

## **AGREEMENT AND RESTRICTIVE COVENANT**

### **AGREEMENT NO.**

An Agreement and Restrictive Covenant running with the land between the CITY OF PORTLAND (CITY) and the HOUSING AUTHORITY OF PORTLAND (HAP) (SUBRECIPIENT) to finance the new construction of three units of affordable housing for persons and families living with HIV/AIDS.

### **RECITALS:**

1. The CITY has been awarded funds from the HOPWA program of the U.S. Department of Housing and Urban Development to fund projects within a six county area to assist individuals with HIV/AIDS.
2. HAP is developing a three-unit family project at SW 45<sup>th</sup> in Portland as housing for families living with HIV/AIDS as a service-enriched community residence.
3. The legal description of the property is as follows:

*A tract of land in the Northwest quarter of the Southwest quarter of Section 20, Township 1 South, Range 1 East of the Willamette Meridian, in the City of Portland, Multnomah County, Oregon, described as follows:*

*Beginning at a point 10 feet East and 952.5 feet South of the one-quarter section corner between Sections 19 and 20 T.1S., R.1E; thence South, parallel with the West line of said Section 20, a distance of 40 feet to an iron pipe; thence East 181.93 feet, more or less, to an iron pipe; thence North 40 feet to an iron pipe; thence West 181.93 feet to an iron pipe and the point of beginning.*

4. HAP is a community leader in the development and provision of housing to residents with special needs, including people living with HIV/AIDS. The facility to which this funding will apply has received financial commitments from the Portland Development Commission and others sufficient to meet identified expenses in the construction and operation of the facility.
5. HAP submitted a proposal for funding the construction and ongoing operation of the SW 45<sup>th</sup> triplex as part of a request for proposals issued by the CITY through the Bureau of Housing and Community Development. A citizen panel recommended that the CITY award \$100,000 in funding through the Housing Opportunities for Persons with AIDS (HOPWA) fund to this project.
6. Funding for this Agreement is available in the FY 2001-02 Housing and Community Development Budget in the Housing for Persons with AIDS Service Area under Housing Development. The Portland EMA HIV/AIDS Housing Committee has recommended funding of this Agreement.
7. In providing this financing, the CITY has foregone other opportunities to fund projects that would have resulted in long-term availability of affordable units for persons with HIV/AIDS. Stability of the inventory and preserving the feasibility and long-term affordability of existing

housing are important elements in the effective implementation of the HOPWA program.

AGREED:

NOW, THEREFORE, the parties agree and the SUBRECIPIENT does hereby impose upon the Project the following covenants, restrictions, charges, and easements, which shall run with the land and shall be binding and a burden upon the Project and all portions thereof, and upon any purchaser, grantee, owner or lessee of any portion of the Project and any other person or entity having any right, title or interest therein, for the length of time that this Agreement shall be in force and effect.

I. Definitions

- A. *Eligible Person* is a person living with HIV, AIDS or related diseases and the person's family with a gross household income at or below 50% of the area median income for the Portland-Vancouver area as published by HUD.
- B. *Family* means a household composed of two or more related persons and also includes one or more eligible person living with another person or persons who are determined to be important to their care or well being.
- C. *HOPWA Units* means the three rental units within the facility described above that are designated for occupancy solely by eligible persons. Residents of the HOPWA Units may be referred to in this Agreement as *HOPWA Tenants*.
- D. *Minimum use period* for the Project is sixty years from the date that the Project obtains certificate of occupancy.
- E. *Monthly adjusted income* means a household's gross monthly income, adjusted for factors such as age, medical expenses, size of the family and child care expenses pursuant to 24 CFR 813.102 (1997).
- F. *Project* means the three HOPWA units located upon the land described above.

II. Scope of Services: HAP will construct, own and operate the three HOPWA units comprising the facility known at signing as SW 45<sup>th</sup> Housing to be constructed at the location indicated above in this agreement. The Project shall include one two-bedroom unit and two three-bedroom units. The ongoing operation of the three HOPWA units as a community residence for permanent housing may be provided in whole or part by HAP's designee, but HAP, as owner, will ensure that it will be conducted in a manner consistent with all regulations governing the Housing Opportunities for Persons with AIDS Program contained at 24 CFR Part 574. HAP shall specifically ensure operation of the HOPWA units as follows:

- A. Occupants: The HOPWA units shall be designated for occupancy by an eligible person at all times during the minimum use period.

