246:** For all construction contracts awarded in excess of \$10,000, both parties hereby agree to comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor Regulations (41 CFR Chapter 60).
- 6.23.4** **Copeland "Anti-Kickback" Act:** For all construction or repair contracts awarded, both parties hereby agree to comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor Regulations (29 CFR Part 3).

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- 6.23.5 Davis-Bacon-Act:** For all construction contracts awarded in excess of \$2,000 when required by Federal Grant Program legislation, both parties hereby agree to comply with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented in Department of Labor Regulations (29 CFR Part 5).
- 6.23.6 Sections 103 and 107 of the Contract Work Hours and Safety Standards Act:** For all construction contracts awarded in excess of \$2,000 and for other contracts, which involve the employment of mechanics or laborers awarded in excess of \$2,500, both parties hereby agree to comply with the Sections 103 and 107 of the Contract Work Hours and Safety Act (40 U.S.C. 327-330) as supplemented in Department of Labor Regulations (29 CFR Part 5).
- 6.23.7 Reporting:** Both parties hereby agree to comply with any reporting requirements that may be detailed herein.
- 6.23.8 Patent Rights:** Both parties hereby agree to comply with HUD Bulletin 90-23, which is the (a) Notice of Assistance Regarding Patent and Copyright Infringement.
- 6.23.9 Copy Rights/Rights in Data:** In addition to the requirements contained within Clause No. 5, *General Conditions for Non-Construction Contracts, Section I— (With or without Maintenance Work)*, HACB has unlimited rights to any data, including computer software, developed by the contractor in the performance of the contract specifically:
- 6.23.9.1** Except as provided elsewhere in this clause, HACB shall have unlimited rights in data first produced in the performance of this contract; form, fit, and function data delivered under this contract; data delivered under this contract (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this contract; and all other data delivered under this contract unless provided otherwise for limited rights data or restricted computer software.
- 6.23.9.2** The contractor shall have the right to: use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the contractor in the performance of this contract, unless provided otherwise in this clause; protect from unauthorized disclosure and use those data which are limited rights data or restricted computer software to the extent provided in this clause; substantiate use of, add or correct limited rights, restricted rights, or copyright notices and to take other appropriate action in accordance with this clause; and establish claim to copyright subsisting in data first produced in the performance of this contract to the extent provided below.

- 6.23.9.3** For data first produced in the performance of this contract, the contractor may establish, without prior approval of the CO, claim to copyright subsisting in scientific or technical articles based on or containing data first produced in the performance of this contract. The contractor grants HACB and others acting on its behalf a paid-up, non-exclusive, irrevocable, worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform or display publicly by or on behalf of HACB.
- 6.23.9.4** The contractor shall not, without the prior written permission of the contracting Officer, incorporate in data delivered under this contract any data not first produced in the performance of this contract, and which contains copyright notice, unless the contractor identifies such data and grants HACB a license of the same scope as identified in the preceding paragraph.
- 6.23.9.5** HACB agrees not to remove any copyright notices placed on data and to include such notices in all reproductions of the data. If any data delivered under this contract are improperly marked, HACB may either return the data to the contractor, or cancel or ignore the markings.
- 6.23.9.6** The contractor is responsible for obtaining from its subcontractors all data and rights necessary to fulfill the contractor's obligations under this contract.
- 6.23.9.7** Notwithstanding any provisions to the contrary contained in the contractor's standard commercial license or lease contract pertaining to any restricted computer software delivered under this contract, and irrespective of whether any such contract has been proposed prior to the award of this contract or of the fact that such contract may be affixed to or accompany the restricted computer software upon delivery, the contractor agrees HACB shall have the rights set forth below to use, duplicate, or disclose any restricted computer software delivered under this contract. The terms and conditions of this contract, including any commercial lease or licensing contract, shall be subject to the following procedures.
- 6.23.9.8** The restricted computer software delivered under this contract may not be used, reproduced, or disclosed by HACB except as provided below or as expressly stated otherwise in this contract. The restricted computer software may be: used or copied for use in or with the computer(s) for which it was acquired, including use at any HACB location to which such computer(s) may be transferred; used or copied for use in or with backup computer if any computer for which it was acquired is inoperative; reproduced for safekeeping (archives)

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or backup purposes; modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of the derivative software incorporating any of the delivered, restricted computer software shall be subject to the same restrictions set forth in this contract; and used or copies for use in or transferred to a replacement computer.

- 6.23.10 Clean Air Act:** For all contracts in excess of \$100,000, both parties hereby agree to comply with all applicable standards, orders or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15).
- 6.23.11 Energy Policy and Conservation Act:** Both parties hereby agree to comply with all mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).
- 6.24 Additional Federally Required Orders/Directives:** Both parties agree that they will comply with the following laws and directives that HACB has received from HUD and that these same clauses will be a part of any contract that ensues as a result of this RFP:
- 6.24.1** Executive Order 11061, as amended, which directs the Secretary of HUD to take all action which is necessary and appropriate to prevent discrimination by agencies that utilize federal funds.
- 6.24.2** Public Law 88-352, Title VI of the Civil Rights Act of 1964, which provides that no person in the United States shall, on the basis of race, color, national origin or sex, be excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity which receives federal financial assistance. HACB hereby extends this requirement to the Contractor and its private contractors. Specific prohibited discriminatory actions and corrective actions are described in Chapter 2, Subtitle C, Title V of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 19901 et. seq.).
- 6.24.3** Public Law 90-284, Title VIII of the Civil Rights Act of 1968., popularly known as the Fair Housing Act, which provides for fair housing throughout the United States and prohibits any person from discriminating in the sale or rental of housing, the financing of housing or the provision of brokerage services, including in any way making unavailable or denying a dwelling to any person because of race, color, religion, sex or national origin. Pursuant to this statute, HACB requires that the Contractor administer all programs and activities, which are related to housing and community development in such a manner as affirmatively to further fair housing.

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- 6.24.4** The Age Discrimination Act of 1975, which prohibits discrimination on the basis of age.
- 6.24.5** Anti-Drug Abuse Act of 1988 (42 U.S.C. 11901 et. seq.).
- 6.24.6** HUD Information Bulletin 909-23 which is the following:
- 6.24.6.1** Notice of Assistance Regarding Patent and Copyright Infringement;
- 6.24.6.2** Clean Air and Water Certification; and
- 6.24.6.3** Energy Policy and Conversation Act.
- 6.24.7** The mentioned herein of any statute or Executive Order is not intended as an indication that such statute or Executive Order is necessarily applicable not is the failure to mention any statute or Executive Order intended as an indication that such statute or Executive Order is not applicable. In this connection, therefore each provision of law and each clause, which is required by law to be inserted in this agreement, shall be deemed to have been inserted herein, and this agreement shall be read and enforced as though such provision or clause had been physically inserted herein. If, through mistake or otherwise, any such provision is not inserted or is inserted incorrectly, this agreement shall forthwith be physically amended to make such insertion or correction upon the application of either party.

# Attachment G

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## Banking Services Contract

## ATTACHMENT G

### HOUSING AUTHORITY OF THE CITY OF BROWNSVILLE

#### BANKING SERVICES CONTRACT

This Contract is made (date) \_\_\_\_\_, between the Housing Authority of the City of Brownsville, hereafter referred to as the "Authority" and \_\_\_\_\_, hereafter referred to as the "Bank".

##### 1. SERVICES TO BE PROVIDED:

Services to be provided under this Contract will be according to the Request for Proposal, dated \_\_\_\_\_ and included here as "ATTACHMENT A" and the Response of Bank, dated \_\_\_\_\_, with all negotiated changes included here as "ATTACHMENT B."

##### 2. TIME OF PERFORMANCE:

The services hereunder will be provided by the Bank commencing \_\_\_\_\_, and this Contract will be effective for one (1) year from that date with four (1) year options upon mutual agreement for a total possible maximum of five (5) years.

##### 3. COMPENSATION:

Authority agrees to pay the Bank, and Bank agrees to accept, as full and complete compensation for all of its services and expenses under this Contract, including payments to any sub-consultant, a sum of money not to exceed the volumes each month multiplied by the cost per service as shown on the attached fee schedule (EXHIBIT A), plus any other service provided for the Authority by Bank at a fee agreed upon prior to performance. Such compensation will be payable upon the timely and satisfactory completion of the work to be done hereunder, and the timely and satisfactory delivery by Bank to the Authority of all items to be delivered hereunder. Should this Contract be terminated prior to the completion of the effective date, Bank will be paid the amounts corresponding to the phase or phases which have been satisfactorily completed as of the date of termination.

##### 4. AUTHORITY'S REPRESENTATIVES:

During the term of this Contract, Authority will, through appropriate action of its Board, designate the officer, or officers, who singly or jointly will be authorized to represent and act on behalf of Authority in any and all matters of every kind arising under this Contract and to (a) appoint and designate, from time to time, a person or persons who may request withdrawals, orders for payment or transfer on behalf of Authority in accordance with the electronic fund or funds transfer agreement, and (b) make withdrawals or transfers by written instrument.

##### 5. INTEREST ON DEPOSITS:

Authority may arrange for time deposits and Bank may accept and shall hold deposits subject to payment in accordance with the terms of the deposit. Interest shall be calculated at the rates, which Bank has bid for the particular denomination and time period of said deposits at competitive public bidding for said deposits. Time deposits will mature on or before the expiration of this Contract. All time deposits that mature beyond the expiration of this Contract will be at the interest rates negotiated at the time of purchase.

##### 6. INFORMATION AND REPORTS

The Bank will provide monthly:

- a. Electronic media and associated printout, a list of checks paid by check number, amount and date paid. Also, the electronic media should include deposit information such as: encoded reference number, amount of deposit, and date posted.
- b. Bank statements with all copies of canceled checks sorted by check number, to be ready for Authority pickup not later than five (5) business days after the last of each month.
- c. A monthly account analysis to be available for pickup by the Authority within ten (10) business days after the last day of each month.

7. RECORDS AND INSPECTION:

Bank will maintain full and accurate records with respect to all matters covered under this contract. The Authority, the Department of Housing and Urban Development, and the Comptroller General of the United States, will have free access at all times to such records, and the right to examine and audit the same and to make transcripts therefrom, and to inspect all Authority data, documents, proceedings and activities.

8. COLLATERAL FOR DEPOSITS:

All funds on deposit with Bank to the credit of Authority shall be secured by collateral as provides for the Public Funds Collateral Act (Chapter 2257 of the Texas Government Code). The total market value of the collateral (which includes accrued interest or income to the extent it is not included in the market price) securing such deposits shall be in an amount at least equal to one hundred ten percent (110%) of the amount of such deposits, plus the amount of any accrued interest thereon, less the amount that such deposits are insured by the Federal Deposit Insurance Corporation. The market value with respect to any securities (collateral) as of any date will be obtained from a primary dealer. When additional collateral is required to cover incremental deposits, Bank must receive the request for collateral prior to 10:30 am on the day the deposits are actually received. Without any obligation to do so, Bank will on a best-efforts basis attempt to provide additional collateral for incremental deposits when notification is received after the delineated deadlines listed above.

9. THE INDEPENDENT BANKERS' BANK FOR COLLATERAL:

Bank has heretofore or will immediately hereafter deliver to The Independent Bankers Bank collateral of the kind and character above mentioned of sufficient amount and market value to provide adequate collateral for the funds of Authority deposited with Bank. Said collateral or substitute collateral, as hereinafter provided for, shall be kept and retained by said Bank in trust so long as the depository relationship between Authority and Bank shall exist hereunder, and thereafter so long as deposits made by Authority and Bank hereunder shall have not been properly paid out by Bank to the Authority or on its order. The Independent Bankers Bank will accept said collateral and hold the same in trust for the purposes herein stated.

10. DEFAULT:

Should Bank fail at any time to pay and satisfy, when due, any check, draft, or voucher lawfully drawn against any deposits and the interest on such deposits or in any manner breach its contract with the Authority, the Authority shall give written notice of such failure or breach to Bank, and Bank shall have seven (7) business days to cure such failure or breach. In the event Bank shall fail to cure any such failure or breach within (7) business days or should the Bank be declared insolvent by a Federal banking regulatory agency, it shall be the duty of The Independent Bankers Bank, upon demand of the Authority (supported by proper evidence of any of the above-listed circumstances), to surrender the above-described collateral to the Authority. The Authority may sell any part of such collateral and out of the proceeds thereof in order to pay the Authority all damages and losses sustained by it, together with all expenses of any and every kind incurred by it on account of such failure or insolvency, or sale, and account to Bank for the remainder, if any, of said proceeds or collateral remaining unsold.

11. SALE OF COLLATERAL:

Authority will have the right at any time to make changes to this Contract. If any such change causes an increase or decrease in the cost of, or the time required for, performance of this Contract, an equitable adjustment will be negotiated in this Contract price or delivery schedule, or both, and the Contract will be modified in writing accordingly.

