

**Section 8 - Neighborhood Stabilization Program 1  
Policy and Procedure  
(NSP 1)**



**MODESTO**  
CALIFORNIA

**City Of Modesto**  
**Neighborhood Stabilization Program (NSP1)**  
**Policies and Procedures**

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# CHAPTER 1.0: INTRODUCTION

## 1.1 Introduction

The Neighborhood Stabilization Program (NSP), for the City of Modesto, is authorized by the Housing and Economic Recovery Act (HERA) Public Law 110-289, which was signed into law on July 30, 2008. Originally introduced as HR 3221, HERA Division B, Title III establishes the NSP grant under the Emergency Assistance for Redevelopment of Abandoned and Foreclosed Homes heading. NSP was revised in February 2009 with the passage of the American Recovery and Reinvestment Act of 2009 (ARRA). The NSP is administered by the U.S. Department of Housing and Urban Development (“HUD”) and is considered a special Community Development Block Grant (“CDBG”) allocation. CDBG allocations for The City of Modesto are administered by the City of Modesto Parks, Recreation and Neighborhoods Department, Housing and Neighborhoods Division. The City of Modesto Received an allocation of \$8,100,000 in NSP funds by HUD.

The City of Modesto will administer the NSP effectively and efficiently under the housing conditions that exist in the city, by working innovatively, and designing the NSP activities to address foreclosed and abandoned properties throughout the city. To that end, this policy and procedures manual is presented to provide an overview of the City’s policies and procedures as they pertain to NSP and step-by-step guidance on the implementation of NSP projects.

This manual is not meant to be a substitute for NSP regulations, but as a supplement to them. It is not exhaustive regarding all considerations affecting the use of NSP funds. While careful consideration and due care has been used in developing the manual, NSP participants are encouraged to consult with NSP staff to ensure correct interpretation of policies and regulations. The City of Modesto reserves the right to implement additional policies as needed.

## 1.2 Purpose of the Neighborhood Stabilization Program

The Neighborhood Stabilization Program (NSP) is authorized by the Housing and Economic Recovery Act (“HERA”) (Public Law 110-289) and requirements contained in the HUD Federal Register Notice published October 6, 2008 (Docket No. FR-5255-N-01) and as revised in a “Bridge Notice” published June 15, 2009 (Docket No. FR-5255-N-02). (The Bridge Notice includes changes from the American Recovery and Reinvestment Act of 2009 (ARRA).) The primary purpose of NSP is to provide emergency assistance for the city to acquire and rehabilitate foreclosed properties that might otherwise become sources of abandonment and blight within our community. The City of Modesto’ NSP program provides loans to purchase foreclosed or abandoned homes and to rehabilitate, resell, or rent homes in order to stabilize neighborhoods and stem the decline of house values in neighboring homes. The City of Modesto has designed its programs into three main categories—the Incentive Transfer Program, Acquisition and Rehabilitation – Scattered and Target Areas and the NSP Homebuyers Assistance Program

## **1.3 General Requirements of NSP1**

### **1.3.1 Allocation of Funds**

NSP funds committed to City of Modesto will be allocated as promulgated in the City's 2009 Substantial Amendment to the Annual Action Plan. In addition, the city may spend up to ten percent (10%) of its NSP allocation and 10% of any program income for administrative and planning expenses.

NSP requires that not less than twenty-five percent (25%) of the total NSP funds allocated to the City shall be utilized to provide permanent housing for households with incomes at or below fifty percent (50%) of the AMI. The City of Modesto will allocate these funds to the Housing Authority of the County of Stanislaus.

In addition, the city is required to ensure that all NSP funding is obligated within 18 months following the execution of the NSP grant agreement with HUD, which occurred in September 2009. Therefore, CITY OF MODESTO reserves the right to award funds to projects that are "ready to go" and to further adjust contracted amounts based upon actual performance and progress to obligate the funds within the initial 18 months of the grant agreement date or by September 19, 2010.

### **1.3.2 Eligible Applicants**

NSP funding is available citywide to non-profit organizations, for-profit organizations, developers, and city designated Community Housing Development Organizations ("CHDOs").

The eligible applicants are the entities responsible for the NSP application, project development, project implementation, and accountability for uses of all NSP funds. The eligible applicants must adhere to required compliance and monitoring of all NSP activities for the full applicable affordability period. The City of Modesto will allocate NSP funds to the approved eligible applicants as outlined in the NSP Program Agreement.

### **1.3.3 Eligible Activities**

For purposes of implementing the NSP, an abandoned property is defined as such when all the following apply: 1) Mortgage or tax foreclosure proceedings have been initiated for that property, and 2) No mortgage or tax payment have been made for the property owner for at least ninety (90) days, and 3) The property has been vacant for at least ninety (90) days.

For purposes of implementing the NSP, a foreclosed property is defined as a property that, under state or local law, has a completed mortgage or tax foreclosure process and is currently owned by the lender or mortgagee. A foreclosure is not considered to be complete until after the property title has been transferred from the former owner under a foreclosure proceeding or transfer in lieu of foreclosure.