B. Supportive Services:

1. At all times during the minimum use period, HAP or any subsequent owner of the HOPWA units covered by this agreement, shall itself provide, or shall maintain an agreement with a qualified service provider to provide, appropriate supportive services to the residents of the HOPWA Units.
  - (a) The provision of supportive services to the residents of the HOPWA units is mandated by the HOPWA regulations and is subject to the Bureau of Housing and Community Development approval and monitoring.
  - (b) Any Supportive Services Agreement or Plan will set out the roles of parties, the terms upon which supportive services will be rendered, and any designation of duties under this Agreement such as tenant selection, screening, tenant placement priority, or rent calculation under this Agreement. If any term of the Supportive Services Agreement or Plan conflicts with or violates this Agreement, the terms of this Agreement shall continue to define SUBRECIPIENT's obligations.
  - (c) Appropriate supportive services include, but are not limited to, providing access to: health, mental health, assessment, permanent housing placement, , housing rental payment assistance, housing crisis intervention, drug and alcohol abuse treatment and counseling, day care, personal assistance, nutritional services, intensive care when required, and assistance in gaining access to local, state and federal government benefits and services, except that health services may only be provided to individuals with AIDS/HIV or related diseases and not to family members of these individuals.
2. If the SUBRECIPIENT wishes to cancel the service provider agreement with an existing provider, to substantially change an approved Supportive Service Plan, or to enter into an agreement with a new certified service provider, the SUBRECIPIENT must provide written notice to the Bureau of Housing and Community Development prior to taking such action.
3. SUBRECIPIENT or its designee will conduct an ongoing assessment of the housing assistance and supportive services required by tenants in the HOPWA units and shall update its services plans and agreements as necessary to appropriately meet current requirements.
4. If, at any time during the minimum use period, the SUBRECIPIENT is unable to maintain a written service contract with a certified service provider or to provide supportive services itself pursuant to its plan, the SUBRECIPIENT shall use its best efforts to locate and enter into a written service contract or correct the deficiencies. The CITY, upon request, shall assist the SUBRECIPIENT in finding the service provider or correcting the deficiencies. If the SUBRECIPIENT does not itself provide sufficient services, the SUBRECIPIENT shall have 90 days after written notice from the CITY to provide the written certifications or complete a written service contract. If compliance is not achieved within such 90-day period, at the option of the CITY, the SUBRECIPIENT shall reimburse the CITY a pro-rated value of the full contract amount of \$100,000. Notwithstanding the foregoing, if the default by the SUBRECIPIENT results from the inability of the SUBRECIPIENT or the CITY to find a service provider acceptable to the CITY in its reasonable discretion within the 90 day period, the period for correcting the deficiency shall be increased by whatever time it

takes for the SUBRECIPIENT to find such a service provider reasonably acceptable to the CITY. In such event, if the CITY locates a service provider which in the CITY's reasonable discretion is a suitable service provider and the SUBRECIPIENT does not enter into a written service contract within 45 days thereafter, the SUBRECIPIENT shall reimburse the CITY as provided herein.

- C. Housing Quality Standards: The three HOPWA units shall comply with the habitability standards set out in 24 CFR 574.310(b) (1997) or in any superseding regulations.

- D. Rents

- 1. Tenant Contribution to Rent:

- (a) HAP or its designee shall certify the gross monthly household incomes of prospective tenants of the HOPWA units before entering into a lease agreement and shall otherwise obtain certifications to make sure they are eligible persons. SUBRECIPIENT or its designee shall calculate and certify the monthly adjusted income of each household who will occupy a HOPWA unit for the purpose of calculating their tenant contribution to rent at the time of initial occupancy and shall recertify the monthly adjusted income and tenant contribution to rent at least annually and more often as necessary to avoid any hardship to tenants whose incomes decline between annual recertifications.

- (b) Tenant contributions to rent in the HOPWA units, including utilities, shall be the greater of:

- (1) 30 percent of the household's monthly adjusted income.

- (2) 10 percent of the household's monthly gross income; or

- (3) If the household is receiving payments for welfare assistance from a public agency and a part of the payments, adjusted in accordance with the household's actual housing costs, is specifically designated by the agency to meet the household's housing costs, the portion of the payments that is designated.