12. SUBSTITUTION OF COLLATERAL:

If Bank shall desire to sell or otherwise dispose of any one or more of said collateral securities so deposited with The Independent Bankers Bank, it may substitute for any one or more of such securities other securities of the same market value and character. Such right of substitution shall remain in full force and any be exercised by Bank as often as it may desire; provided, however, that the aggregate market value of such collateral so deposited with The Independent Bankers Bank is less than one hundred ten percent (110%) of Authority's funds on deposit with said Bank, Bank immediately shall deposit with The Independent Bankers Bank such additional collateral as may be necessary to cause the market value of such collateral to equal the total amount of required collateral. Bank shall be entitled to income on securities held by The Independent Bankers Bank for

the collateral required hereunder, and The Independent Bankers Bank may dispose of such income as directed by Bank without approval of Authority.

13. TRUST RECEIPTS:

Bank shall promptly forward to Authority copies of safekeeping or trust receipts covering all such collateral held for Bank, including substitute collateral as provided for herein.

14. WITHDRAWAL OF COLLATERAL:

If at any time the collateral in the hands of The Independent Bankers Bank shall have a market value in excess of one hundred ten percent (110%) of the balances due the Authority by Bank, Authority shall authorize the withdrawal of a specific amount of collateral. The Independent Bankers Bank shall deliver this amount of collateral (and no more) to Bank, taking its receipt therefore, and The Independent Bankers Bank shall have no further liability for collateral so redelivered to Bank.

15. SUCCESSORS:

This Contract shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Whenever a reference is made herein to either party, such reference shall include the party's successors and assigns.

16. RELEASE OF COLLATERAL:

When the relationship of Authority and Bank shall have ceased to exist between Authority and Bank, and when Bank shall have properly paid out all deposits of Authority, it shall be the duty of Authority to give The Independent Bankers Bank certificate to that effect; whereupon The Independent Bankers Bank shall redeliver to Bank all collateral then its possession belonging to Bank, taking its receipt therefore. An order in writing to said The Independent Bankers Bank by Authority and a receipt for such collateral by Bank shall be a full and final release of the Independent Bankers Bank of all duties and obligations undertaken by it by virtue of these presents.

17. CHANGES:

Authority will have the right at any time to make changes to this Contract. If any such change causes an increase or decrease in the cost of, or the time required for, performance of this Contract, an equitable adjustment will be negotiated in this Contract price or delivery schedule, or both, and the Contract will be modified in writing accordingly.

18. SERVICES AND MATERIALS TO BE FURNISHED BY THE AUTHORITY:

Authority will furnish the Bank with all available necessary information, data and materials pertinent to the accomplishment of this Contract. Authority will cooperate with the Bank in carrying out the work herein, and will provide available staff for liaison in the Bank's performance of the Contract.

19. AUTHORITY NOT OBLIGATED TO THIRD PARTIES: Authority will not be obligated or liable hereunder to any party other than Bank.

20. STATUS OF BANK:

It is understood and agreed by and between the parties that the status of the Bank will be that of an independent contractor and of a person retained on a contractual basis to perform professional or technical services for limited periods of time. It is not intended, nor will it be construed, that the Bank or any employee or subconsultant is an employee, officer, or agent of the Authority.

21. ASSIGNMENT:

Bank will not assign, transfer, convey, sublet or otherwise dispose of the Contract or its right, title, or interest in or to the same or any part thereof without prior written consent of Authority, by means of a Contract Change.

22. BANK LIABILITY IF AUDITED:

The Bank will assume that all financial and statistical information provided to the Bank by the Authority employees or representatives is accurate and complete. If the Bank becomes aware of any inaccuracy or incompleteness in such information, it will immediately notify the Authority. Any subsequent disallowance of

funds paid to the Authority by any source, which is solely attributable to any such inaccuracy or incompleteness on the part of the Authority or its agents, is the sole responsibility of the Authority. Bank will, however, provide direct assistance to the Authority should an audit be undertaken of the Authority's indirect costs which are determined under the Contract, regardless of the reason for the audit.

23. TERMS OF PAYMENT:

Payments for services due the Bank and interest or other funds due the Authority will be posted to the bank account each month as a debit or credit as applicable.

24. EQUAL EMPLOYMENT OPPORTUNITY:

The Bank will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age or disability. The Bank 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, age or disability. The Bank will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.

25. TERMINATION OF AGREEMENT:

The Authority may terminate this Contract at any time on ten (10) days notice if the Bank's services are not being satisfactorily performed in accordance with the Contract. The Authority may otherwise terminate this Contract without cause, for its convenience, upon thirty (30) days notice to the Bank. If the Bank's services are terminated, they will be paid only for that portion of services satisfactorily completed in accordance with this Contract at the time of notice of such action.

26. NO WAIVER

In no event will any payment by the Authority hereunder constitute or be construed to be a waiver by the Authority of any breach of covenant or condition or any default which may exist on the part of the Bank, and the making of any such payment when any such breach of default will exist will not impair or prejudice any right or remedy available to the Authority with respect to such breach or default; and no assent, expressed or implied, to any breach of any one or more covenants, provisions, or conditions of the Contract will be construed as a waiver of any succeeding or other breach.

27. AGREEMENT AS COMPLETE INTEGRATION; AMENDMENTS:

This Contract is intended as the complete integration of all understanding and agreements between the parties. No prior or contemporaneous addition, deletion, of other amendment will have any force or effect, unless embodied herein in writing. Amendments to this Contract will become effective when approved by both parties and executed in the same manner as the Contract.

28. CONFLICT OF INTEREST:

No officer or employee of the Authority, no member of the governing body of the locality in which the Authority is situated, no member of the governing body of the locality in which the Authority was activated, and no other public official of such locality of localities who exercises any functions or responsibilities with respect to the Authority, during his tenure or for one year thereafter, shall have any interest, direct or indirect, in this Contract or the proceeds thereof.

29. COVENANT AGAINST CONTINGENT FEES:

The Bank warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bonafide employees of bonafide established commercial or selling agencies maintained by the Bank for the purpose of securing business. For breach or violation of this warranty, the Authority will have the right to annul this Contract without liability or, at its discretion, to deduct from the Contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day and year first above written.

THE BANK:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name and Title

HOUSING AUTHORITY OF THE CITY OF BROWNSVILLE

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name and Title

## PUBLIC DEPOSITORY CERTIFICATION

This is to certify that the Bank, for with the undersigned is an agent or officer, in respect to the Contract entered into on the \_\_\_\_\_ day of \_\_\_\_\_ 2026 with the Housing Authority of the City of Brownsville "Authority" for Bank Depository Services is certified as an eligible public depository under the "Public Deposit Protection Act". Further deposits in excess of the Federal Deposit Insurance Corporation coverage will be unconditionally secured by the pledge of eligible collateral having a market value at all times, equal to or greater than one hundred-three percent (103%) of the aggregate of said deposits. The collateral requirements set forth in the Public Deposit Protection Act will be adhered to. The Bank will immediately notify the Authority if the Bank ceases to be an "eligible public depository" or becomes subject to regulatory oversight.

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Address)

**SUBSCRIBED AND SWORN** to before me  
this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

My commission expires \_\_\_\_\_

# Attachment G-1

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Form HUD 5370-C

# General Conditions for Non-Construction Contracts

## Section I — (With or without Maintenance Work)

## U.S. Department of Housing and Urban Development

Office of Public and Indian Housing

Office of Labor Relations

OMB Approval No. 2577-0157 (exp. 1/31/2027)

Public Reporting Burden for this collection of information is estimated to average one hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. HUD may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB number. This form includes those clauses required by OMB's common rule on grantee procurement, implemented at HUD in 2 CFR 200, and those requirements set forth in Section 3 of the Housing and Urban Development Act of 1968 and its amendment by the Housing and Community Development Act of 1992, implemented by HUD at 24 CFR Part 75. The form is required for non-construction contracts awarded by Public Housing Agencies (PHAs). The form is used by PHAs in solicitations to provide necessary contract clauses and allows PHAs to enforce their contracts. Comments regarding the accuracy of this burden estimate and any suggestions for reducing this burden can be sent to the Reports Management Officer, Office of Policy Development and Research, REE, Department of Housing and Urban Development, 451 7th St SW, Room 4176, Washington, DC 20410-5000. When providing comments, please refer to OMB Approval No. 2577-0157. Do not send this completed form to either of these addressees. The information collected will not be held confidential.

**Applicability. This form HUD-5370-C has 2 Sections. These Sections must be inserted into non-construction contracts as described below:**

- 1) **Non-construction contracts** (*without* maintenance) **greater than \$250,000 - use Section I;**
- 2) **Maintenance contracts** (including nonroutine maintenance as defined at 24 CFR 905.100) **greater than \$2,000 but not more than \$250,000 - use Section II;** and
- 3) **Maintenance contracts** (including nonroutine maintenance), **greater than \$250,000 — use Sections I and II.**

**Section I - Clauses for All Non-Construction Contracts greater than \$250,000**

### 1. Definitions

The following definitions are applicable to this contract:

- (a) "Authority or Housing Authority (HA)" means the Housing Authority.
- (b) "Contract" means the contract entered into between the Authority and the Contractor. It includes the contract form, the Certifications and Representations, these contract clauses, and the scope of work. It includes all formal changes to any of those documents by addendum, Change Order, or other modification.
- (c) "Contractor" means the person or other entity entering into the contract with the Authority to perform all of the work required under the contract.
- (d) "Day" means calendar days, unless otherwise stated.
- (e) "HUD" means the Secretary of Housing and Urban development, his delegates, successors, and assigns, and the officers and employees of the United States Department of Housing and Urban Development acting for and on behalf of the Secretary.

### 2. Changes

- (a) The HA may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in the services to be performed or supplies to be delivered.
- (b) If any such change causes an increase or decrease in the hourly rate, the not-to-exceed amount of the contract, or the time required for performance of any part of the work under this contract, whether or not changed by the order, or otherwise affects the conditions of this contract, the HA shall make an equitable adjustment in the not-to-exceed amount, the hourly rate, the delivery schedule, or other affected terms, and shall modify the contract accordingly.
- (c) The Contractor must assert its right to an equitable adjustment under this clause within 30 days from the date of receipt of the written order. However, if the HA decides that the facts justify it, the HA may receive and act upon a

- proposal submitted before final payment of the contract.
- (d) Failure to agree to any adjustment shall be a dispute under clause Disputes, herein. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.
- (e) No services for which an additional cost or fee will be charged by the Contractor shall be furnished without the prior written consent of the HA.

### 3. Termination for Convenience and Default

- (a) The HA may terminate this contract in whole, or from time to time in part, for the HA's convenience or the failure of the Contractor to fulfill the contract obligations (default). The HA shall terminate by delivering to the Contractor a written Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall: (i) immediately discontinue all services affected (unless the notice directs otherwise); and (ii) deliver to the HA all information, reports, papers, and other materials accumulated or generated in performing this contract, whether completed or in process.
- (b) If the termination is for the convenience of the HA, the HA shall be liable only for payment for services rendered before the effective date of the termination.
- (c) If the termination is due to the failure of the Contractor to fulfill its obligations under the contract (default), the HA may (i) require the Contractor to deliver to it, in the manner and to the extent directed by the HA, any work as described in subparagraph (a)(ii) above, and compensation be determined in accordance with the Changes clause, paragraph 2, above; (ii) take over the work and prosecute the same to completion by contract or otherwise, and the Contractor shall be liable for any additional cost incurred by the HA; (iii) withhold any payments to the Contractor, for the purpose of off-set or partial payment, as the case may be, of amounts owed to the HA by the Contractor.
- (d) If, after termination for failure to fulfill contract obligations (default), it is determined that the Contractor had not failed, the termination shall be deemed to have been effected for the convenience of the HA, and the Contractor shall be entitled to payment as described in paragraph (b) above.
- (e) Any disputes with regard to this clause are expressly made subject to the terms of clause titled Disputes herein.

### 4. Examination and Retention of Contractor's Records

- (a) The HA, HUD, or Comptroller General of the United States, or any of their duly authorized representatives shall, until 3 years after final payment under this contract, have access to and the right to examine any of the Contractor's directly pertinent books, documents, papers, or other records involving transactions related to this contract for the purpose of making audit, examination, excerpts, and transcriptions.

- (b) The Contractor agrees to include in first-tier subcontracts under this contract a clause substantially the same as paragraph (a) above. "Subcontract," as used in this clause, excludes purchase orders not exceeding \$10,000.
- (c) The periods of access and examination in paragraphs (a) and (b) above for records relating to:
- (i) appeals under the clause titled Disputes;
  - (ii) litigation or settlement of claims arising from the performance of this contract; or,
  - (iii) costs and expenses of this contract to which the HA, HUD, or Comptroller General or any of their duly authorized representatives has taken exception shall continue until disposition of such appeals, litigation, claims, or exceptions.

#### 5. Rights in Data (Ownership and Proprietary Interest)

The HA shall have exclusive ownership of, all proprietary interest in, and the right to full and exclusive possession of all information, materials and documents discovered or produced by Contractor pursuant to the terms of this Contract, including but not limited to reports, memoranda or letters concerning the research and reporting tasks of this Contract.