The following are the eligible activities under the City of Modesto NSP:

| NSP-Eligible Uses   | Correlated Eligible Activities From the CDBG Entitlement Regulations  |
|---|---|
| (A) Establish financing mechanisms for purchase and redevelopment of foreclosed upon homes and residential properties, including such mechanisms as soft-second, loan loss reserves, and shared equity loans for low- and moderate-income home buyers | As part of an activity delivery cost for an eligible activity as defined in 24 CFR 570.206. Also, the eligible activities listed below to the extent financing mechanisms are used to carry them out.   |
| (B) Purchase and rehabilitate homes and residential properties that have been abandoned or foreclosed upon, in order to sell, rent, or redevelop such homes and properties  | <ul style="list-style-type: none"> <li>• 24 CFR 570.201</li> <li>(a) Acquisition;(b) Disposition; (i) Relocation , and (n) Direct homeownership assistance (as modified below);</li> <li>• 570.202 eligible rehabilitation and preservation activities for homes and other residential properties (HUD notes that rehabilitation may include counseling for those seeking to take part in the activity</li> </ul> |

The activities undertaken by the City of Modesto under its NSP meet the NSP National Objective of providing assistance to “low-, moderate-, and middle-income households” (abbreviated as LMMH). For the purposes of NSP/CDBG only, an activity may meet the HERA low- and moderate income national objective if the assisted activity:

- provides or improves permanent residential structures that will be occupied by a household whose income is at or below 120 percent of area median income (abbreviated as LMMH);
- serves an area in which at least 51 percent of the residents have incomes at or below 120 percent of area median income (LMMA);
- creates or retains jobs for persons whose household incomes are at or below 120 percent of median income (LMMJ); or
- serves a limited clientele whose incomes are at or below 120 percent of area median income (LMMC).

#### 1.4 City of Modesto Responsibilities

The City of Modesto as the HUD grantee, has oversight and implementation responsibility of all NSP activities and, is responsible for:

- Providing financial mechanisms to developers to housing developer partners purchase foreclosed properties from REO lenders and servicers;
- Providing funds to housing developer partners to rehabilitating acquired properties;
- Providing financial assistance to qualified homebuyers to acquire and rehabilitate foreclosed properties.

The City's activities are responsible for meeting the NSP requirement that not less than 25% of the city's NSP funds, approximately \$2+ million, be used to house individuals or families whose incomes do not exceed 50 percent of area median income.

To be successful the City of Modesto must be committed to effective management practices. These include: (1) supporting cooperative, problem-solving relationships; (2) working toward continuous improvement in regulatory compliance and timely program performance; (3) maintaining open and frequent communications among all participants; and (4) focusing on preventing problems first, rather than curing them later.

## **1.5 Summary of Principal Regulations Governing NSP/CDBG Administrative Systems**

Title III of Division B of the Housing and Economic Recovery Act, 2008 (HERA)

(Public Law 110-289, approved July 30, 2008) appropriates \$3.92 billion for emergency assistance for redevelopment of abandoned and foreclosed homes and residential properties, and provides under a rule of construction that, unless HERA states otherwise, the grants are to be considered Community Development Block Grant (CDBG) funds. The grant program under Title III is commonly referred to as the Neighborhood Stabilization Program (NSP). The key regulations that form the basic administrative requirements of the NSP/CDBG Entitlement programs are summarized here to acquaint the City with the sources of the various standards described in the Operations Manual.

Regulations are developed in response to, or in fulfillment of, Federal statutes that govern the CDBG Entitlement program, both those specific to the NSP and CDBG programs and those addressing other "cross-cutting" Federal laws or policies that apply to the these programs (e.g., National Environmental Policy Act, Americans with Disabilities Act, Davis-Bacon Act).

The basic program regulations governing management and financial systems for the CDBG program are contained in 24 CFR Part 570, Subparts J and K. They are applicable both to grantees and subrecipients in the public and private sectors:

- Subpart J (24 CFR 570.500–570.513) addresses general responsibilities for grant administration, including the applicability of uniform administrative requirements, provisions of Subrecipient Agreements, program income, use of real property, record keeping and reporting, and closeout procedures.
- Subpart K (24 CFR 570.600–570.613) deals with other program requirements of the CDBG program, including civil rights; labor standards; environmental standards; flood insurance; relocation; displacement; acquisition; employment and contracting opportunities; lead-based paint; use of debarred, suspended, or ineligible contractors; uniform administrative requirements and cost principles; and conflicts of interest.

In addition to the basic regulations of the CDBG program contained in 24 CFR Part 570, there are three other categories of requirements that affect the administrative systems and procedures subrecipients must have in place to receive support:

- Federal regulations governing administrative and audit requirements for grants and cooperative agreements (governmental subrecipients) for which HUD has oversight responsibilities.
- Administrative circulars from the Office of Management and Budget (OMB) and Department of the Treasury governing cost principles, administrative systems, fiscal procedures, and audit requirements for grantees and subrecipients.
- Executive Orders from the Office of the President implementing various equal employment opportunity and environmental policies.

The applicability of these administrative requirements depends upon the public or private status of the organization receiving funds. For subrecipients that are private, non-profit organizations,<sup>1</sup> the key regulations defining administrative requirements are:

- 24 CFR Part 84 “Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-profit Organizations”<sup>2</sup>: These regulations implement OMB Circular A-110 and specify standards relative to cash depositories, bonding and insurance, retention and custodial requirements for records, financial management systems, monitoring and reporting on performance, property management, and procurement.
- OMB Circular A-122 “Cost Principles for Non-profit Organizations”: A publication of OMB, this document establishes principles for determining costs that are allowed to be charged to Federal grants, contracts, and other agreements with non-profit organizations (except educational institutions). The principles are designed to ensure that the Federal Government will bear its fair share of costs except where restricted or prohibited by law.
- OMB Circular A-133 “Audits of States, Local Governments and Non-profit Organizations”: This circular defines audit requirements for both governments and non-profits receiving Federal funds. The document addresses mandated frequency and scope of audits, allowability of audit costs, and the process of auditor selection. The above referenced sections of Title 24 regulations and OMB circulars may be accessed at the HUD Web site at <http://www.hudclips.org/cgi/index.cgi>.

## **1.6 Acquisition of Properties Using NSP1 Funds**

### **1.6.1 Acquisition, Sales Contracts, and Obligations**

The City of Modesto must have executed sales contracts for specific properties for funds to be considered obligated. Options or other non-binding instruments are not acceptable.