- (c) Any basic utilities not included in the unit rent shall be offset from the Tenant contribution by a utility allowance derived by a method approved by the CITY.

- 2. Unit rents may be set by the SUBRECIPIENT for the purpose of calculating tenant-based subsidies or for other reasons relating to the operation of the Project. Units shall not be greater than the HUD-defined rent standard in the Portland-Vancouver area that is affordable to a very low-income household (50% AMI) of the size likely to occupy a unit of that configuration.

- E. Leases: Lease agreements in the HOPWA units shall be for a period of no less than one year and shall be renewable at the sole option of the tenant. Lease agreements for the HOPWA units shall comply with, and shall provide



adequate notice to all HOPWA tenants of, the following requirements that are binding upon SUBRECIPIENT in the operation of the HOPWA units:

1. Termination of eligible person: SUBRECIPIENT may only terminate assistance to eligible persons residing in HOPWA units, including the refusal to renew an existing lease, if the eligible person or his or her family violates reasonable conditions of occupancy. SUBRECIPIENT must ensure that supportive services are provided prior to any proposed termination, so that an eligible person's housing assistance is terminated only in the most severe cases. Termination by SUBRECIPIENT must be made upon written notice containing a clear statement of the reasons for termination, must be carried out in compliance with the requirements of Oregon Law and must accord the tenant with all of his or her rights to due process of law.
2. Increased need for care: If the SUBRECIPIENT becomes aware that a tenant with HIV or AIDS in a HOPWA unit requires more intensive care than can be provided at the Project, the SUBRECIPIENT or its designee shall reasonably attempt to assist the client in locating a care provider who can appropriately care for the individual and shall refer the individual to the care provider.
3. Termination of Assistance to Surviving Family Members: With respect to the surviving family member or members living in a HOPWA unit with the person with AIDS at the time of his or her death, housing assistance and supportive services shall continue for a grace period of at least six months following the death of the eligible person with AIDS. SUBRECIPIENT may extend the grace period up to an additional six months and shall notify the family of the duration of their grace period in writing. SUBRECIPIENT may assist the family with information on other housing resources and with moving expenses.
4. Fees and Deposits: No fees, except rent, will be charged of any eligible person for any housing or services provided by SUBRECIPIENT. SUBRECIPIENT can require a Security Deposit pursuant to the rules and limitations under Oregon Law. SUBRECIPIENT shall make all reasonable efforts to insure that the collection of a Security Deposit does not serve as a barrier to housing eligible persons and their families.
5. Household Income Increase: If, after initial occupancy, the gross household income of a tenant occupying a HOPWA unit rises above 50% of the median family income for the Portland-Vancouver area as published by HUD, then that tenant family may continue to reside in the HOPWA unit and will pay as their contribution to rent and utilities an amount equal to the unit rent, as established by SUBRECIPIENT. If the gross household income of a tenant family rises above 80% of the area median family income, then the SUBRECIPIENT or its designee shall provide adequate notice to that family that they are no longer eligible to live in the HOPWA unit and shall form a plan with that family for timely relocation from the HOPWA unit. Under no circumstances shall a HOPWA unit be

occupied by a family whose household income is greater than 80% of the area median income, except on an interim basis to avoid hardship