#### 6. Energy Efficiency

The contractor shall comply with all mandatory standards and policies relating to energy efficiency which are contained in the energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub.L. 94-163) for the State in which the work under this contract is performed.

#### 7. Disputes

- (a) All disputes arising under or relating to this contract, except for disputes arising under clauses contained in Section 111, Labor Standards Provisions, including any claims for damages for the alleged breach there of which are not disposed of by agreement, shall be resolved under this clause.
- (b) All claims by the Contractor shall be made in writing and submitted to the HA. A claim by the HA against the Contractor shall be subject to a written decision by the HA.
- (c) The HA shall, with reasonable promptness, but in no event in no more than 60 days, render a decision concerning any claim hereunder. Unless the Contractor, within 30 days after receipt of the HA's decision, shall notify the HA in writing that it takes exception to such decision, the decision shall be final and conclusive.
- (d) Provided the Contractor has (i) given the notice within the time stated in paragraph (c) above, and (ii) excepted its claim relating to such decision from the final release, and (iii) brought suit against the HA not later than one year after receipt of final payment, or if final payment has not been made, not later than one year after the Contractor has had a reasonable time to respond to a written request by the HA that it submit a final voucher and release, whichever is earlier, then the HA's decision shall not be final or conclusive, but the dispute shall be determined on the merits by a court of competent jurisdiction.
- (e) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the HA.

#### 8. Contract Termination; Debarment

A breach of these Contract clauses may be grounds for termination of the Contract and for debarment or denial of participation in HUD programs as a Contractor and a subcontractor as provided in 24 CFR Part 24.

#### 9. Assignment of Contract

The Contractor shall not assign or transfer any interest in this contract; except that claims for monies due or to become due from the HA under the contract may be assigned to a bank, trust company, or other financial institution. If the Contractor is a partnership, this contract shall inure to the benefit of the surviving or remaining member(s) of such partnership approved by the HA.

#### 10. Certificate and Release

Prior to final payment under this contract, or prior to settlement upon termination of this contract, and as a condition precedent thereto, the Contractor shall execute and deliver to the HA a certificate and release, in a form acceptable to the HA, of all claims against the HA by the Contractor under and by virtue of this contract, other than such claims, if any, as may be specifically excepted by the Contractor in stated amounts set forth therein.

#### 11. Organizational Conflicts of Interest

- (a) The Contractor warrants that to the best of its knowledge and belief and except as otherwise disclosed, it does not have any organizational conflict of interest which is defined as a situation in which the nature of work under this contract and a contractor's organizational, financial, contractual or other interests are such that:
  - (i) Award of the contract may result in an unfair competitive advantage; or
  - ( ) The Contractor's objectivity in performing the contract work may be impaired.
- (b) The Contractor agrees that if after award it discovers an organizational conflict of interest with respect to this contract or any task/delivery order under the contract, he or she shall make an immediate and full disclosure in writing to the Contracting Officer which shall include a description of the action which the Contractor has taken or intends to take to eliminate or neutralize the conflict. The HA may, however, terminate the contract or task/delivery order for the convenience of the HA if it would be in the best interest of the HA.
- (c) In the event the Contractor was aware of an organizational conflict of interest before the award of this contract and intentionally did not disclose the conflict to the Contracting Officer, the HA may terminate the contract for default.
- (d) The terms of this clause shall be included in all subcontracts and consulting agreements wherein the work to be performed is similar to the service provided by the prime Contractor. The Contractor shall include in such subcontracts and consulting agreements any necessary provisions to eliminate or neutralize conflicts of interest.

#### 12. Inspection and Acceptance

- (a) The HA has the right to review, require correction, if necessary, and accept the work products produced by the Contractor. Such review(s) shall be carried out within 30 days so as to not impede the work of the Contractor. Any

product of work shall be deemed accepted as submitted if the HA does not issue written comments and/or required corrections within 30 days from the date of receipt of such product from the Contractor.

- (b) The Contractor shall make any required corrections promptly at no additional charge and return a revised copy of the product to the HA within 7 days of notification or a later date if extended by the HA.
- (c) Failure by the Contractor to proceed with reasonable promptness to make necessary corrections shall be a default. If the Contractor's submission of corrected work remains unacceptable, the HA may terminate this contract (or the task order involved) or reduce the contract price or cost to reflect the reduced value of services received.

### 13. Interest of Members of Congress

No member of or delegate to the Congress of the United States of America or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit to arise there from, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

### 14. Interest of Members, Officers, or Employees and Former Members, Officers, or Employees

No member, officer, or employee of the HA, no member of the governing body of the locality in which the project is situated, no member of the governing body in which the HA was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the project, shall, during his or her tenure, or for one year thereafter, have any interest, direct or indirect, in this contract or the proceeds thereof.

### 15. Limitation on Payments to Influence Certain Federal Transactions

(a) Definitions. As used in this clause:

"Agency", as defined in 5 U.S.C. 552(f), includes Federal executive departments and agencies as well as independent regulatory commissions and Government corporations, as defined in 31 U.S.C. 9101(1).

"Covered Federal Action" means any of the following Federal actions:

- (i) The awarding of any Federal contract;
- (ii) The making of any Federal grant;
- (iii) The making of any Federal loan;
- (iv) The entering into of any cooperative agreement; and,
- (v) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

Covered Federal action does not include receiving from an agency a commitment providing for the United States to insure or guarantee a loan.

"Indian tribe" and "tribal organization" have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B). Alaskan Natives are included under the definitions of Indian tribes in that Act.

"Influencing or attempting to influence" means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

"Local government" means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government

"Officer or employee of an agency" includes the following individuals who are employed by an agency:

- (i) An individual who is appointed to a position in the Government under title 5, U.S.C., including a position under a temporary appointment;
- (ii) A member of the uniformed services as defined in section 202, title 18, U.S.C.;
- (iii) A special Government employee as defined in section 202, title 18, U.S.C.; and,
- (iv) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, appendix 2.

"Person" means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit or not for profit. This term excludes an Indian tribe, tribal organization, or other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Recipient" includes all contractors, subcontractors at any tier, and subgrantees at any tier of the recipient of funds received in connection with a Federal contract, grant, loan, or cooperative agreement. The term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Regularly employed means, with respect to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement, an officer or employee who is employed by such person for at least 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract, grant, loan, or cooperative agreement. An officer or employee who is employed by such person for less than 130 working days within one year immediately preceding the date of submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

"State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and a multi-State, regional, or interstate entity having governmental duties and powers.

(b) Prohibition.

- (i) Section 1352 of title 31, U.S.C. provides in part that no appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(v) The prohibition does not apply as follows:

(1) Agency and legislative liaison by Own Employees.

(a) The prohibition on the use of appropriated funds, in paragraph (i) of this section, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement, if the payment is for agency and legislative activities not directly related to a covered Federal action.

(b) For purposes of paragraph (b)(i)(1)(a) of this clause, providing any information specifically requested by an agency or Congress is permitted at any time.

(c) The following agency and legislative liaison activities are permitted at any time only where they are not related to a specific solicitation for any covered Federal action:

(1) Discussing with an agency (including individual demonstrations) the qualities and characteristics of the person's products or services, conditions or terms of sale, and service capabilities; and,

(2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(d) The following agency and legislative liaison activities are permitted where they are prior to formal solicitation of any covered Federal action:

(1) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

(2) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and

(3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Public Law 95-507 and other subsequent amendments.

(e) Only those activities expressly authorized by subdivision (b)(ii)(1)(a) of this clause are permitted under this clause.

(2) Professional and technical services.

(a) The prohibition on the use of appropriated funds, in subparagraph (b)(i) of this clause, does not apply in the case of-

(i) A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.

(i) Any reasonable payment to a person, other than an officer or employee of a

person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(b) For purposes of subdivision (b)(ii)(2)(a) of clause, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline.

(c) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.

(d) Only those services expressly authorized by subdivisions (b)(ii)(2)(a)(i) and (ii) of this section are permitted under this clause.

(iii) Selling activities by independent sales representatives.

(c) The prohibition on the use of appropriated funds, in subparagraph (b)(i) of this clause, does not apply to the following selling activities before an agency by independent sales representatives, provided such activities are prior to formal solicitation by an agency and are specifically limited to the merits of the matter:

(i) Discussing with an agency (including individual demonstration) the qualities and characteristics of the person's products or services, conditions or terms of sale, and service capabilities; and

(ii) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(d) Agreement. In accepting any contract, grant, cooperative agreement, or loan resulting from this solicitation, the person submitting the offer agrees not to make any payment prohibited by this clause.

(e) Penalties. Any person who makes an expenditure prohibited under paragraph (b) of this clause shall be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.

(f) Cost Allowability. Nothing in this clause is to be interpreted to make allowable or reasonable any costs which would be unallowable or unreasonable in accordance with Part 31 of the Federal Acquisition Regulation (FAR), or OMB Circulars dealing with cost allowability for recipients of assistance agreements. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any of the provisions of FAR Part 31 or the relevant OMB Circulars.

## 16. Equal Employment Opportunity

During the performance of this contract, the

Contractor/Seller agrees as follows:

(a)The [contractor/seller] will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, disability, or national origin. The

[contractor/seller] 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, sexual orientation, gender identity, disability, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The [contractor/seller] agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(b)The [contractor/seller] will, in all solicitations or advertisements for employees placed by or on behalf of the [contractor/seller], state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, disability, or national origin.

(c)The [contractor/seller] will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the [contractor/seller]'s legal duty to furnish information.

(d)The [contractor/seller] will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the [contractor/seller]'s commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(e)The [contractor/seller] will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(f)The [contractor/seller] will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(g)In the event of the [contractor/seller]'s non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the [contractor/seller] may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g)In the event of the [contractor/seller]'s non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the [contractor/seller] may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(h) The [contractor/seller] will include the provisions of paragraphs (a) through (h) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each sub[contractor/seller] or vendor. The [contractor/seller] will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the [contractor/seller] becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the [contractor/seller] may request the United States to enter into such litigation to protect the interests of the United States.

## 17. Equal Opportunity for Workers with Disabilities

1. The [contractor/seller] will not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The [contractor/seller] agrees to take affirmative action to employ and advance in employment individuals with disabilities, and to treat qualified individuals without discrimination on the basis of their physical or mental disability in all employment practices, including the following:

- i. Recruitment, advertising, and job application procedures;
- ii. Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;
- iii. Rates of pay or any other form of compensation and changes in compensation;
- iv. Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
- v. Leaves of absence, sick leave, or any other leave;
- vi. Fringe benefits available by virtue of employment, whether or not administered by the [contractor/seller];
- vii. Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
- viii. Activities sponsored by the [contractor/seller] including social or recreational programs; and
- ix. Any other term, condition, or privilege of employment.

2. The [contractor/seller] agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the act.

3. In the event of the [contractor/seller] noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the act.

4. The [contractor/seller] agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, Office of Federal Contract Compliance Programs, provided by or through the contracting officer. Such notices shall state the rights of applicants and employees as well as the [contractor/seller]'s obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants with disabilities.

The [contractor/seller] must ensure that applicants or employees with disabilities are provided the notice in a form that is accessible and understandable to the individual applicant or employee (e.g., providing Brail or large print versions of the notice, or posting a copy of the notice at a lower height for easy viewing by a person using a wheelchair). With respect to employees who do not work at a physical location of the [contractor/seller], a [contractor/seller] will satisfy its posting obligations by posting such notices in an electronic format, provided that the [contractor/seller] provides computers, or access to computers, that can access the electronic posting to such employees, or the [contractor/seller] has actual knowledge that such employees otherwise are able to access the electronically posted notices. Electronic notices for employees must be posted in a conspicuous location and format on the company's intranet or sent by electronic mail to employees. An electronic posting must be used by the [contractor/seller] to notify job applicants of their rights if the [contractor/seller] utilizes an electronic application process. Such electronic applicant notice must be conspicuously stored with, or as part of, the electronic application.

5. The [contractor/seller] will notify each labor organization or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the [contractor/seller] is bound by the terms of section 503 of the Rehabilitation Act of 1973, as amended, and is committed to take affirmative action to employ and advance in employment, and shall not discriminate against, individuals with physical or mental disabilities.

6. The [contractor/seller] will include the provisions of this clause in every subcontract or purchase order in excess of \$ 10,000, unless exempted by the rules, regulations, or orders of the Secretary issued pursuant to section 503 of the act, as amended, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Director, Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

7. The [contractor/seller] must, in all solicitations or advertisements for employees placed by or on behalf of the [contractor/seller], state that all qualified applicants will receive consideration for employment and will not be discriminated against on the basis of disability.

#### 18. Dissemination or Disclosure of Information

No information or material shall be disseminated or disclosed to the general public, the news media, or any person or organization without prior express written approval by the HA.

#### 19. Contractor's Status

It is understood that the Contractor is an independent contractor and is not to be considered an employee of the HA, or assume any right, privilege or duties of an employee, and shall save harmless the HA and its employees from claims suits, actions and costs of every description resulting from the Contractor's activities on behalf of the HA in connection with this Agreement.