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<sup>1</sup> Not all the requirements of 24 CFR Parts 84 and 85 are applicable to CDBG subrecipients; 24 CFR 570.502(a) and (b) specify the sections and paragraphs of the Common Rule that apply to CDBG recipients and subrecipients.

### 1.6.2 Appraisals and Discount Requirements

Properties acquired using NSP funds shall be appraised in conformity with the appraisal requirements of the Uniform Relocation Act (URA) at 49 CFR 24.103 by a licensed appraiser within sixty (60) days prior to an offer to purchase the property. Further guidance may be found at:

[http://www.hud.gov/offices/cpd/communitydevelopment/programs/neighborhoodspg/docs/appraisal\\_guidance.doc](http://www.hud.gov/offices/cpd/communitydevelopment/programs/neighborhoodspg/docs/appraisal_guidance.doc).

The market appraised value of properties may be established based on a review of available data and shall be made by a person knowledgeable of and with experience in property valuation that the City determines is qualified to make the valuation.

NSP requires that properties acquired using program funding be purchased **at a discount of at least 1% from the current market appraised value of the home or property**. The City of Modesto will require documentation to ensure the discount requirement is met including the address, appraised value, purchase offer amount, and discount amount for each property. The discount value calculation may take into account the likely carrying costs of the mortgagee if it were to NOT sell the property to the applicant. Carrying costs may include: taxes, insurance, maintenance, marketing, overhead and interest.

### 1.6.3 Voluntary Transactions and Tenants

ALL NSP-assisted property acquisitions must be voluntary acquisitions. Taking of property through eminent domain proceedings is NOT allowed. The Uniform Relocation Act requires that notices are provided to property owners even those considered to be voluntary transactions. The notices can be found at: <http://www.hud.gov/offices/cpd/library/relocation/nsp/index.cfm>. URA and Section 104(d) and 5305(a)(11) of Title I of the Housing and Community Development Act of 1974, as amended, and the implementing regulations at 24 CFR Part 570.496(a) (the Barney Frank Amendment) govern the permanent displacement as well as temporary relocation of tenants in properties funded by NSP. For more information, refer to <http://www.hud.gov/offices/cpd/library/relocation/nsp/index.cfm>. In addition, ARRA includes additional provisions protecting the rights of property owners and “bona fide” tenants.

### 1.6.4 Tenant Rights and Protections

The following requirements apply to any foreclosed upon dwelling or residential real property that was acquired by the initial successor in interest pursuant to the foreclosure after February 17, 2009 and was occupied by a *bona fide* tenant at the time of foreclosure. The initial successor in interest in a foreclosed upon dwelling or residential real property shall provide a notice to vacate to any *bona fide* tenant at least 90 days before the effective date of such notice. The initial successor in interest shall assume such interest subject to the rights of any *bona fide* tenant, as of the date of such notice of foreclosure: (i) under any *bona fide* lease entered into before the notice of foreclosure to occupy the premises until the end of the remaining term of the lease, except that a successor in interest may terminate a lease effective on the date of sale of the unit to a purchaser who will occupy the unit as a primary residence, subject to the receipt by the tenant of the 90-day notice under this paragraph; or (ii) without a lease or with a lease terminable at will under State law, subject to the receipt by the tenant of the 90-day notice under this paragraph, except that nothing in this section shall affect the requirements for termination of any Federal- or State-subsidized tenancy or of any State or local law that provides longer time periods or other additional protections for tenants.

In the case of any qualified foreclosed housing in which a recipient of assistance under Section 8 of the United States Housing Act of 1937 (42 U.S.C 1437f) (the “Section 8 Program”) resides at the time of foreclosure, the initial successor in interest shall be subject to the lease and to the housing assistance payments contract for the occupied unit. Vacating the property prior to sale shall not constitute good cause for termination of the tenancy unless the property is unmarketable while occupied or unless the owner or subsequent purchaser desires the unit for personal or family use.

If a public housing agency is unable to make payments under the contract to the immediate successor in interest after foreclosure, due to (A) an action or inaction by the successor in interest, including the rejection of payments or the failure of the successor to maintain the unit in compliance with the Section 8 Program or (B) an inability to identify the successor, the agency may use funds that would have been used to pay the rental amount on behalf of the family—(1) to pay for utilities that are the responsibility of the owner under the lease or applicable law, after taking reasonable steps to notify the owner that it intends to make payments to a utility provider in lieu of payments to the owner, except prior notification shall not be required in any case in which the unit will be or has been rendered uninhabitable due to the termination or threat of termination of service, in which case the public housing agency shall notify the owner within a reasonable time after making such payment; or (2) for the family’s reasonable moving costs, including security deposit costs.

A lease or tenancy shall be considered *bona fide* only if: (i) the mortgagor under the contract is not the tenant; (ii) the lease or tenancy was the result of an arm’s length transaction; and (iii) the lease or tenancy requires the receipt of rent that is not substantially less than fair market rent for the property.

The City of Modesto will maintain documentation of its efforts to ensure that the initial successor in interest in a foreclosed upon dwelling or residential real property has complied with the requirements under section K.2.a. and K.2.b. If the City of Modesto determines that the initial successor in interest in such property failed to comply with such requirements, it may not use NSP funds to finance the acquisition of such property unless it assumes the obligations of the initial successor in interest specified in section K.2.a. and K.2.b. If CITY OF MODESTO elects to assume such obligations, it must provide the relocation assistance required pursuant to 24 CFR 570.606 to tenants displaced as a result of an activity assisted with NSP funds and maintain records in sufficient detail to demonstrate compliance with the provisions of that section.

The recipient of any grant or loan made from NSP funds may not refuse to lease a dwelling unit in housing with such loan or grant to a participant under the Section 8 Program because of the status of the prospective tenant as such a participant.