6. Confidentiality: SUBRECIPIENT shall take all reasonable necessary steps, except as otherwise required by law, to ensure the confidentiality of the name of any individual who is a tenant in the HOPWA units or seeks to become one.
- F. Minimum Use Period: The housing units assisted under this agreement must be maintained as a community residence to provide housing for eligible persons, and the SUBRECIPIENT must provide supportive services for individuals with HIV/AIDS or engage a service provider to provide such services for a period not less than the Minimum Use Period of sixty years.
1. The SUBRECIPIENT represents and warrants that the financing provided by the CITY is an inducement to the SUBRECIPIENT to operate the Project in accordance with this Agreement, and that the SUBRECIPIENT has induced the CITY to provide financing it otherwise would not have provided, by promising to operate the Project in accordance with this Agreement, and that the CITY has relied upon the enforceability of this Agreement in determining to provide financing to the SUBRECIPIENT in relation to the Project.
  2. The SUBRECIPIENT hereby declares its express intent that, during the term of this Agreement, the covenants, restrictions, charges and easements set forth herein shall be deemed covenants running with the land and shall pass to and be binding upon the SUBRECIPIENT's successors in title including any purchaser, grantee or lessee of any portion of the Project and any other person or entity having any right, title, or interest therein and upon their respective heirs, executors, administrators, devisees, successors and assigns and any other person or entity having any right, title or interest therein. Each and every contract, deed or other instrument hereafter executed covering or conveying the Project or any portion thereof or interest therein (other than a rental agreement or lease for a Dwelling Unit) shall contain an express provision making such conveyance subject to the covenants, restrictions, charges and easements contained herein; provided, however, that any such contract, deed or other instrument shall conclusively be held to have been executed, delivered, and accepted subject to such covenants, regardless of whether or not such covenants are set forth or incorporated by reference in such contract, deed, or other instrument.
  3. If the SUBRECIPIENT sells, transfers, or otherwise disposes of the Project or any portion thereof (other than by leasing or renting for individual tenant use as contemplated herein) without obtaining the prior written consent of the CITY, an Event of Default shall occur under the terms of this Agreement, and the remedies provided for such default herein may be exercised. The CITY shall not unreasonably withhold or delay its consent which may be conditioned upon, but is not limited to consideration of:
    - (a) Reasonable evidence that the SUBRECIPIENT is not in default hereunder; and
    - (b) Evidence satisfactory to the CITY that the transferee has the skills and capacity to fulfill the terms of this Agreement.
- G. Waiver of Minimum use period and desire to change use:
1. During the first ten years of the minimum use period: During the first ten years after

the date this agreement takes effect, The U.S. Department of Housing and Urban Development (HUD) or its successor agency shall have the final and sole authority to grant any waiver of the minimum use period and to relieve the SUBRECIPIENT of any obligations under the HOPWA program and the regulations implementing them. If, during the first ten years of the minimum use period, the SUBRECIPIENT or subsequent owner of the Project determines that the HOPWA units are no longer needed to provide supported housing or assistance for eligible persons, or the continued operation of the HOPWA units for such purposes is no longer feasible, the SUBRECIPIENT may request that the CITY apply to the Secretary of the Department of Housing and Urban Development for a waiver. The CITY will then apply for a waiver from the Secretary of the Department of Housing and Urban Development of the minimum use period or of any specific federal requirement if the CITY reasonably determines that the continued use or compliance specified by the SUBRECIPIENT is no longer feasible or necessary to carry out the purpose for which the Project was designed.

2. After the first ten years of the minimum use period:

- (a) After the expiration of the first ten years of the minimum use period, the CITY shall have the final and sole authority to grant a waiver of the minimum use period or to waive any requirements or obligations set out in this agreement. If, after the expiration of the first ten years of the minimum use period, the SUBRECIPIENT or subsequent owner of the Project determines that the HOPWA units are no longer needed to provide supported housing or assistance to eligible persons, or the continued operation of the HOPWA units for such purposes is no longer feasible, the SUBRECIPIENT may apply to the Bureau of Housing and Community Development, as agent for the CITY, for a waiver of the minimum use period or of any specific obligations under this contract, including but not limited to the obligation to make the HOPWA units available solely to households containing at least one eligible person.
- (b) If the SUBRECIPIENT seeks a waiver from the obligation to make the HOPWA units available solely to households that include an eligible person or seeks a waiver from the obligation to calculate tenant contributions to rent as set out in this agreement, the SUBRECIPIENT's proposal shall include specific reasons why continued operation is no longer feasible or desirable and supporting documentation and shall propose substitute requirements and an alternative use that targets a specific population in need of housing for the remainder of the minimum use period.
- (c) The CITY shall only approve such a waiver if it finds that continued use is no longer feasible or desirable to accomplish the purpose of serving those with urgent housing needs, and that the SUBRECIPIENT or its successor will bind itself and the HOPWA units to appropriate requirements that will accomplish the purpose of serving those with the most urgent housing needs practicable. In no event shall the CITY approve a waiver of the minimum use period or any requirement that would result in the SUBRECIPIENT making the HOPWA units available to households with incomes greater than 80% of the median family income for the Portland-Vancouver area.

- H. Event of Default During Minimum Use Period: If the SUBRECIPIENT substantially violates this Agreement during the minimum use period by changing use to a facility not providing the housing specified in Section A for individuals with HIV/AIDS, selling or transferring ownership without the proper waiver from either the CITY or HUD, charging rents in violation of the terms of this Agreement, or by engaging in any other actions that materially violate this agreement, such action shall constitute an Event of Default and the remedies provided herein for such default may be exercised.