#### 20. Other Contractors

HA may undertake or award other contracts for additional work at or near the site(s) of the work under this contract. The contractor shall fully cooperate with the other contractors and with HA and HUD employees and shall carefully adapt scheduling and performing the work under this contract to accommodate the additional work, heeding any direction that may be provided by the Contracting Officer. The contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or HA employee.

#### 21. Liens

The Contractor is prohibited from placing a lien on HA's property. This prohibition shall apply to all subcontractors.

#### 22. Training and Employment Opportunities for Residents in the Project Area (Section 3, HUD Act of 1968; 24 CFR 135)

- (a) The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- (b) The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 75, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 75 regulations.
- (c) The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 prioritization requirements, and shall state the minimum percentages of labor hour requirements established in the Benchmark Notice (FR-6085-N-04).
- (d) The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 75, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 75. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 75.
- (e) Noncompliance with HUD's regulations in 24 CFR Part 75 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts
- (f) Contracts, subcontracts, grants, or subgrants subject to Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5307(b)) or subject to tribal preference requirements as authorized under 101(k) of the Native American Housing Assistance and Self-Determination Act (25 U.S.C. 4111(k)) must provide preferences in employment, training, and business opportunities to Indians and Indian organizations, and are therefore not subject to the requirements of 24 CFR Part 75.

#### 23. Procurement of Recovered Materials

- (a) In accordance with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, the Contractor shall procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered

materials practicable consistent with maintaining a satisfactory level of competition. The Contractor shall procure items designated in the EPA guidelines that contain the highest percentage of recovered materials practicable unless the Contractor determines that such items: (1) are not reasonably available in a reasonable period of time; (2) fail to meet reasonable performance standards, which shall be determined on the basis of the guidelines of the National Institute of Standards and Technology, if applicable to the item; or (3) are only available at an unreasonable price.

- (b) Paragraph (a) of this clause shall apply to items purchased under this contract where: (1) the Contractor purchases in excess of \$10,000 of the item under this contract; or (2) during the preceding Federal fiscal year, the Contractor: (i) purchased any amount of the items for use under a contract that was funded with Federal appropriations and was with a Federal agency or a State agency or agency of a political subdivision of a State; and (ii) purchased a total of in excess of \$10,000 of the item both under and outside that contract

# Attachment H

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General Depository Agreement Form HUD 51999

Public reporting burden for this collection of information is estimated to average 1 hour per response. HUD may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number. HUD will use this information to ensure PHAs use all Program Receipts received from HUD or otherwise associated with public housing funds for purposes of public housing, by requiring such financial assistance to be deposited into interest-bearing accounts at certain financial institutions. The information requested does not lend itself to confidentiality.

**This Agreement**, entered into this \_\_\_ day of \_\_\_, 20\_\_\_ by and between \_\_\_ (herein called the "HA"), a duly organized and existing public body corporate and politic of the \_\_\_ of \_\_\_ and \_\_\_ (herein called the "Depository"), located at \_\_\_.

**Witnesseth:**

**Whereas**, the Department of Housing and Urban Development (herein called "HUD") has entered into one or more Annual Contributions Contracts (herein called the "ACC" with the HA for the purpose of providing financial assistance to develop and operate lower income housing projects, as authorized by the United States Housing Act of 1937, as amended (42 USC 1437, et seq.); and

**Whereas**, under the terms of the ACC the HA is required to select as depositories of its funds, financial institutions whose deposits or accounts are insured by the Federal Deposit Insurance Corporation (FDIC) or the National Credit Union Share Insurance Fund (NCUSIF) as long as this Agreement is in force and effect.

**Now Therefore**, in consideration of the mutual covenants hereinafter set forth, the parties hereto agree as follows:

1. The deposits and accounts of the Depository shall continue to be insured by the FDIC Corporation or NCUSIF.
2. All monies deposited by the HA with the Depository shall be credited to the HA in a separate interest-bearing deposit or interest-bearing accounts, designated "Accounts" (herein the "Accounts"). Any portion of HA Funds not insured by a Federal insurance organization shall be fully (100%) and continuously collateralized with specific and identifiable U.S. Government or Agency securities prescribed by HUD in a notice. Collateralization is required on a daily basis at the end of the business day. Such securities shall be pledged and set aside in accordance with applicable law or Federal regulations. The HA shall have possession of the securities (or the HA will take possession of the securities) or an independent custodian (or an independent third party) holds the securities on behalf of the HA as a bailee (evidenced by safe keeping receipt and a written bailment for hire contract) and will be maintained for the full term of deposit. The Depository may substitute other securities as collateral to equal or increase the value. If the HA is an agency of an Indian tribe, the collateral shall be in United States bonds and otherwise as may be prescribed for public funds by the United States Secretary of the Treasury.
3. Except as stated in Paragraph 5, the Depository shall honor any (a) check or other order to pay from the Accounts, or (b) directive to purchase investment securities with monies from the Accounts or to sell securities, if such order or directive is in writing and signed on behalf of the HA by an officer or member designated by resolution of the Board of Directors of the HA to have such authority. To assist the Depository in its obligation, the HA shall furnish the Depository with a certified copy of the resolution.
4. Any securities received from the HA or purchased by the Depository with monies from the Accounts shall be considered to be a part of the Accounts and shall be held by the Depository in safe-keeping for the HA until sold. Interest on such securities and the proceeds from the sale thereof shall be deposited in the Account upon receipt
5. If the Depository receives written notice from HUD that no withdrawals by the HA from the Accounts are to be permitted, the Depository shall not honor any check or other order to pay from the Accounts or directive to purchase or sell securities, or permit any withdrawals by the HA from said Accounts until the Depository is authorized to do so by written notice from HUD.
6. The Depository is not obligated to be familiar, and shall not be charged, with knowledge of the provisions of the ACC, and shall be under no duty to investigate or determine whether any action taken by either the HA or HUD in respect of the Accounts are consistent with or are authorized by the ACC or whether either HA or HUD is in default under the provisions of the ACC. The Depository shall be fully justified in accepting and acting on, without investigation, any certificate or notice furnished to it pursuant to the provisions of this Agreement and which the Depository shall in good faith believe to have been duly authorized and executed on behalf of the party in whose name the same purports to have been made or executed
7. The rights and duties of the Depository under this Agreement shall not be transferred or assigned by the Depository without the prior written approval of the HA and HUD. This Agreement may be terminated by either party hereto upon thirty days' written notice to the other party, and HUD. The rights and duties of the Depository hereunder shall not be transferred or assigned nor shall this Agreement be terminated during any period in which the Depository is required to refuse to permit withdrawals from the Accounts as provided in Paragraph 5.

8. HUD is intended to be a third-party beneficiary of this Agreement and may sue to enforce its provisions and to recover damages for failure to carry out its terms.

9. The Depository shall provide the HA with remote, electronic access to the Accounts for the purpose of monitoring the crediting or depositing of any monies in the Accounts.

10. The provisions of this Agreement may not be modified by either Party without the prior written approval of HUD

11. **Strike this paragraph if inapplicable:** Previous General Depository or Savings Depository Agreements, if any, entered into between the Depository and the HA are hereby terminated and all monies and securities of the HA on deposit with or held by the Depositories pursuant to the terms of said Agreement shall continue to be held for account of the HA pursuant to and in accordance with the provisions of this Agreement.

12. **Strike this paragraph if paragraph 2 applies:** For use only in certain States that have statutes that prohibit HAs from implementing paragraph 2.

At no time shall the HA Funds in the Accounts be permitted to exceed the amount insured by Federal deposit insurance (herein the "Insured Amount"). At any such time as the amount of funds in the Accounts reach the Insured Amount, whether by the accrual of interest or otherwise, the Depository shall promptly, as directed by the HA, and in an amount sufficient to limit the funds in the Accounts to the Insured Amount, either: (a) remit payment to the HA or, (b) on behalf of the HA, purchase securities approved for investment by the HA. Such securities shall not be considered to be a part of the Account pursuant to Paragraph 4 hereof but shall be held by the Depository as custodian or trustee for the HA in a separate account established for that purpose by the Depository (herein the "Securities Account"). The Securities Account shall be designated as \_\_\_\_\_ Income or other proceeds from securities held in the Securities Account shall, as directed by the HA, upon receipt, be paid to or on behalf of the HA; provided, however, that such proceeds shall, to the extent consistent otherwise with the provisions of this Paragraph, be deposited in the Accounts. If the Depository receives written notice from HUD pursuant to Paragraph 5 hereof that no withdrawals by the HA from the Accounts are to be permitted, the Depository shall not honor any directive from the HA to sell securities, or permit any withdraws by the HA, from the Securities Account until the Depository is authorized to do so by written notice from HUD. During the pendency of such restrictions on the Accounts and the Securities Account, the Depository, except as directed in writing by HUD, shall not remit any payment to the HA for the purpose of limiting the amount of funds in the Account to the Insured Amount but shall instead purchase securities approved for investment by the HA and hold such securities in the Securities Account.

13. Notice required under the terms and conditions of this agreement shall be deemed to have been given when it made by:

\_\_\_\_\_, on behalf of \_\_\_\_\_  
Title Organization (HA)

\_\_\_\_\_, on behalf of \_\_\_\_\_  
Title Organization (Depository)

\_\_\_\_\_, on behalf of \_\_\_\_\_  
Title Organization (HUD)

Notice shall be made in writing. Notice may be delivered in person, by United States Postal Service mail, by receipted commercial mail delivery, by facsimile machine or other electronic means that clearly identifies the sender as one of the persons so authorized in this paragraph. **Notice under the terms of this agreement shall be implemented by the Depository within 24 hours of actual receipt.**

**In Witness Whereof**, the HA and the Depository have caused this Agreement to be executed in their respective names and their respective seal to be impressed hereon and attested as of the date and year first above written.

\_\_\_\_\_

HA

(SEAL)

ATTEST:

By \_\_\_\_\_

Chairman

\_\_\_\_\_

Secretary

\_\_\_\_\_

Depository

(SEAL)

ATTEST

By \_\_\_\_\_

# Attachment I

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Investment Policy Appendix A, B & C

## HUD APPROVED INVESTMENT INSTRUMENTS

1. Direct obligations of the Federal Government backed by the full faith and credit of the United States.
  - a. U.S. Treasury Bills
  - b. U.S. Treasury Notes and Bonds
2. Obligations of Federal Government Agencies
  - a. Federal Financing Bank (FFB)
  - b. Government National Mortgage Association (GNMA)  
Mortgage-Backed Securities Program  
Mortgage-Backed Bonds (MBS)
  - c. GNMA Participation Certificates
  - d. U.S. Government Guaranteed New Communities Act Debentures
  - e. U.S. Export-Import Bank Debentures
  - f. U.S. Export-Import Bank Participation Certificates and Certificates of Beneficial Interest
  - g. Farmers Home Administration Farmers Home Insured Note Trust  
Certificates of Beneficial Ownership
  - h. Maritime Administration Merchant Marine Bonds, Notes, and Obligations
  - i. Small Business Administration Small Business Investment Corporation Debentures
  - j. Tennessee Valley Authority (TVA) Power Bonds and Notes
3. Securities of Government-Sponsored Agencies
  - a. Farm Credit Consolidated System wide Discount Notes
  - b. Federal Farm Credit Banks Consolidated System-wide Bonds
  - c. Federal Home Loan Banks Consolidated Obligations
  - d. Federal Home Loan Mortgage Corporation Guaranteed Mortgage Certificates
  - e. Federal National Mortgage Association Debentures
  - f. FNMA Notes
  - g. FNMA Short-Term Discount Notes
  - h. FNMA Capital Debentures
  - i. Student Loan Marketing Association Obligations
4. Demand and Savings Deposits
  - a. Demand and savings deposit at commercial banks, mutual savings banks, savings and loan associations and credit unions

will be permitted for HA funds, provided that the entire deposit is insured by the Federal Deposit Insurance Corporation (FDIC).

- b. A deposit in excess of the insurance coverage may be made at a depository institution, provided it is one-hundred percent (100%) collateralized by the securities listed above. Care will be taken that withdrawals may be made on demand, without loss of interest, and without penalty.

5. Certificates of Deposit

Certificates of Deposit at depository institutions that may not be fully insured by the FDIC, NCUSIF, or FSLIC will be permitted, provided the certificates are fully backed by one-hundred percent (100%) collateral consisting of the securities listed above.

6. Money Market Deposit Accounts

7. Municipal Depository Fund or Local Government Investment Pool

8. Super NOW Accounts

9. Repurchase Agreements (Special Requirements)

10. Sweep Accounts

11. Separate Trading or Registered Interest and Principal Securities

12. Mutual Funds (Special Requirements)

## STATE OF TEXAS RULES AND REGULATIONS

### PUBLIC FUNDS INVESTMENTS

Legal Limitations – Direct specific investment parameters for the investment of public funds in Texas are found in the Public Funds Investment Act, Chapter 2256, Texas Government Code.