This section shall not preempt any Federal, State or local law that provides more protections for tenants.

### **1.6.5 Energy Efficiency**

To the extent feasible, the City of Modesto will strongly encourage grantees to incorporate modern, green building, and energy-efficiency improvements in all NSP activities to provide for long-term affordability and increased sustainability and attractiveness of housing and neighborhoods.

## **CHAPTER 2.0: CITY OF MODESTO NSP1 ACTIVITIES**

### **2.1 Incentive Transfer Program - \$2,027,319**

#### **2.1.1 Summary**

This is an acquisition and rehabilitation activity that will specifically serve households at or below 50% of the median area income. This activity can be carried out in any of the greatest need areas and will be subject to ensuring compliance with CDBG regulation 24 CFR 570.202. The City of Modesto will enter into an Exclusive Agreement with the Housing Authority of the County of Stanislaus. All units will be owned and operated by the Housing Authority.

#### **2.1.2 Activity Purpose**

Acquisition and rehabilitation of foreclosed or abandoned properties located in areas of “greatest needs” as defined by HUD:

#### **Definitions:**

**Foreclosed:** A property “has been foreclosed upon” under HUD regulations “at the point that, under state or local law, the mortgage or tax foreclosure is complete. HUD generally will not consider a foreclosure to be complete until after the title for the property has been transferred from the former homeowner under some type of foreclosure proceeding or transfer in lieu of foreclosure, in accordance with state or local law.

**Abandoned:** Under HUD regulations “a home is abandoned when mortgage or tax foreclosure proceedings have been initiated for that property, no mortgage or tax payments have been made by the property owner for at least 90 days and the property has been vacant for at least 90 days.”

#### **2.1.3 Eligible Properties**

Existing single-family, duplex or condominiums. Properties built prior to 1978, may be subject to Lead Base Paint requirements. Units must be acquired at 1% below market-appraised value. All units must be appraised in accordance to URA appraisal standards at 24.103.

#### **2.1.4 Use of Funds**

Funds can buy scattered sites anywhere within the community to the requirement that 25% of the funding is utilized to serve those at and below 50% median area income. Funding will work on a draw system, as the Housing Authority has purchase agreements on properties, the city will provide funding.

#### **2.1.5 Income Limits**

50% of Median Area Household Income, adjusted for family size.

#### **2.1.6 Affordability Covenants**

The Incentive Transfer Program will have an affordability covenant of no less than 40 years. HOME regulations will be followed in determining all affordability covenants per 24 CFR 92.252 (e)(f).

#### **2.1.7 Property Requirements**

Property must meet applicable local codes, standards, and ordinances (at a minimum HQS).

**2.1.8 Timelines:**

- Must complete a minimum of ten (10) units.
- Allocate funding within 18 months, completely expended in four years.
- To meet ten (10) unit goal – five (5) units will need to be done within the first year, two the second, two the third and one unit in the fourth year.

**2.1.9 Monitoring**

- Project must meet National Objective
- Determining and documenting income
- Must monitor projects, partners

**2.2 Acquisition and Rehabilitation - Scattered and Target Areas**

*Airport/Weed and Seed - \$2,390,000 and Scattered Site - \$2,390,000*

**2.2.1 Summary**

This is an acquisition and rehabilitation activity that will benefit individuals and families whose incomes do not exceed 120 percent of Median Area Household Income, adjusted for family size.

This activity can be carried out in any of the greatest need areas and will be subject to ensuring compliance with CDBG regulation 24 CFR 570.202.

**2.2.2 Purpose**

Acquisition and rehabilitation of foreclosed or abandoned properties located in Airport/Weed and Seed and Scattered sites.

**2.2.3 Eligible Properties**

- Existing single-family, duplex or condominiums.
- Properties built prior to 1978, may be subject to Lead Base Paint requirements.
- Units must be acquired at 1% below market-appraised value.
- All units must be appraised in accordance to URA appraisal standards at 24.103.

**2.2.4 Income Limits**

120% of Median Area Household Income, adjusted for family size.

FY 2008 Income Limits for 120% of HUD Area Median Income

| 1 person household | 2 person household | 3 person household | 4 person household | 5 person household | 6 person household | 7 person household | 8 person household |
|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|
| \$50,050           | \$57,200           | \$64,350           | \$71,500           | \$77,250           | \$82,950           | \$88,700           | \$94,400           |

**2.2.5 Affordability Covenants**

HOME regulations will be followed in determining all affordability covenants per 24 CFR 92.252 (e)(f).

### **2.2.6 Property Requirements**

- Property must meet applicable local codes, standards, and ordinances (at a minimum HQS).
- Regulations established to rehab the homes meet Public Housing Standards or local codes whichever is greater, cap set at \$100,000 for rehabilitation.
- If the units become rental units, management plan has to be in place to ensure maintenance and adhere to regulations.

### **2.2.7 Procurement**

- Issue RFQ in May 2009 to establish list of qualified developers that are either for-profit or non-profit and experienced in housing. Must meet RFQ requirements including City of Modesto Insurance requirements
- Issue RFQ in May 2009 to establish list of qualified appraisers. Must meet the following requirements:
  - Fee appraiser must be state licensed or FIRREA certified
  - Use procurement to select contracted appraisers
  - Appraisals to include description of property, approaches to value, comparables, statement of value, date and signature
  - Conduct appraisal within 60 days prior to final offer

### **2.2.8 Project Review Process**

A sub-committee of the Citizens Housing and Community Development Committee has been assigned as the NSP Project Review Committee. This committee will review each project and make a recommendation for funding based on the programs selection criteria which translates the following items into a points scale: location, total project cost, proximity to other approved properties, unit size, project timeline, and an approved purchase agreement.