### III. Time Line

- A. Construction of the facility and of the HOPWA units has begun.
- B. SUBRECIPIENT anticipates completion of construction by May, 2002.
- C. SUBRECIPIENT anticipates initial occupancy by June 2002.

### IV. Performance Measures

- A. Three units will be constructed, rented and designated for occupancy by eligible persons and their families.
- B. SUBRECIPIENT or designee will maintain records regarding initial and subsequent clients, including income, demographic and housing outcome information during the minimum use period.
- C. One hundred percent (100%) of the households living in these units will experience improved housing circumstances defined as one or more of the following:
  - 1. Rent no greater than 30% of family income during their tenure;
  - 2. Housing which is decent, safe and sanitary and meets any specific needs relating to the tenants; and
  - 3. Enhanced stability or security of housing at the point they move from the units.
- D. These units will remain affordable and in good condition for the minimum use period.

### V. Reporting Requirements:

- A. SUBRECIPIENT will submit quarterly progress reports during construction. Quarterly reports shall be due 30 days from the end of each quarter, Jul – Sept, Oct – Dec, Jan – Mar, Apr – June.
- B. Upon completion of construction and within 90 days of occupancy, SUBRECIPIENT shall provide a completed HOPWA Program Report in the form provided as Attachment A.

### VI. Method of Payment: The CITY will provide financing to SUBRECIPIENT for Project construction and operating expenses in accordance with the Budget below:

Construction, Eligible Soft Costs and the pre-funding of a Project Operating Reserve Account, not to exceed \$100,000.

The CITY will pay to SUBRECIPIENT an amount of up to \$100,000 upon receipt of a request for payment accompanied by sufficient evidence that eligible expenses have been incurred.

- A. All funds received by SUBRECIPIENT must be disbursed within three business days of receipt and must be applied to reduce the private indebtedness of the Project or placed in a Project Operating Reserve Account.
- B. Any changes to the approved budget must be approved in writing by the CITY Project Manager before expenditure of funds in new amounts or line items.
- C. Total amount to be paid by the CITY under this Agreement shall not exceed ONE HUNDRED THOUSAND DOLLARS (\$100,000).

VII. CITY Project Manager

- A. The CITY Project Manager shall be Andy Miller, or such person as shall be designated in writing by the Director of the Bureau of Housing and Community Development.
- B. The CITY Project Manager is authorized to approve work and billings hereunder, to give notices referred to herein, to terminate this Agreement as provided herein, and to carry out any other CITY actions referred to herein.

VIII. Remedies and Enforceability

- A. If the SUBRECIPIENT defaults in the performance of observance of any material covenant, agreement, or obligation of the SUBRECIPIENT set forth in this Agreement, and if such default remains uncured for a period of 30 days after the notice thereof shall have been given by the CITY to the SUBRECIPIENT, then the CITY may declare an Event of Default to have occurred hereunder and, at its option, may take any one or more of the following steps, such election not to be exclusive:
  - 1. By mandamus or other suit, action or proceeding at law or in equity, require the SUBRECIPIENT to perform its obligations and covenant hereunder, or enjoin any acts or things that may be unlawful or in violation of the rights of CITY hereunder;
  - 2. Have access to and inspect, examine, and make copies of all of the books and records of the SUBRECIPIENT pertaining to the Project;
  - 3. Seek money damages, including but not limited to the full return of the financing provided by the CITY, irrespective of the time that has passed since the financing was provided;
  - 4. Take such other action available at law or in equity as may appear necessary to enforce the obligations, covenants, and agreements of the SUBRECIPIENT hereunder, including but not limited to petition for the appointment of a Receiver who shall have a right to enter the Project upon appointment.

- B. In the event of default by the SUBRECIPIENT, the CITY or any entity succeeding to the CITY's functions may institute and prosecute any proceeding at law or in equity to abate, prevent or enjoin any such violation or attempted violation, or to recover monetary damages caused by such violation or attempted violation, such damages to include but not be limited to all costs, expenses including but not limited to staff and administrative expense, fees including but not limited to all reasonable attorney fees, that may be incurred by the CITY or any other party enforcing or attempting to enforce this Agreement following any Event of Default on the part of the SUBRECIPIENT or its successors, whether the same shall be enforced by suit or otherwise; together with all such costs, fees and expenses that may be incurred in connection with any amendment to this Agreement at the request of the SUBRECIPIENT.