### UNAUTHORIZED INVESTMENTS

The following are not authorized investments for Governmental Entities:

- 1) Obligations whose payment represents the coupon payments on the outstanding principal balance of the underlying mortgage-backed security collateral and pays no principal;
- 2) Obligations whose payment represents the principal stream of cash flow from the underlying mortgage-backed security collateral and bears no interest;
- 3) Collateralized mortgage obligations that have a stated final maturity date of greater than ten (10) years; and
- 4) Collateralized mortgage obligations the interest rate of which is determined by an index that adjusts opposite to the changes in a market index.

### INVESTMENTS TRAINING

The Investments Officer shall attend at least one training session relating to the officer's responsibilities under Texas Government Code, Chapter 2256.008 within twelve (12) months after assuming duties. Training must include education in investment controls, security risks, and compliance with the State of Texas Public Funds Investment Code, Chapter 2256.

### PERFORMANCE STANDARDS AND REPORTING

The Investment Officer or designee will prepare a written investments report (not less than quarterly according to State law) and submit to the Brownsville Housing Authority Board of Commissioners.

The report must:

1. Describe in detail the investment position of the BHA on the date of the report.
2. Be prepared jointly by all investment officers of the BHA.
3. Be signed by each investment officer of the BHA.
4. Contain a summary statement of each pooled fund group that states that:

- A. Beginning market value for the reporting period;
  - B. Additions and changes to the market value during the period; and
  - C. Ending market value for the period;
5. State the book value and market value of each separately invested asset at the beginning and end of the reporting period by the type of asset and fund type invested.

#### **REQUIRED INVESTMENT RATING**

Investments, as rated as to investment quality by a nationally recognized investment rating firm, are not authorized unless the rating is at least an "A" or its equivalent under Texas law. The BHA shall take all prudent measures that are consistent with this investment policy to liquidate any investment that does not have the minimum rating.

**CERTIFICATION BY BUSINESS ORGANIZATION  
OR FINANCIAL INSTITUTION**

In accordance with the State of Texas Public Funds Investment Code, the Housing Authority of the City of Brownsville hereby requests certification in accordance with the provisions of the government code, Chapter 2256.

I/we have received a written copy of the Housing Authority City of Brownsville's Investment Policy and do hereby certify that the registered principal has:

- 1) Received and thoroughly reviewed the Investment Policy and
- 2) Acknowledges that the organization has implemented reasonable procedures and controls in an effort to preclude imprudent investment activities arising out of investment transactions conducted between the entity and the organization.
- 3) The Investment Officer of an entity may not buy any securities from a person who has not delivered to the entity an instrument in substantially this form.

Acknowledged, Agreed and Accepted

\_\_\_\_\_  
Name of Business Organization or Financial Institution

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

By: \_\_\_\_\_  
Signature of Registered Principal of Business Organization or Financial Institution

# Attachment J

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Notice PIH 96-33

U.S. Department of Housing and Urban Development  
PUBLIC AND INDIAN HOUSING

Special Attention of: Notice PIH 96-33 (HA)  
Public Housing Agencies; Indian  
Housing Authorities; Secretary's  
Representatives; State/Area  
Coordinators; Directors, Public  
Housing Divisions; Administrators,  
Offices of Native American Programs;  
Resident Management Corporations  
(RMCs)

Cross References:

Subject: Required HA Cash Management and Investment Policies and Procedures

1. PURPOSE

The purpose of this Notice is to advise public housing agencies and Indian housing authorities (herein referred to as HAs) and Area Offices of the Department's HA requirements governing cash management and approved investment instruments. The Notice extends and reissues, with minor editorial changes, the policies and procedures, including the list of HUD approved investment instruments, previously set forth in Notice PIH 95-27 .

2. BACKGROUND

The Annual Contributions Contract (ACC) requires the HA to deposit and invest all program funds for projects under an ACC in accordance with the terms of a General Depository Agreement. The General Depository Agreement must be in a form approved by HUD and is executed between the HA and the depository. In addition, the ACC requires the HA to invest General Fund (program) monies only in HUD approved investments.

The Federal Code of Regulations, Part 85, Subpart C, (24 CFR § 85.20) requires HAs to establish cash management procedures. Cash management is the process of managing the cash flow of a HA to optimize its use of funds. This process involves the timing of receipts and disbursements to assure the availability of funds to meet expenditures and to maximize the yield from the investment of temporarily surplus funds. Effective cash management calls for organized planning. Good relations between the HA and the financial institution can improve the effectiveness of a cash management program.

PAHO: Distribution: W-3-1, R-6, R-7, R-9, R-3-1(PIH), 138-2, 138-7, RMC-2

3. APPLICABILITY

This Notice applies to the Low Rent Public Housing Program, the HA Owned/Leased Housing Homeownership Program (Turnkey III Program), the Section 23 Leased Housing Program, and the Mutual Help Homeownership Program.

#### 4. BANKING SERVICES

Banking services shall be arranged by selecting a bank through competitive solicitation to assure the HA that it receives the banking services provided at the lowest cost. It should be noted, however, that HAs must designate a single bank account for the deposit of all payments that are received from HUD through Direct Deposit-Electronic Funds Transfer (DD-EFT). (A Standard Form 1199A, Direct Deposit Sign-Up Form, must be submitted to designate this account.) A copy of the General Depository Agreement (see below) with the financial institution shall be attached with the SF-1199A. Once the funds are received, they may be transferred to separate accounts according to the applicable program.

##### a. General Depository Agreement

The General Depository Agreement (Form HUD-51999) shall be executed by the HA and the depository. The depository must be a financial institution whose deposits are insured by the Federal Deposit Insurance Corporation (FDIC) or National Credit Union Share Insurance Fund (NCUSIF). An original HUD-51999 should be maintained by the HA and the financial institution. A copy of the HUD-51999 should be sent to the HUD Area Office and the Field Accounting Office (along with the SF-1199A).

##### b. Procurement Procedure and Period of Service

Banking services should be periodically solicited through competitive negotiation. The solicitation in the form of a Request for Proposal (RFP) would permit the HA to evaluate the quality of the services received as well as the price. This periodic process should prevent the bank supplying the services from becoming complacent in its dealings with the HA.

#### 5. COLLATERALIZATION OF DEPOSITS

HAs shall require their depositories to continuously and fully (100%) secure all deposits regardless of type (i.e. regular, savings, etc.) that are in excess of the \$100,000 insured amount. This may be

accomplished by the pledging or setting aside collateral of identifiable U.S. Government securities as prescribed by HUD. The HA has possession of the securities (or the HA will take possession of the securities) or an independent custodian (or an independent third party) holds the securities on behalf of the HA as a bailee (evidenced by safe keeping receipt and a written bailment for wire contract) and will be maintained for the full term of the deposit. Such securities shall be owned by the depository and the manner of collateralization shall provide the HA with a continuing perfected security interest for the full term of the deposit in the collateral in accordance with applicable laws and Federal regulations. Such collateral shall, at all times, have a market value at least equal to the amount of the deposits so secured.

6. INVESTMENT OF FUNDS

a. Funds Available for Investment

- 1) Funds on deposit in the General Fund are comprised of four components: (1) funds for current transaction purposes, (2) development and/or modernization funds (see #2 below), (3) funds exceeding those necessary for the daily operation of the HA which are considered available for investment and (4) any operating reserve funds. As a general rule, the average amount on deposit in the General Fund cash accounts (the targeted maximum cash balance) should be the amount needed on hand for transaction purposes or as a safeguard against cash shortages. In the interest of good cash management, non-interest bearing deposits should be reduced to the amount necessary to maintain a good banking relationship.
  
- 2) Under the Modernization and Development Programs, the term "cash management" also means minimizing the time elapsing between the drawdown and disbursement of funds by the HA. HUD has established the maximum time to be generally three working days. Therefore, reference to "excess funds" also means the amount of modernization or development funds drawn down, but not needed for immediate disbursement (see 24 CFR § 85.21 (b)). Interest income earned on modernization funds is included as operating income in the calculation of operating subsidy eligibility under the Performance Funding System (PFS). Interest income earned on development funds is credited to the development program and reduces the development cost of the project.

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b. Approved Investment Securities

In most cases, purchases of securities shall have maturities which

coincide with expected disbursements by the HA. For the purpose of investing operating reserves, issues shall be limited to maturities three years or less. Although some of the following securities have maturities longer than three years, they can be traded in the secondary market. A list of investments approved by HUD for the investment of HA funds is attached. HAs are required to choose from these financial instruments. Within the HUD approved instruments, HAs are permitted to modify their investment policy without prior HUD approvals. The choice of investments from the approved list should be made using the criteria developed in the remainder of this paragraph.

c. Determination of Investment Type

The determination of the best or appropriate types and mixtures of investments is dependent on several factors. The primary objective is safety. Once that objective is attained, the optimum return on the investment should be consistent with the goals of the cash management program of the HA. The factors that should be taken into account include the following:

- (1) Safety - Safety is achieved through adherence to the list of permitted investments which are backed by the full faith and credit of, or a guarantee of principal and interest by, the U.S. Government, a Government agency or issued by a Government-sponsored agency, coupled with an appropriate maturity date.
- (2) Yield - The HA should strive to achieve the highest yield consistent with the other factors of the investment policy. Tax-exempt securities are not appropriate for investment by a HA because it would not benefit from the tax advantage.
- (3) Liquidity - All investments must be capable of being liquidated on one day's notice. Therefore, no investments may be made which impose a longer notice period for redemption or which are not readily marketable.
- (4) Maturity - Investments should be scheduled to mature when the funds are needed. Sale of securities prior to maturity should be avoided due to the inherent risk. (If the market interest rate increases above the yield on the investment, the market

or such lesser period that coincides with expected disbursements by the HA, but not beyond the current financing cycle. HAs may invest in securities up to three years for the investment of operating reserves.

- (5) Amount - The best or most appropriate type of investment depends, to some degree, on the amount available for investment because certain investments require a large initial amount.
- (6) Administrative Cost - In choosing an investment, a HA must consider the administrative work involved, particularly with regard to investments of short duration. Substantial amounts can be invested for periods as short as one or two days. However, the administrative costs with small amounts may be greater than the return on the investment, thus would not be justified or cost effective. Administrative costs will be higher with a more frequent turnover of investments and must be taken into account together with the yield and term in determining the optimum investment strategy.

d. INVESTMENT OF FUNDS HELD BY HA FISCAL AGENTS

Funds held by the Fiscal Agent in any trust funds shall be invested in strict accordance with the Resolution establishing such funds. Where the Resolution contains no provision concerning the investment of funds, the funds shall be invested in securities approved for General Fund Investment provided such investment will mature or may be redeemed at the option of the purchaser at not less than the purchase price on or prior to the date such funds are required to be disbursed by the Fiscal Agent. A description of funds established by HA resolutions authorizing the issues of bonds is attached.

e. Investment Register

An investment register or other record shall be maintained by the HA or its agent. The register/record shall be maintained in such a manner that a determination can be made as to the amount of investment securities purchased from each fund and at a minimum provide for recording a complete description of investment instrument, date of purchase, purchase price, interest rate,

and applicable date of sale or maturity. The investment register/record may also be used to identify the source of funds

invested (i.e., modernization or development funds, tenant security deposit funds, operating funds).

f. Internal Controls

HAs shall implement the following internal controls to assist in controlling investments and preventing loss or misuse.

- (1) Investment transactions shall be authorized by the HA governing board and documented in the board minutes.
- (2) Investment documents shall be kept in a safe fire-resistant locked file cabinet, safe deposit box, or other similarly secured location.
- (3) Individuals responsible for custody of securities shall be someone other than an individual maintaining the accounting records.
- (4) Investments shall be maintained in a custodian or trust account.
- (5) Investments shall be in the name of the HA.
- (6) Investments shall be recorded in detail in an investment ledger.
- (7) A system shall be in place to insure that all interest earned is collected and credited to the appropriate HA records.
- (8) Investments shall be reconciled periodically to the detailed record (investment ledger).

7. CASH MANAGEMENT

A major factor contributing to the success of an investment program is the delegation of responsibility and authority for developing and executing it. A HA should compare the cost of establishing a cash management program in-house (if qualified professional staff are available) to contracting out. If HAs contract for cash management and investment services, then the organization should have qualified personnel to achieve cost-effectiveness. Commercial banks and savings and loans association offer such services.

responsibilities for the use of funds. Such responsibilities are placed on both the HA and HUD for a successful program to benefit both. The primary goals of cash management are to assure the availability of cash for transaction needs, preserve the value of cash resources and earn the maximum return on funds until disbursed.

a. Cash Management by the HA

The HA should compare the return from an in-house cash management program with a program managed by an agent. If the HA finds that administrative costs of an in-house program are such that the net yield on investments is less than that obtainable through an alternative, the general rule is that the HA should use that alternative.

b. Cash Management by an Agent

As an alternative to an in-house cash management program, a HA may enter into a contract with an approved governmental unit such as a State agency established for this purpose (see attachment A, #6, Municipal Depository Fund), or a financial institution (excluding investment bankers and brokerage houses) to administer its cash management program.