### **2.2.9 Monitoring**

- Project must meet National Objective
- Determining and documenting income
- Must monitor projects, partners

### **2.2.10 Loan Terms for For-Profit Organizations**

- The City of Modesto adopted the recapture option based on HOME regulations so that the remaining funding is repaid when the property is sold.
- If the equity gain is in excess of \$50,000, utilize an equity share clause to have 10% due back to the City minus the initial amount that the developer contributed.
- Defer first five years of the loan. Year six 3% simple annual interest begins only on the acquisition proportion of the loan, which will be amortized for 35 years of a 40-year loan.
- Defer the rehabilitation proportion of the loan for 15 years. Year 16, 3% simple annual interest begins only on the rehabilitation proportion of the loan which will be amortized for 24 years to conclude at the same time the acquisition proportion of the loan is due.
- Reasonable closing cost will be included in the loan.
- For Profit organizations are required to leverage 10% of the total loan amount.

### **2.2.11 Loan Terms for Non-Profit Organizations**

- Recapture clause to have the remaining balance paid upon sale of the property if the affordability covenant is not met with 0% for the first 5 years and 3% simple interest for years 6 on.
- Affordability period based on amount borrowed based on HOME regulations
- No payments due, if affordability period is met, the loan is turned into a grant and forgiven.
- Reasonable closing cost will be included in the loan.
- Loans may be converted to grants at the sole discretion of the City.

### **2.2.12 Loan Documentation Requirements**

- Developer Purchase Agreement
- Rehabilitation Budget and Timeline
- Preliminary Title report
- Home Inspection Report
- Pest Inspection Report
- Lead Base Paint Report (when applicable)
- Property Appraisal
- Payable Commissions Report
- Natural Hazard Reports (when applicable)

### **2.2.13 Rehabilitation Requirements**

Rehabilitation funds will be held back by the City according to the terms in the Loan Agreement. Funds to be disbursed to borrower, contractor/supplier for work completed as documented by progress inspections. City Rehabilitation staff will conduct inspections prior to release of funds.

All of the programs utilizing rehabilitation funding will have to adhere to current Housing Rehabilitation Policies.

## **2.3 Homebuyers Assistance Program (HAP) - \$491,031**

### **2.3.1 Summary**

This activity will provide gap financing to income-eligible households to purchase foreclosed properties, including funds for rehabilitation of the property. The homebuyer must qualify for a first mortgage and the City assistance will be a second mortgage. This activity will follow the existing down-payment assistance program that the City of Modesto administers and will comply with CDBG regulations 570.201 (n).

### **2.3.2 Activity Purpose**

The HAP provides assistance for acquisition and rehabilitation of foreclosed or abandoned properties located in areas of “greatest needs” as defined by HUD. Homebuyers must reside in the home as their principal residence.

### **2.3.3 Eligible Properties**

- Existing foreclosed or abandoned single-family units in residentially zoned greatest needs areas within the City of Modesto limits.

- The purchase price of the home or after rehabilitation value must not exceed 95% of median sales price for Modesto, as determined by HUD.
- Units must be acquired at 1% below market appraised value.
- All units must be appraised in accordance to URA appraisal standards at 49 CFR 24.103 and the appraisal must be within 60 days of the final offer.
- The property must be vacant at the time of listing.

#### **2.3.4 Income Limits**

120% of Median Area Household Income, adjusted for family size.

#### **2.3.5 Affordability Covenants**

HOME regulations will be followed in determining all affordability covenants per 24 CFR 92.252 (e)(f) The Affordability Period for the Homebuyer's Assistance Program is 15 years for all loans.

#### **2.3.6 Property Requirements**

- Property must meet applicable local codes, standards, and ordinances and must meet Housing Quality Standards upon purchase and/or rehabilitation of the property.
- Properties built prior to 1978, may be subject to Lead Based Paint requirements.

#### **2.3.7 Maximum Loan Amount**

This program provides gap financing up to \$125,000 including reasonable rehabilitation funds for repairs to the property

#### **2.3.8 Loan Terms**

- The interest is deferred for the first five years. In year six, the loan will begin to accrue interest at the rate of 2%. Payments will begin in year six and will be amortized over 25 years.
- If the home is sold, refinanced, transferred or no longer used as the primary residence during the affordability period, the loan is recaptured, with 2% simple interest calculated from year six
- At the completion of the Affordability Period, the balance of the assistance for down payment and closing costs could be forgiven. Homebuyers must be in good terms with first mortgage lender and the City loan.
- 1% contribution of sale price of the home by buyer.

#### **2.3.9 Loan Documentation Requirements**

- Purchase Agreement
- First Mortgage Loan Application, Good Faith Estimate and City Application
- First Mortgage Loan Approval
- Certificate of Completion for 8 hours of HUD Approved Homebuyer Counseling
- Credit Report
- Pay stubs, tax returns, verification of income, as applicable
- Bank Statements
- Appraisal which meets NSP guidelines, Pest Inspection, Property Inspection, and Lead Based Paint Assessment Report (for homes built prior to 1978)
- Preliminary Title Report

- Loan Documents including Promissory Note, Deed of Trust, Loan Agreement, and Covenants, Conditions and Restrictions, and Real Property Improvement Agreement for properties requiring City assistance for repairs.
- The first mortgage loan must be approved for the maximum possible amount and must be a fixed rate and cannot exceed 30 years.

### **2.3.10 Rehabilitation Requirements**

Rehabilitation funds will be held back by the City according to the terms in the Loan Agreement. Funds to be disbursed to borrower, contractor/supplier for work completed as documented by progress inspections. City Rehabilitation staff will conduct inspections prior to release of funds.

All of the programs utilizing rehabilitation funding will have to adhere to current Housing Rehabilitation Policies.