IX. General Contract Provisions

- A. **TERMINATION FOR CAUSE.** In accordance with 24 CFR 85.43, if, through any cause, the Subrecipient shall fail to fulfill in timely and proper manner his/her obligations under this Contract, or if the Subrecipient shall violate any of the covenants, agreements, or stipulations of this Contract, the City may avail itself of such remedies as cited in 24 CFR 85.43 by giving written notice to the Subrecipient of such action and specifying the effective date thereof at least 30 days before the effective date of such action. In such event, all finished or unfinished documents, data, studies, and reports prepared by the Subrecipient under this Contract shall, at the option of the City, become the property of the City and the Subrecipient shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents.

Notwithstanding the above, the Subrecipient shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of the Contract by the Subrecipient, and the City may withhold any payments to the Subrecipient for the purpose of setoff until such time as the exact amount of damages due the City from the Subrecipient is determined.

- B. **TERMINATION FOR CONVENIENCE.** In accordance with 24 CFR 85.44, the City and Subrecipient may terminate this contract at any time by mutual written agreement. If the Contract is terminated by the City as provided herein, the Subrecipient will be paid an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of the Subrecipient covered by this Contract less payments of compensation previously made.
- C. **ENFORCEMENT AND REMEDIES.** In the event of termination under section A hereof by the City due to a breach by the Subrecipient, then the City may complete the work either itself or by agreement with another subrecipient, or by a combination thereof. In the event the cost of completing the work exceeds the amount actually paid to the Subrecipient hereunder plus the remaining unpaid balance of the compensation provided herein, then the Subrecipient shall pay to the City the amount of excess. Allowable costs shall be determined in accordance with 24 CFR 85.43(c).



The remedies provided to the City under sections A and C hereof for a breach by the Subrecipient shall not be exclusive. The City also shall be entitled to any other equitable and legal remedies that are available.

In the event of breach of this contract by the City, then the Subrecipient's remedy shall be limited to termination of the contract and receipt of payment as provided in section B hereof.

In the event of termination under Section A, the City shall provide the Subrecipient an opportunity for an administrative appeal to the Bureau Director.

- D. **CHANGES.** The City or Subrecipient may, from time to time, request changes in writing in the scope of services or terms and conditions hereunder. Such changes, including any increase or decrease in the amount of the Subrecipient's compensation, shall be incorporated in written amendments to this contract. Changes to the scope of work, budget line items, timing, reporting, or performance measures may be approved by the Project Manager. Significant changes to the scope of work, performance measures, or compensation must be approved by ordinance of the City Council.
- E. **NON-DISCRIMINATION and EQUAL OPPORTUNITY.** During the performance of this Contract, the Subrecipient agrees as follows:
1. The Subrecipient will comply with the non-discrimination provisions of Title VI of the Civil Rights Act of 1964 (24 CFR 1), Fair Housing Act (24 CFR 100), and Executive Order 11063 (24 CFR 107).
  2. The Subrecipient will comply with prohibitions against discrimination on the basis of age under Section 109 of the Act as well as the Age Discrimination Act of 1975 (24 CFR 146), and the prohibitions against discrimination against otherwise qualified individuals with handicaps under Section 109 as well as section 504 of the Rehabilitation Act of 1973 (24 CFR 8).
  3. The Subrecipient will comply with the equal employment and affirmative action requirements of Executive Order 11246, as amended by Order 12086 (41 CFR 60). Furthermore, the Subrecipient certifies it has adopted procedures to ensure that all persons who qualify for assistance, regardless of their race, color, religion, sex, age, national origin, familial status, or handicap, know of the HOPWA program, including facilities and services accessible to persons with a handicap, and maintain evidence of implementation of these procedures.
  4. The Subrecipient will comply with the equal employment and non-discrimination requirements of Portland City Code Sections 3.100.005 (City Policies Relating to Equal Employment Opportunity, Affirmative Action and Civil Rights), 3.100.042 (Certification of Contractors), and Chapter 23 – Civil Rights.
- F. **SECTION 3:** The Subrecipient will comply with the training and employment guidelines of Section 3 of the Housing and Urban Development Act of 1968, as amended (12U.S.C. 1701a), and regulations pursuant thereto (24 CFR Part 135).
- G. **ACCESS TO RECORDS.** The City, HUD, the Comptroller General of the United

States, or any of their duly authorized representatives, shall have access to any books, general organizational and administrative information, documents, papers, and records of the Subrecipient which are directly pertinent to this contract, for the purpose of making audit or monitoring, examination, excerpts, and transcriptions. All required records must be maintained by the Subrecipient for four years after the City makes final payments and all other pending matters are closed.