Such a program may include any of the functions of cash management, i.e., receipts, disbursements and investments. Such a contractual arrangement will give a small HA the expertise and administrative skills which it would not otherwise be expected to have and often can make a cash management program cost-effective.

c. Temporary Funds Available for Investment

- (1) Each HA with an average cash balance of \$20,000 or more shall invest such funds in HUD-Approved Investment Securities in order to meet the PFS Target Investment requirements (24 CFR Section 990.109 (e), 24 CFR § 950.725 (e)).

HAs with average cash balances of less than \$20,000 shall also invest such funds in HUD-Approved Investment Securities. For the purpose of calculating operating subsidy eligibility under the PFS (24 CFR Section 990.109 (e), 24 CFR § 950.725 (e)) these HAs shall make a reasonable estimate of investment income for the requested budget year. Please note that

investment income estimates for these HAs are not subject to

the mandatory year-end adjustment.

- (2) See Handbook 7475.13, Performance Funding System (PFS), regarding reporting requirements for projecting investment income for the purpose of calculating PFS operating subsidy eligibility. These requirements mandate a minimum investment income (Target Investment Income) for calculating operating subsidies and allow HAs to retain investment income in excess of the required amount. HAs should review these requirements carefully in developing their cash management programs.

## 8. MONITORING

The Office of Finance and Budget, PIH, will continue to oversee the overall cash management policy and programs for HAs. Actual monitoring of each HA's cash management will continue to be the responsibility of the respective Area Office. Monitoring will be accomplished through review of documentation submitted to support the investment income shown in the calculation of operating subsidy and during on-site monitoring reviews.

If there are questions regarding the contents of this Notice, please contact the Office of Finance and Budget at 202-708-1872.

Assistant Secretary for Public and Indian Housing

Attachments

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### ATTACHMENT A

#### HUD-APPROVED INVESTMENT INSTRUMENTS

1. Direct Obligations of the Federal Government Backed by the Full Faith and Credit of the United States
  - a. U.S. Treasury Bills

These securities are short-term obligations which a HA or its agent may purchase directly. Treasury Bills with 3-month and 6-month maturities are issued weekly and those with 9-month and 12-month maturities are issued monthly. The minimum denomination is \$10,000. They are issued on a discount basis and are redeemed at par upon maturity.

U.S. Treasury Bills are available for purchase at any time after

issuance from investment departments of banks and from dealers in investment securities. Purchases may be made conveniently using the HA's depository bank. Treasury Bills may be acquired by subscription on the issue date from a Federal Reserve Bank or branch in amounts not in excess of \$200,000. Detailed information is contained in the weekly or monthly announcements which may be received regularly upon application to a Federal Reserve Bank or branch.

b. U.S. Treasury Notes and Bonds

These securities are issued periodically by the Treasury Department through Federal Reserve Banks and branches. They are medium to long-term obligations which a HA or its agent can only purchase in the secondary market to assure that they will mature at a date which coincides with scheduled disbursements by the HA. Outstanding issues may be purchased from banks or dealers in investment securities at the market price which on any given day may be more or less than the face amount.

(1) U.S. Treasury Notes

These notes mature in not less than one and not more than 10 years from the issue date and bear interest at fixed rates payable semiannually.

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(2) U.S. Treasury Bonds

These bonds mature after ten years from the issue date and bear interest at fixed rates payable semi-annually. Many issues of bonds are redeemable on call by the Treasury Department before maturity. The yield of such issues usually is computed to the first call date which may be as much as 5 years prior to maturity.

2. Obligations of Federal Government Agencies

a. Federal Financing Bank (FFB)

The Federal Financing Bank is authorized to purchase obligations held by Federal agencies and to issue obligations to the public.

b. Government National Mortgage Association (GNMA) Mortgage-Backed Securities (GNMA I and GNMA II)

The securities, guaranteed by GNMA are issued by an issuer (a GNMA-approved mortgage lender). The securities are backed by a pool of government-insured or guaranteed mortgages. The holders of the securities receive monthly payments of principal and interest. The minimum denomination issued is \$25,000. The difference in GNMA I and GNMA II is that the GNMA II payment date is on the 20th of the month and the GNMA I payment date is on the 15th; GNMA II uses a central paying agency whereas GNMA I has individual issuers sending checks to investors; and GNMA II has interest rates that vary within a one percent range. The maximum maturity for GNMA I and GNMA II is 30 years, except that GNMA I project loans mature in 40 years.

c. GNMA Participation Certificates

These securities, guaranteed by GNMA, were sold by GNMA as the trustee with various other Federal agencies as trusters. They represent beneficial interest in future payments of principal and interest on mortgage pools. Their maturities range between one and 20 years and the minimum denomination is \$5,000.

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d. Maritime Administration Merchant Marine Bonds, Notes, and Obligations

These securities are issued by shipping companies and are backed by the full faith and credit of the U.S. Government. Each issue is further secured by a first preferred ship or fleet mortgage. Maturities and denominations vary.

e. Small Business Administration (SBA), Small Business Investment Corporation (SBIC) Debentures

When authorized by appropriation acts, the SBA may guarantee principal and interest payments on debentures of SBIC. The SBA may also pool these debentures and sell SBA-guaranteed debentures. These issues have maturities of 10 years and are issued in \$10,000 denominations.

f. Tennessee Valley Authority (TVA) Power Bonds and Notes

These securities are secured by a first charge on net power proceeds. Payment of interest and principal on them is ranked ahead of annual payments to the U.S. Treasury. They have been issued in multiples of \$1,000.

### 3. Securities of Government-Sponsored Agencies

#### a. Farm Credit Consolidated System-Wide Discount Notes

These notes are the secured joint and several obligations of the Farm Credit System which consists of the Federal Land Banks, the Federal Intermediate Credit Banks, and the Banks for Cooperatives. They are issued in denominations of \$5,000 and maturities are authorized from 5 to 365 days.

#### b. Federal Farm Credit Banks Consolidated System-wide Bonds

These bonds are the secured joint and several obligations of the Farm Credit Banks. Their issuance supersedes individual bond issues by the Federal Land Banks, the Federal Intermediate Credit Banks, and the Banks for Cooperatives. They are issued in multiples of \$1,000 for maturities in excess of 13 months and in multiples of \$5,000 for shorter maturities.

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#### c. Federal Home Loan Banks Consolidated Obligations

These securities are the secured joint and several obligations of the Federal Home Loan Banks comprised of:

##### (1) Bonds

Bonds which have maturities of one year or more. They are issued in multiples of \$10,000, \$25,000, \$100,000 and \$1,000,000.

##### (2) Notes

Notes which have maturities of less than one year. They are issued in multiples of \$10,000, \$25,000, \$100,000 and \$1,000,000.

##### (3) Discount Notes

Discount notes which have maturities ranging from 30 to 170 days. They are issued in denominations of \$100,000 and \$1,000,000.

#### d. FHLMC Mortgage Participation Certificates (PC) (Guaranteed)

These certificates represent undivided interest in specific fixed

rate, first lien conventional and residential mortgages. FHLMC provides monthly interest and principal payments. The final payment is the first of the month and year in which the last monthly payment on the last maturing mortgage is scheduled to be paid.

e. FHLMC Collateralized Mortgage Obligations (CMOs)

CMOs are general obligations of FHLMC that are secured by a single pool of conventional mortgages owned by FHLMC. CMOs are issued in several classes with varying stated maturities. Semiannual principal payments are allocated to each class of the CMOs in the order of the stated maturity of each class so that no principal payments are made to holders of a class until classes with an earlier maturity are retired.

f. Federal National Mortgage Association (FNMA) Debentures

These debentures are issued in denominations ranging from \$10,000 and with maturities ranging from 20 to 25 years.

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g. FNMA Notes

The minimum investment in these notes is \$50,000 with maturities ranging from 1 to 20 years.

h. FNMA Short-Term Discount Notes

These notes are similar to commercial paper and are tailored to the individual needs of investors. They are sold at published rates with maturities of 30 to 270 days and in denominations ranging from \$5,000.

i. FNMA Capital Debentures

These debentures are subordinated to the non-capital debentures, notes, and short-term discount notes. They were last issued in 1975 in a \$10,000 minimum denomination and with maturities of 5 and 25 years.

j. Student Loan Marketing Associations (SLMA) Obligations

SLMA issues obligations comprises of guaranteed student loans as follows:

(1) Floating Rate and Master Notes.

These notes bear interest at rates that vary with the 91-day Treasury Bill rate. Short-term borrowing have an original or remaining term maturity of one year or less.

(2) The Series E and F Floating Rate Notes.

These notes bear interest at rates which vary with the 91-day Treasury Bill, except that each issue has fixed minimum and maximum rates known as interest rate "collars" for any quarterly interest period.

(3) Zero Coupon Notes

These notes are shown at net proceeds adjusted for accretion of discount.

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4. Demand and Savings Deposits

Demand and savings deposits at commercial banks, mutual savings banks, savings and loan associations and credit unions are permitted for HA funds provided that the entire deposit is insured by the Federal Deposit Insurance Corporation (FDIC) or the National Credit Union Share Insurance Fund (NCUSIF). A deposit in excess of the insurance coverage may be made at a depository institution provided that it is 100 percent collateralized by any of the securities listed under paragraphs 1, 2, and 3 of this Attachment. Care should be taken that withdrawals may be made on demand without loss of interest and without penalty.

5. Money-Market Deposit Accounts

Money-Market Deposit Accounts at depository institutions that may not be insured fully by the FDIC or NCUSIF are permitted provided that the certificates are fully backed by 100 percent collateral consisting of securities listed under paragraphs 1, 2, or 3 of this Attachment. When accounts exceed the \$100,000 insurance limitation, their safety also may depend on the HA's control of the underlying collateral which must consist of clearly identified (not pooled) U.S. Government securities. Possession of the collateral securities and a continuous perfected security interest may be the only sure protection against loss in case of financial institution failure.

6. Municipal Depository Fund

A Municipal Depository Fund (Fund) or Local Government Investment Pool which is established by States, municipalities, units of local government or other political subdivisions to serve as an investment fund for HAs is permitted. The securities purchased by a Fund shall be on the HUD-approved list of investment securities. HA shall have either an undivided or divided interest in securities comprising the Fund. The Fund shall be under the control of the Investment Company Act of 1940, and its objective shall be clearly stated. The investment objective of the Fund shall be to obtain as much income as possible consistent with the preservation and conservation of capital. The Fund shall disclose clearly the basis of earnings and how they are distributed. HA shall obtain a statement of potential default and risk and a clear demonstration that withdrawals from the Funds will not be so restricted as to impair a HA's day-to-day cash management

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needs. The management fee shall be fixed at a reasonable amount and management shall be passive. HA shall limit the amount of funds invested in the Fund to no more than 30 percent of a HA's available investment funds. The Fund shall disclose the relationships of the investment advisor, manager, trustees, custodian and transfer agent. Each financial advisory relationship shall be evidenced by a written document executed prior to, upon, or promptly after the inception of the financial advisory relationship, or promptly after the creation or selection of the issuer. If the issuer does exist or has not been determined at the time the relationship commences, that written document shall set forth the basis of compensation for the financial advisory services to be rendered.

#### 7. Super NOW Accounts

Super NOW accounts have been available and approved for public funds since January 1983. They offer a relatively high market rate and are fully transactional (have no limitations on the number of checks or transfers). Insurance and collateral requirements are as above for subparagraph e Demand and Savings Deposits.

#### 8. Certificates of Deposit

- a. Certificates of Deposit are permitted at depository institutions that are insured by an agency of the Federal Government. Caution must be exercised for certificates exceeding the \$100,000 insurance limit or when the term is longer than 30-90 days. Although the certificates' rate of return may be attractive for larger amounts and longer terms, U.S. Treasury securities offer superior safety and liquidity for the same amounts and terms. Certificates shall be

in the HA's name. In addition a General Depository Agreement must be executed by each financial institution that issues a Certificate of Deposit.

- b. Certificate amounts above \$100,000 are permitted provided that the excess is 100 percent collateralized by clearly identified (not pooled) U.S. Government securities. Possession of the collateral securities and a continuous perfected security interest may be the only sure protection against loss in case of bank failure.
- c. Brokered deposits should be avoided because it is impossible to get \$100,000 federal insurance on a number of deposits placed by brokers.

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## 9. Repurchase Agreements

Repurchase (repos) agreements for a term not to exceed 30 days may be entered into with Federally insured depository institutions to purchase and sale of securities identified under paragraphs 1, 2, and 3. A repurchase agreement is an agreement negotiated with a bank usually for a short period (1 to 7 days) wherein securities approved for investment are purchased from that bank at a stated price with the bank agreeing to repurchase them on a specified date for a specified amount. The minimum may vary, although it is usually \$ 100,000. There are three main types: (1) fixed term, where both parties are bound to the negotiated time period, (2) demand, where the agreement stays in effect until terminated by either party, and (3) day-to-day, where daily renewal is by mutual consent and 24-hour notice is required for termination. The HA should review existing and future repos for compliance with the following certifications. Prior approval by HUD is not necessary, however, the repos seller depository or its agency must provide a written certification to HUD, Assistant Secretary for Public and Indian Housing (Office of Finance and Budget), the Area Office, and to the HA.