In addition to this Policies and Procedures please see Exhibit “A” NSP Down Payment Assistance Program Guidelines.

## **CHAPTER 3.0: PROCUREMENT AND CONTRACTING**

### **3.1 Introduction**

The Department of Housing and Urban Development (HUD) has established that procurement requirements for the National Stabilization Program (NSP) will follow Community Development Block Grant (CDBG) requirements. CDBG procurement requirements are outlined in 24 CFR 84.40-48.

Local governments and subrecipient entities are required to adhere to all applicable procurement requirements in the selection and award of contracts for goods and services. Therefore, all solicitation of bids for goods and services to be paid with NSP funds must be conducted openly and competitively.

### **3.2 General Procurement Provisions**

The standards and procedures for procurement are intended to ensure that supplies, equipment, construction and other services acquired in whole or in part with Federal funds are:

- Obtained as efficiently and economically as possible.
- Procured in a manner that provides, to the maximum extent practical, open and free competition.

Solicitations must clearly explain all requirements that the bidder must fulfill in order for his or her bid to be evaluated. Solicitations for goods and services must be based on a clear and accurate description of the material, product, or service to be procured, and cannot contain features which unduly restrict competition. Some of the situations considered to be restrictive of competition include, but are not limited to:

- Placing unreasonable qualifying requirements on firms.
- Requiring unnecessary experience and excessive bonding.
- Specifying only “brand name” products instead of allowing “an equal” product.

- Noncompetitive pricing practices between firms or affiliated companies.
- Noncompetitive awards to consultants on retainer contracts.

PLEASE NOTE: There is one exception to this. HUD is strongly encouraging grantees to use a Green Communities Standard for housing rehabilitation. Due to the newness of the field and the lack of knowledge among contractors and others about Green systems and components, rehabilitation specifications will identify specific products that have been tested and certified as Green.

### **3.3 Use of Local Businesses; Contracting with Small, Minority, and/or Women-Owned Businesses**

Federal regulations, both CDBG and non-CDBG, make it very clear that subrecipients should make every effort to use local business firms and contract with small, minority-owned and/or women-owned businesses in the procurement process. Specifically,

- A subrecipient must take affirmative steps to use small firms, minority-owned firms, women-owned firms, or labor surplus area firms in its CDBG-financed activities (24 CFR 85.36(e) or 84.44(b)). The efforts which a subrecipient should make include:
  - Incorporating such businesses in solicitation lists whenever they are potential sources.
  - Ensuring that such businesses are solicited when identified as potential sources.
  - Dividing procurement requirements, when economically feasible, to permit maximum participation of such businesses.
  - Requiring prime contractors, when subcontracts are let, to take affirmative steps to select such firms.
- In conformance with the requirements of Section 3 of the Housing and Community Development Act of 1968, to the greatest extent feasible, subrecipients must award contracts for work to be performed to eligible business concerns located in or owned by residents of the target area to ensure that the employment and other economic opportunities generated by Federal financial assistance for housing and community development programs shall, to the greatest extent feasible, be directed toward low- and very low-income persons, particularly those who are recipients of governmental assistance for housing (see 24 CFR 570.607(b)).

Subrecipients should note, however, that the desire to award contracts to local firms is not a legitimate excuse for avoiding an open and competitive procurement process.

### **3.4 Funding Disbursement**

The following processes will apply:

- Disbursement of NSP funds will occur only when all of the following conditions have been met:
  - Required environmental review process must be satisfactorily completed.
  - Project closing documents shall reflect a project completion date acceptable to the City of Modesto and the recipient of the NSP funds. The NSP Agreement will

outline the payment of the NSP funds, (e.g., how the funds will be disbursed, i.e., prorate share, etc.). The NSP Agreement must contain provisions for the timing of NSP fund disbursements.

- City staff must complete all Disaster Recovery Grant Reporting (DRGR) system set up procedures.
  - For rental activities the rehabilitation of the properties must be conducted by the development team and a City Rehabilitation Specialist will inspect the unit at different stages of the rehabilitation process until completion of the project.
  - All progress payments will be issued for work complete-to-date. No requests or payment(s) will be approved for work not completed. No requests will be approved for payment for any work completed that was not a part of the original contract or an approved by the City of Modesto Change Order. Change orders should be requested only for unforeseen problems and/or emergencies, not for upgrades.
- Retain age will be released within thirty (30) days after the final inspection is approved and upon City's receipt of all completion documentation.
  - For rental activities, the following completion documentation will be required prior to City's release of funds:
    - Certification of release of liens
    - Hazard insurance
    - Certificate of Occupancy issued by local jurisdiction, if applicable
    - Certification of final inspection.
  - For homebuyer activities, the following completion documentation will be required prior to City's release of funds:
    - Certification in release of liens
    - Hazard Insurance
    - Certification of Occupancy issued by local jurisdiction, if applicable, and
    - Certification of final inspection.
  - If any NSP-funded project has an available balance after acquisition and rehabilitation completion, The City of Modesto will deobligate those funds and reallocate such balance of NSP funds to other eligible activities according to City's adopted NSP allocation process. The City of Modesto must ensure that all NSP funds are obligated within 18 months after the execution of the grant agreement (date of our agreement with HUD or by September 20, 2010).

### **3.5 Contractor Requirements**

All general contractors working on all NSP-funded developments must have an active license issued by the California Contractor's Licensing Board (CSLB) as applicable and meet all requirements of contractors in the state of California. Contractors may not "share" a license. That is, the City of Modesto will not allow one contractor to work from another contractor's license. All City of Modesto NSP-funded projects must have a general contractor that is properly licensed by the California State Contractor's Licensing Board. Any questions regarding licensing issues

and a list of licensed contractors may be directed to the State Licensing Board at the following address:

Contractors State License Board  
9821 Business Park Drive  
Sacramento, CA 95827  
Phone (800) 321-CSLB

Any contractor or subcontractor who has been debarred by any entity or had a contractor license suspended by any entity within the previous twelve (12) months will be prohibited from participating in the NSP. All general contractors working on all NSP-funded developments must obtain one of the following: (1) a payment and performance bond; or (2) an Irrevocable Letter of Credit in the amount of the construction contract.