- a. that the depository's repo program complies with applicable Federal and State statutes and regulations and that the program does not involve sales or loans of Federal securities by securities dealers that are not regulated or that report to the Federal Reserve Board;
- b. that the depository owns the underlying Federal securities (approved for repurchase under HUD guidelines) when the repo interest is sold and that the value of the securities is equal to or greater than the amount the HA pays for the repo;
- c. that the HA has possession of the securities (or the HA will take

possession of the securities) or an independent custodian (or an independent third party) holds the securities on behalf of the HA as a bailee (evidenced by a safe keeping receipt and a written bailment for hire contract), from the time the repo interest is sold to the HA and will be (or is expected to be) maintained for the full term of the repo;

- d. that the repo agreement and any related documents identify specific Federal securities related to the specific repo purchased by the HA;

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- e. that the repo interest does not represent any interest in a pool or fund of Federal securities for which registration under the Investment Company Act of 1940 may be required;
- f. that the HA will have a continuous perfected security interest in the underlying Federal securities under State or Federal law for the full term of the repo (disclosing the method by which perfection has or will be accomplished, i.e., by possession, filing, registration of book-entry securities and/or Federal preemption of State law by Federal regulation);
- g. that the depository or a reporting dealer selling the repo has not received any adverse financial report from a credit reporting agency, State or Federal regulatory agency; and
- h. that the depository will not substitute other securities as collateral, except to increase the value of the repo security to match the repos's purchase price.

#### 10. Sweep Accounts

Sweep Accounts is a contractual agreement between a bank and a HA which provides that the bank will regularly "sweep" or transfer any available collected balances from the HA's account into repurchase agreements. The Sweep Accounts agreement shall include all the certification provided in the Repurchase Agreement and adherence to paragraph 4-3, Collateralization of Deposits.

#### 11. Separate Trading of Registered Interest and Principal of Securities

Separate Trading of Registered Interest and Principal of Securities (STRIPS) are Treasury-based zero-coupon securities which consist of interest or principal on U.S. Treasury securities. STRIPS were issued in minimum increments of \$1,000. STRIPS pay no interest until maturity and

the rate of return is "locked in" at the time of purchase. The delivery of STRIPS is accomplished by wire transfer through the Federal Reserve book entry system. STRIPS shall be in the name of the HA.

## 12. Mutual Funds

A Mutual Fund (Fund) is an investment company that makes investments on behalf of individuals and institutions. The Fund pools the money of the investors and buys various securities that are consistent with the Fund's objective.

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### a. Mutual Fund Criteria

The Fund shall be organized as a no-load, open-end, diversified management company and its shares shall be registered under the Securities Act of 1933. The Fund shall be under the control of the Securities Exchange Act of 1934, Investment Advisers Act of 1940 and the Investment Company Act of 1940. The investment objective of the Fund shall be to obtain as much income as possible consistent with the preservation, conservation and stability of capital. The mutual fund objective cannot be changed without the prior approval of fund shareholders.

- b. The securities purchased by the Fund shall be on the HUD-approved list of investment securities. The Fund will not engage in options or financial futures. The HA shall limit the amount of funds invested in the Fund to no more than 20 percent of the HA's available investment funds. The Fund shall disclose clearly the basis of earnings and how they are distributed. The HA shall obtain a statement of potential default and risk. The HA's invested funds shall be accessible to the HA daily. It shall be demonstrated that any limitations on withdrawals will not impair the HA's day-to-day cash management needs.
- c. The management fee shall be fixed at a reasonable amount. The Fund shall disclose the relationships of the investment advisor, manager, trustee, custodian and transfer agent. The Fund shall clearly state all services (such as wire transfers and check writing privileges) and charges.
- d. Investment in the Fund shall be authorized by a Board Resolution. A certified copy of the resolution shall accompany the initial application for the Fund.
- e. The Fund (or custodian) and the HA shall sign the General

Depository Agreement, HUD-51999 dated June 1991, modified as follows:

- (1) In the title, "(Mutual Fund)" shall be added after General Depository Agreement. Whenever "depository" appears in the text it also refers to "mutual fund."
- (2) The HA's name and location (including county or city) will be filled in the first clause of the General Depository Agreement. The name, location and the HA's mutual fund account number also will be filled in the first clause. The second clause remains unchanged.

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- (3) The third clause is substituted as follows: "Whereas, under the terms of the Contract the HA shall invest in a mutual fund (herein called the depository) only on the terms set forth hereafter. Mutual fund is defined as an investment company that makes investments on behalf of individuals and institutions. The depository shall be organized as a no-load, open-end, diversified management company and its shares shall be registered under the Securities Exchange Act of 1933. The depository shall be under the control of the Securities Exchange Act of 1934, the Investment Advisers Act of 1940 and the Investment Company Act of 1940. HA shall acquire shares in a mutual fund whose portfolio includes only securities on the HUD-approved list of investment securities."
- (4) Paragraphs 1, 3, 11 and 12 are deleted.
- (5) Paragraphs 4 through 6 are modified to read as follows:
  - (a) Paragraph 4: Any shares purchased from HA funds shall be held by the depository in safe-keeping for the HA until sold. Dividends and distributions on such shares and the proceeds from the sale thereof shall be used to purchase additional shares or remitted directly to the HA.
  - (b) Paragraph 5: The language "from said Accounts" is deleted.
  - (c) Paragraph 6: The language "in respect of the Accounts" is deleted.
  - (d) Paragraphs 7 through 10 are not changed.

- (e) The additional language can be typed on a separate page, attached and duly executed. The following language shall be added to the bottom of the page: Page number incorporated in and made a part of the General Depository Agreement between (HA) and (Depository).

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## ATTACHMENT B

### INVESTMENT OF FUNDS HELD BY HA FISCAL AGENTS

#### Description of Funds

The funds established by HA resolutions authorizing the issuance of bonds to finance the development cost of projects are as follows:

(1) Debt Service Fund

This Fund is established pursuant to the Annual Contributions Contracts and HA Resolutions providing for the issuance of new HA bonds. The Fiscal Agent is explicitly required under the form of the Fiscal Agency Agreement entered into since 1964 to purchase and sell investment securities as the HA, with the approval of the Federal Government, may direct. Where a Fiscal Agency Agreement does not contain a specific requirement for the investment of Debt Service Funds, such investment must, nevertheless, be made since it is a general power and duty of a trustee, (implied if not expressed) to keep funds properly invested in order to attain safety and produce income for the trust funds.

(2) Advance Amortization Fund

(a) Since 1952, the form of Fiscal Agency Agreement in use requires the Fiscal Agent to invest funds on deposit in the Advance Amortization Fund as the HA, with the approval of the Federal Government, may direct.

(b) With respect to the investment of funds resulting from a consolidated sale of bonds by an Agency Authority, only the Agency Authority of HUD may issue investment instructions to the Fiscal Agent. These instructions shall be consistent with HUD guidelines.

(3) Annual Contributions Reduction Account (sometimes called Supplementary Revenues Account); Bond Service Account; Series A Reserve Fund; General Bond Reserve Fund; Rental Debt Service Fund; and Excess Lands Account.

The Resolution authorizing Series A and Series B Bonds issued prior to 1951 established these funds and the Resolution usually contains limitations on the investment of funds on deposit in one or more of such accounts.

## HUD APPROVED INVESTMENT INSTRUMENTS

1. Direct Obligations of the Federal Government Backed by the Full Faith and Credit of the United States

a. U.S. Treasury Bills

These securities are short-term obligations which a HA or its agent may purchase directly. Treasury Bills with 3- month and 6-month maturities are issued weekly and those with 9-month and 12-month maturities are issued monthly. The minimum denomination is \$10,000. They are issued on a discount basis and are redeemed at par upon maturity.

U.S. Treasury Bills are available for purchase at any time after issuance from investment departments of banks and from dealers in investment securities. Purchases may be made conveniently using the HA's depository bank. Treasury Bills may be acquired by subscription on the issue date from a Federal Reserve Bank or branch in amounts not in excess of \$200,000. Detailed information is contained in the weekly or monthly announcements which may be received regularly upon application to a Federal Reserve Bank or branch.

b. U.S. Treasury Notes and Bonds

These securities are issued periodically by the Treasury Department through Federal Reserve Banks and branches. They are medium to long-term obligations which a HA or its agent can only purchase in the secondary market to assure that they will mature at a date which coincides with scheduled disbursements by the HA. Outstanding issues may be purchased from banks or dealers in investment securities at the market price which on any given day may be more or less than the face amount.

(1) U.S. Treasury Notes

These notes mature in not less than one and not more than 10 years from the issue date and bear interest at fixed rates payable semi-annually.

(2) U.S. Treasury Bonds

These bonds mature after ten years from the issue date and bear interest at fixed rates payable semi-annually. Many issues of bonds are redeemable on call by the Treasury Department before maturity. The yield of such issues usually is computed to the first call date which may be as much as 5 years prior to maturity.

2. Obligations of Federal Government Agencies

a. Federal Financing Bank (FFB)

The Federal Financing Bank is authorized to purchase obligations held by Federal agencies and to issue obligations to the public.

b. Government National Mortgage Association (GNMA). Mortgage- Backed Securities (GNMA I and GNMA II)

The securities, guaranteed by GNMA are issued by an issuer (a GNMA- approved mortgage lender). The securities are backed by a pool of government- insured or guaranteed mortgages. The holders of the securities receive monthly payments of principal and interest. The minimum denomination issued is \$25,000. The difference in GNMA I and GNMA II is that the GNMA II payment date is on the 20th of the month and the GNMA I payment date is on the 15th; GNMA II uses a central paying agency whereas GNMA I has individual issuers sending checks to investors; and GNMA II has interest rates that vary within a one percent range. The maximum maturity for GNMA I and GNMA II is 30 years, except that GNMA I project loans mature in 40 years.

c. GNMA Participation Certificates

These securities, guaranteed by GNMA, were sold by GNMA as the trustee with various other Federal agencies as trusters. They represent beneficial interest in future payments of principal and interest on mortgage pools. Their maturities range between one and 20 years and the minimum denomination is \$5,000.

d. Maritime Administration Merchant Marine Bonds, Notes, and Obligations

These securities are issued by shipping companies and are backed by the full faith and credit of the U.S. Government. Each issue is further secured by a first preferred ship or fleet mortgage. Maturities and denominations vary.

e. Small Business Administration (SBA). Small Business Investment Corporation (SBIC) Debentures

When authorized by appropriation acts, the SBA may guarantee principal and interest payments on debentures of SBIC. The SBA may also pool these debentures and sell SBA- guaranteed debentures. These issues have maturities of 10 years and are issued in \$10,000 denominations.

f. Tennessee Valley Authority (TVA) Power Bonds and Notes

These securities are secured by a first charge on net power proceeds. Payment of interest and principal on them is ranked ahead of annual payments to the U.S. Treasury. They have been issued in multiples of \$1,000.

3. Securities of Government-Sponsored Agencies

a. Farm Credit Consolidated System-Wide Discount Notes

These notes are the secured joint and several obligations of the Farm Credit System which consists of the Federal Land Banks, the Federal Intermediate Credit Banks, and the Banks for Cooperatives. They are issued in denominations of \$5,000 and maturities are authorized from 5 to 365 days.

b. Federal Farm Credit Banks Consolidated System-wide Bonds

These bonds are the secured joint and several obligations of the Farm Credit Banks. Their issuance supersedes individual bond issues by the Federal Land Banks, the Federal Intermediate Credit Banks, and the Banks for Cooperatives. They are issued in multiples of \$1,000 for maturities in excess of 13 months and in multiples of \$5,000 for shorter maturities.

c. Federal Home Loan Banks Consolidated Obligations

These securities are the secured joint and several obligations of the Federal Home Loan Banks comprised of:

(1) Bonds

Bonds which have maturities of one year or more. They are issued in multiples of \$10,000, \$25,000, \$100,000 and \$1,000,000.

(2) Notes

Notes which have maturities of less than one year. They are issued in multiples of \$10,000, \$25,000, \$100,000 and \$1,000,000.