**Note:** Construction contracts for rehabilitation projects \$25,000 or under will not be required to obtain a payment and performance bond or an irrevocable letter of credit.

## CHAPTER 4.0: OTHER FEDERAL REQUIREMENTS

NSP awardees and funded projects must adhere to all applicable other Federal requirements as outlined in 24 CFR part 570, HERA, ARRA, and NSP guidance from HUD. Key requirements are summarized below.

### 4.1 Equal Opportunity and Fair Housing

The state shall not exclude any organization or individual from participation under any program funded in whole or in part by NSP funds on the grounds of age, disability, race, creed, color, national origin, familial status, religion, or sex.

The following federal requirements as set forth in 24 CFR 5.105(a), Nondiscrimination and Equal Opportunity, are applicable to NSP projects:

| Federal Requirements  |   |
|---|---|
| Fair Housing Act<br>24 CFR 100  | Executive Order 11246, as amended<br>(Equal Employment Opportunity Programs)<br>41 CFR 60 |
| Executive Order 11063, as amended<br>(Equal Opportunity in Housing)<br>24 CFR 107               | Section 3 of the Housing and Urban<br>Development Act of 1968;<br>24 CFR 135              |
| Title VI of the Civil Rights Act of 1964<br>(Nondiscrimination in Federal Programs)<br>24 CFR 1 | Executive Order 11625, as amended<br>(Minority Business Enterprises)                      |
| Age Discrimination Act of 1975<br>24 CFR 146  | Executive Order 12432, as amended<br>(Minority Business Enterprises)                      |
| Section 504 of the Rehabilitation Act of 1973<br>24 CFR 8                                       | Executive Order 12138, as amended<br>(Women's Business Enterprise) <sup>2</sup>           |

In addition to the above requirements, all NSP participants must ensure that their Equal Opportunity and Fair Housing policies related to activities funded by NSP are consistent with the current Consolidated Plan adopted by their jurisdiction or the State Consolidated Plan.

## **4.2 Affirmative Marketing**

Any entity applying for NSP funds must adopt affirmative marketing procedures and requirements for all NSP-assisted housing and submit the affirmative marketing plan with the NSP application. The affirmative marketing plan and requirements for NSP-assisted housing must be approved by the City of Modesto prior to any NSP funds being committed to a development.

Affirmative marketing requirements and procedures must include ALL of the following:

- Methods for informing the public, owners, and potential tenants about fair housing laws and the policies of the local program;
- A description of what owners and/or the program administrator will do to affirmatively market housing assisted with NSP funds A description of what owners and/or the program administrator will do to inform persons not likely to apply for housing without special outreach;

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1 Section 3 requires that the employment and other economic opportunities generated by federal financial assistance for housing and community development programs shall, to the greatest extent feasible, be directed toward low and very low income persons, particularly those who are recipients of government assistance for housing.

2 Executive Orders 11625, 12432, and 12138 require that participating jurisdictions and local programs must prescribe procedures acceptable to HUD for a minority outreach program to ensure the inclusion, to the greatest extent possible, of minorities and women entities owned by minorities and women in all contracts. Local programs must also develop acceptable policies and procedures if their application is approved by the City of Modesto.

- Maintenance of records to document actions taken to affirmatively market NSP-assisted units and to assess marketing effectiveness
- A description of how efforts will be assessed and what corrective actions will be taken when requirements are not met.

## **4.3 Environmental Review**

In implementing NSP, the environmental effects of each activity must be assessed in accordance with the provisions of the National Environment Policy Act of 1969 and HUD's regulations at 24 CFR Part 58.

The City of Modesto, as the NSP grantee, will be responsible for carrying out environmental reviews for approved projects/programs. The City must request the release of funds (RROF) from HUD for any developments carried out by other types of entities. The City reserves the right to require a Phase I Environmental Study as part of the environmental review process. Applicants/awardees of NSP funds may NOT execute contracts for purchase of properties that may be funded with NSP until receiving written authorization from the City of Modesto to do so.

#### **4.4 Flood Plains/Wetlands**

NSP funds may generally not be invested in housing located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards. The City of Modesto discourages developments located in special flood hazard areas but, in some instances and with written permission from the City, houses located in a flood plain may be assisted. It is the responsibility of the applicant to evaluate any remedies to remove any properties from the flood plain and ensure the feasibility of the proposed plan. The City of Modesto is willing to consider the proposed remedy and must approve the proposal in writing prior to approval of any NSP allocation. The community must be currently participating in the National Flood Insurance Program, and flood insurance must be obtained and maintained on the NSP-assisted property for the full period of affordability.

#### **4.5 Lead-Based Paint Requirements**

The Lead-Based Paint Regulations described in 24 CFR Part 35 require that lead hazard evaluation and reduction activities be carried out for all developments constructed before 1978 and receiving NSP assistance. Applications for rehabilitation funds for existing buildings constructed prior to 1978 must include a lead hazard evaluation, by appropriate lead-certified personnel. The application must also include detailed lead hazard reduction plan, in accordance with the regulations, and separately identify within the rehabilitation budget, the costs associated with reduction of lead hazards in accordance with the regulation and guidelines. All NSP fund allocations will be contingent upon the applicant agreeing to complete lead hazard reduction, evidenced by a clearance report performed by appropriate lead-certified personnel. In a development where NSP funds will be used on only a portion of the units, the lead-based paint requirements apply to ALL units and common areas in the development.