(3) Discount Notes

Discount notes which have maturities ranging from 30 to 170 days. They are issued in denominations of \$100,000 and \$1,000,000.

d. FHLMC Mortgage Participation Certificates (PC) (Guaranteed)

These certificates represent undivided interest in specific fixed rate, first lien conventional and residential mortgages. FHLMC provides monthly interest and principal payments. The final payment is the first of the month and year in which the last monthly payment on the last maturing mortgage is scheduled to be paid.

e. FHLMC Collateralized Mortgage Obligations (CMOs)

CMOs are general obligations of FHLMC that are secured by a single pool of conventional mortgages owned by FHLMC. CMOs are issued in several classes with varying stated maturities. Semiannual principal payments are allocated to each class of the CMOs in the order of the stated maturity of each class so that no principal payments are made to holders of a class until classes with an earlier maturity are retired.

f. Federal National Mortgage Association (FNMA) Debentures

These debentures are issued in denominations ranging from \$10,000 and with maturities ranging from 20 to 25 years.

g. FNMA Notes

The minimum investment in these notes is \$50,000 with maturities ranging from 1 to 20 years.

h. FNMA Short-Term Discount Notes

These notes are similar to commercial paper and are tailored to the individual needs of investors. They are sold at published rates with maturities of 30 to 270 days and in denominations ranging from \$5,000.

i. FNMA Capital Debentures

These debentures are subordinated to the non-capital debentures, notes, and short-term discount notes. They were last issued in 1975 in a \$10,000 minimum denomination and with maturities of 5 and 25 years.

j. Student Loan Marketing Associations (SLMA) Obligations

SLMA issues obligations comprises of guaranteed student loans as follows:

(1) Floating Rate and Master Notes.

These notes bear interest at rates that vary with the 91-day Treasury Bill rate. Short-term borrowing have an original or remaining term maturity of one year or less.

(2) The Series E and F Floating Rate Notes.

These notes bear interest at rates which vary with the 91-day Treasury Bill, except that each issue has fixed minimum and maximum rates known as interest rate "collars" for any quarterly interest period.

(3) Zero Coupon Notes

These notes are shown at net proceeds adjusted for accretion of discount.

4. Demand and Savings Deposits

Demand and savings deposits at commercial banks, mutual savings banks, savings and loan associations and credit unions are permitted for HA funds provided that the entire deposit is insured by the Federal Deposit Insurance Corporation (FDIC) or the National Credit Union Share Insurance Fund (NCUSIF). A deposit in excess of the insurance coverage may be made at a depository institution provided that it is 100 percent collateralized by any of the securities listed under paragraphs 1, 2, and 3 of this Attachment. Care should be taken that withdrawals may be made on demand without loss of interest and without penalty.

5. Money-Market Deposit Accounts

Money-Market Deposit Accounts at depository institutions that may not be insured fully by the FDIC or NCUSIF are permitted provided that the certificates are fully backed by 100 percent collateral consisting of securities listed under paragraphs 1, 2, or 3 of this Attachment. When accounts exceed the \$100,000 insurance limitation, their safety also may depend on the HA's control of the underlying collateral which must consist of clearly identified (not pooled) U.S. Government securities. Possession of the collateral securities and a continuous perfected security interest may be the only sure protection against loss in case of financial institution failure.

6. Municipal Depository Fund

A Municipal Depository Fund (Fund) or Local Government Investment Pool which is established by States, municipalities, units of local government or other political subdivisions to serve as an investment fund for HAs is permitted. The securities purchased by a Fund shall be on the HUD-approved list of investment securities. HA shall have either an undivided or divided interest in securities comprising the Fund. The Fund shall be under the control of the Investment Company Act of 1940, and its objective shall be clearly stated. The investment objective of the Fund shall be to obtain as much income as possible consistent with the preservation and conservation of capital. The Fund shall disclose clearly the basis of earnings and how they are distributed. HA shall obtain a statement of potential default and risk and a clear demonstration that withdrawals from the Funds will not be so restricted as to impair a HA's day-to-day cash management

needs. The management fee shall be fixed at a reasonable amount and management shall be passive. HA shall limit the amount of funds invested in the Fund to no more than 30 percent of a HA's available investment funds. The Fund shall disclose the relationships of the investment advisor, manager, trustees, custodian and transfer agent. Each financial advisory relationship shall be evidenced by a written document executed prior to, upon, or promptly after the inception of the financial advisory relationship, or promptly after the creation or selection of the issuer. If the issuer does exist or has not been determined at the time the relationship commences, that written document shall set forth the basis of compensation for the financial advisory services to be rendered.

7. Super NOW Accounts

Super NOW accounts have been available and approved for public funds since January 1983. They offer a relatively high market rate and are fully transactional (have no limitations on the number of checks or transfers). Insurance and collateral requirements are as above for subparagraph e Demand and Savings Deposits.

8. Certificates of Deposit

- a. Certificates of Deposit are permitted at depository institutions that are insured by an agency of the Federal Government. Caution must be exercised for certificates exceeding the \$100,000 insurance limit or when the term is longer than 30-90 days. Although the certificates' rate of return may be attractive for larger amounts and longer terms, U.S. Treasury securities offer superior safety and liquidity for the same amounts and terms. Certificates shall be in the HA's name. In addition a General Depository Agreement must be executed by each financial institution that issues a Certificate of Deposit.
- b. Certificate amounts above \$100,000 are permitted provided that the excess is 100 percent collateralized by clearly identified (not pooled) U.S. Government securities. Possession of the collateral securities and a continuous perfected security interest may be the only sure protection against loss in case of bank failure.
- c. Brokered deposits should be avoided because it is impossible to get \$100,000 federal insurance on a number of deposits placed by brokers.

9. Repurchase Agreements

Repurchase (repos) agreements for a term not to exceed 30 days may be entered into with Federally insured depository institutions to purchase and sale of securities identified under paragraphs 1, 2, and 3. A repurchase agreement is an agreement negotiated with a bank usually for a short period (1 to 7 days) wherein securities approved for investment are purchased from that bank at a stated price with the bank agreeing to repurchase them on a specified date for a specified amount. The minimum may vary, although it is usually \$100,000. There are three main types: (1) fixed term, where both parties are bound to the negotiated time period, (2) demand, where the agreement stays in effect until terminated by either party, and (3) day-to-day, where daily renewal is by mutual consent and 24-hour notice is required for termination.

The HA should review existing and future repos for compliance with the following certifications. Prior approval by HUD is not necessary, however, the repos seller depository or its agency must provide a written certification to HUD, Assistant Secretary for Public and Indian Housing (Office of Finance and Budget), the Area Office, and to the HA.

- a. that the depository's repo program complies with applicable Federal and State statutes and regulations and that the program does not involve sales or loans of Federal securities by securities dealers that are not regulated or that report to the Federal Reserve Board;
- b. that the depository owns the underlying Federal securities (approved for repurchase under HUD guidelines) when the repo interest is sold and that the value of the securities is equal to or greater than the amount the HA pays for the repo;
- c. that the HA has possession of the securities (or the HA will take possession of the securities) or an independent custodian (or an independent third party) holds the securities on behalf of the HA as a bailee (evidenced by a safe keeping receipt and a written bailment for hire contract), from the time the repo interest is sold to the HA and will be (or is expected to be) maintained for the full term of the repo;
- d. that the repo agreement and any related documents identify specific Federal securities related to the specific repo purchased by the HA;

- e. that the repo interest does not represent any interest in a pool or fund of Federal securities for which registration under the Investment Company Act of 1940 may be required;
- f. that the HA will have a continuous perfected security interest in the underlying Federal securities under State or Federal law for the full term of the repo (disclosing the method by which perfection has or will be accomplished, i.e., by possession, filing, registration of book-entry securities and/or Federal preemption of State law by Federal regulation);
- g. that the depository or a reporting dealer selling the repo has not received any adverse financial report from a credit reporting agency, State or Federal regulatory agency; and
- h. that the depository will not substitute other securities as collateral, except to increase the value of the repo security to match the repos's purchase price.

10. Sweep Accounts

Sweep Accounts is a contractual agreement between a bank and a HA which provides that the bank will regularly "sweep" or transfer any available collected balances from the HA's account into repurchase agreements. The Sweep Accounts agreement shall include all the certification provided in the Repurchase Agreement and adherence to paragraph 4-3, Collateralization of Deposits.

11. Separate Trading of Registered Interest and Principal of Securities

Separate Trading of Registered Interest and Principal of Securities (STRIPS) are Treasury-based zero-coupon securities which consist of interest or principal on U. S. Treasury securities. STRIPS were issued in minimum increments of \$1,000. STRIPS pay no interest until maturity and the rate of return is "locked in" at the time of purchase. The delivery of STRIPS is accomplished by wire transfer through the Federal Reserve book entry system. STRIPS shall be in the name of the HA.

12. Mutual Funds

A Mutual Fund (Fund) is an investment company that makes investments on behalf of individuals and institutions. The Fund pools the money of the investors and buys various securities that are consistent with the Fund's objective.

a. Mutual Fund Criteria

The Fund shall be organized as a no-load, open-end, diversified management company and its shares shall be registered under the Securities Act of 1933. The Fund shall be under the control of the Securities Exchange Act of 1934, Investment Advisers Act of 1940 and the Investment Company Act of 1940.

The investment objective of the Fund shall be to obtain as much income as possible consistent with the preservation, conservation and stability of capital. The mutual fund objective cannot be changed without the prior approval of fund shareholders.

- b. The securities purchased by the Fund shall be on the HUD-approved list of investment securities. The Fund will not engage in options or financial futures. The HA shall limit the amount of funds invested in the Fund to no more than 20 percent of the HA's available investment funds. The Fund shall disclose clearly the basis of earnings and how they are distributed. The HA shall obtain a statement of potential default and risk. The HA's invested funds shall be accessible to the HA daily. It shall be demonstrated that any limitations on withdrawals will not impair the HA's day-to-day cash management needs.
- c. The management fee shall be fixed at a reasonable amount. The Fund shall disclose the relationships of the investment advisor, manager, trustee, custodian and transfer agent. The Fund shall clearly state all services (such as wire transfers and check writing privileges) and charges.
- d. Investment in the Fund shall be authorized by a Board Resolution. A certified copy of the resolution shall accompany the initial application for the Fund.
- e. The Fund (or custodian) and the HA shall sign the General Depository Agreement, HUD-51999 dated June 1991, modified as follows:
- (1) In the title, "(Mutual Fund)" shall be added after General Depository Agreement. Whenever "depository" appears in the text it also refers to "mutual fund."
  - (2) The HA's name and location (including county or city) will be filled in the first clause of the General Depository Agreement. The name, location and the HA's mutual fund account number also will be filled in the first clause. The second clause remains unchanged.

- (3) The third clause is substituted as follows: "Whereas, under the terms of the Contract the HA shall invest in a mutual fund (herein called the depository) only on the terms set forth hereafter. Mutual fund is defined as an investment company that makes investments on behalf of individuals and institutions. The depository shall be organized as a no-load, open-end, diversified management company and its shares shall be registered under the Securities Exchange Act of 1933. The depository shall be under the control of the Securities Exchange Act of 1934, the Investment Advisers Act of 1940 and the Investment Company Act of 1940. HA shall acquire shares in a mutual fund whose portfolio includes only securities on the HUD-approved list of investment securities."
- (4) Paragraphs 1, 3, 11 and 12 are deleted.
- (5) Paragraphs 4 through 6 are modified to read as follows:
  - (a) Paragraph 4: Any shares purchased from HA funds shall be held by the depository in safe-keeping for the HA until sold. Dividends and distributions on such shares and the proceeds from the sale thereof shall be used to purchase additional shares or remitted directly to the HA.
  - (b) Paragraph 5: The language "from said Accounts" is deleted.
  - (c) Paragraph 6: The language "in respect of the Accounts" is deleted.
  - (d) Paragraphs 7 through 10 are not changed.
  - (e) The additional language can be typed on a separate page, attached and duly executed. The following language shall be added to the bottom of the page: Page number incorporated in and made a part of the General Depository Agreement between\_(HA) and (Depository).

## **INVESTMENT OF FUNDS HELD BY HA** **FISCAL AGENTS**

### Description of Funds

The funds established by HA resolutions authorizing the issuance of bonds to finance the development cost of projects are as follows:

(1) Debt Service Fund

This Fund is established pursuant to the Annual Contributions Contracts and HA Resolutions providing for the issuance of new HA bonds. The Fiscal Agent is explicitly required under the form of the Fiscal Agency Agreement entered into since 1964 to purchase and sell investment securities as the HA, with the approval of the Federal Government, may direct. Where a Fiscal Agency Agreement does not contain a specific requirement for the investment of Debt Service Funds, such investment must, nevertheless, be made since it is a general power and duty of a trustee, (implied if not expressed) to keep funds properly invested in order to attain safety and produce income for the trust funds.

(2) Advance Amortization Fund

- (a) Since 1952, the form of Fiscal Agency Agreement in use requires the Fiscal Agent to invest funds on deposit in the Advance Amortization Fund as the HA, with the approval of the Federal Government, may direct.
- (b) With respect to the investment of funds resulting from a consolidated sale of bonds by an Agency Authority, only the Agency Authority of HUD may issue investment instructions to the Fiscal Agent. These instructions shall be consistent with HUD guidelines.

(3) Annual Contributions Reduction Account (sometimes called Supplementary Revenues Account); Bond Service Account; Series A Reserve Fund; General Bond Reserve Fund; Rental Debt Service Fund; and Excess Lands Account.

The Resolution authorizing Series A and Series B Bonds issued prior to 1951 established these funds and the Resolution usually contains limitations on the investment of funds on deposit in one or more of such accounts.