#### **4.6 Labor Standards**

Davis-Bacon wage compliance and other federal laws and regulations pertaining to labor standards apply to all construction and rehabilitation contracts that are financed in whole or in part with NSP funds for residential property consisting of eight (8) or more NSP-assisted units. Davis-Bacon and related laws include the following:

- Davis-Bacon and Related Acts (40 USC 276a-276a-7)
- Contract Work Hours and Safety Standards Act (40 USC 327-333)
- Copeland (Anti-Kickback) Act (18 USC 874; 40 USC 276c)
- Fair Labor Standards Act of 1938, as amended (29 USC 201, et seq.)

The construction bids and contract for any NSP-assisted activity must contain the applicable wage provisions and labor standards. Davis-Bacon does not apply to projects using solely volunteer labor or to sweat equity projects. The City of Modesto will monitor all developments subject to Davis-Bacon requirements to ensure compliance with all applicable regulations.

#### **4.7 Debarment and Suspension**

The City of Modesto will require participants in lower-tier transactions covered by 24 CFR 24 to certify that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from any entity from a federally funded transaction.

Any participant that remains on a debarred or suspended condition shall be prohibited from participation in the City of Modesto NSP as long as they are classified in this manner.

#### **4.8 Relocation**

NSP funds are intended ONLY for use in purchasing/improving properties that have been abandoned and foreclosed. As such, most properties are expected to be vacant at the time of appraisal and offer to acquire. Should there be residents in any foreclosed property considered for NSP assistance, potential awardees must follow the residential anti-displacement and relocation plans in effect and outlined in the State's approved Consolidated Plan and all applicable Uniform Relocation Assistance and Real Property Acquisition Act (URA) of 1970 provisions. Applicable regulations can be found at 49 CFR Part 24.

#### **4.9 Audit**

The City of Modesto requires that non-profit recipients expending more than \$500,000 in Federal awards in a given fiscal year have an audit conducted in accordance with Generally Accepted Accounting Principles (GAAP) and the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507) and revised OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

#### **4.10 Reporting Requirements**

The City of Modesto is required to submit quarterly performance reports to HUD no later than thirty (30) days following the end of each quarter, beginning 30 days after the completion of the first full calendar quarter after grant award (i.e., August 1, 2009) and continuing until all funds are expended and the program is closed out. Accordingly, all NSP awardees will be required to submit during the projects process documentation to demonstrate their performance information to the City of Modesto by established deadlines conducive for the City to meet its reporting requirements. The required information will include, but not be limited to, the following:

- Project name
- Project activity
- Project location
- NSP Eligible use
- CDBG national objective
- Budgeted funds
- Expended funds
- Funding source
- Total amount of any non-NSP funds
- Numbers of properties and housing units assisted
- Beginning and ending dates of activities
- Numbers of low, moderate, and middle-income persons or households benefiting
- Demographic data for households benefiting

To collect the data elements and to meet its reporting requirements, the City of Modesto will use the online DRGR system to report on its NSP funds to HUD. When it submits the report to HUD, the City of Modesto will post a copy of the NSP DRGR report on the City's website for the public to review.

## 4.11 Program Income

### Program Income (24 CFR 570.503(a), (b)(3) and (7), and 570.504)

The term “program income” means any gross income received by the subrecipient that was directly generated from the use of NSP or CDBG funds (24 CFR 570.500(a)). This includes, but is not limited to:

- Proceeds from the sale or long-term lease of real property purchased or improved with CDBG funds.
- Proceeds from the disposition of equipment purchased with CDBG funds.
- Gross income from the use or rental of property acquired by the grantee or subrecipient with CDBG funds, less the costs incidental to the generation of such income.
- Gross income from the use or rental of property owned by the grantee or subrecipient that was constructed or improved with CDBG funds, less any costs incidental to the generation of such income.
- Payments of principal and interest on loans made using CDBG funds.
- Proceeds from the sale of loans made with CDBG funds.
- Proceeds from the sale of obligations secured by loans made with CDBG funds.
- Interest earned on program income, pending the disposition of such program income.
- Funds collected through special assessments made against properties owned and occupied by households not of low- and moderate-income, where such assessments are used to recover part or all of the CDBG portion of a public improvement.

Program income does not include (except for funds in lump-sum drawdown accounts), the interest earned on cash advances from the grantee or funds held in a revolving loan fund account. Such interest must be returned to the grantee for remittance to HUD.

When income is generated by an activity that is only partially assisted with CDBG funds, the income must be prorated to reflect the percentage of CDBG funds used to determine the portion that is program income.

The written agreement between the subrecipient and the grantee will specify whether any program income received by the subrecipient is to be returned to the grantee or retained by the subrecipient for use in carrying out CDBG activities.

If the program income is to be retained by the subrecipient, the written agreement will also specify what CDBG-eligible activities the subrecipient may undertake with the program income.

The receipt and expenditure of program income must be recorded by the subrecipient as part of its records of financial transactions.

When a subrecipient retains program income, such income must be used for any authorized activity before drawing down additional grant funds from the grantee, except in the case of a revolving fund. In the case of program income in a revolving fund, the subrecipient must use the program income for the activity for which the revolving fund was established, before drawing down additional grant funds for that activity.

At the expiration of the Subrecipient Agreement, any program income on hand or subsequently received by the subrecipient must be returned to the grantee.

#### **4.12 Monitoring**

During the period of affordability, the City of Modesto will perform on-site compliance and monitoring inspections of all single-family and multi-family developments utilizing NSP funds to determine compliance with the applicable regulations and requirements outlined in this manual and NSP regulations.

**Section 9 - Neighborhood Stabilization Program 2  
Policy and Procedure  
(NSP 2)**



**MODESTO**  
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