- H. **MAINTENANCE OF RECORDS.** The Subrecipient shall maintain fiscal records on a current basis to support its billings to the City. The Subrecipient shall retain fiscal as well as all records relating to program management and operation, program beneficiaries, demographics and eligibility for inspection, audit, and copying for 4 years from the date of completion or termination of this contract. The City or its authorized representative shall have the authority to inspect, audit, and copy on reasonable notice and from time to time any records of the Subrecipient regarding its billings or its work here under.

- I. **AUDITS.** The Subrecipient is subject to the audit requirements of 24 CFR 45.

Also, the City, either directly or through a designated representative, may audit the records of the Subrecipient at any time during the 4 year period established by Section H above.

If an audit discloses that payments to the Subrecipient were in excess of the amount to which the Subrecipient was entitled, then the Subrecipient shall repay the amount of the excess to City.

- J. **INDEMNIFICATION.** The Subrecipient shall hold harmless, defend, and indemnify the City and the City's officers, agents and employees against all claims, demands, actions, and suits (including all attorney fees and costs) brought against any of them arising from the Subrecipient's work or any subcontractor's work under this contract.

- K. **LIABILITY INSURANCE.**

(a) The Subrecipient shall maintain public liability and property damage insurance that protects the Subrecipient and the City and its officers, agents, and employees from any and all claims, demands, actions, and suits for damage to property or personal injury, including death, arising from the Subrecipient's work under this contract. The insurance shall provide coverage for not less than \$200,000 for personal injury to each person, \$500,000 for each occurrence, and \$500,000 for each occurrence involving property damages; or a single limit policy of not less than \$500,000 covering all claims per occurrence. The limits of the insurance shall be subject to statutory changes as to maximum limits of liability imposed on municipalities of the state of Oregon during the term of the agreement. The insurance shall be without prejudice to coverage otherwise existing and shall name as additional insureds the City and its officers, agents, and employees. Notwithstanding the naming of additional insureds, the insurance shall protect each insured in the same manner as though a separate policy had been issued to each, but nothing herein shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured. The coverage must apply as to claims between insureds on the policy. The insurance shall provide that it shall not terminate or be canceled without 30 days written notice first being given to the City Auditor. If the insurance is canceled or terminated prior to completion of

the contract, Subrecipient shall provide a new policy with the same terms. Subrecipient agrees to maintain continuous, uninterrupted coverage for the duration of the contract. The insurance shall include coverage for any damages or injuries arising out of the use of automobiles or other motor vehicles by Subrecipient.

(b) The Subrecipient shall maintain on file with the City Auditor a certificate of insurance certifying the coverage required under subsection (a). The adequacy of the insurance shall be subject to the approval of the City Attorney. Failure to maintain liability insurance shall be cause for immediate termination of this agreement by the City.

In lieu of filing the certificate of insurance required herein, Subrecipient shall furnish a declaration that Subrecipient is self-insured for public liability and property damage for a minimum of the amounts set forth in ORS 30.270.

**L. WORKERS' COMPENSATION INSURANCE.**

(a) The Subrecipient, its subcontractors, if any, and all employers working under this Agreement are subject employers under the Oregon Worker's compensation law and shall comply with ORS 656.017, which requires them to provide worker's compensation coverage for all their subject workers. A certificate of insurance, or copy thereof, shall be attached to this Agreement and shall be incorporated herein and made a term and part of this Agreement. The Subrecipient further agrees to maintain worker's compensation insurance coverage for the duration of this Agreement.

(b) In the event the Subrecipient's worker's compensation insurance coverage is due to expire during the term of this Agreement, the Subrecipient agrees to timely renewal of its insurance, either as a carrier-insured employer or a self-insured employer as provided by Chapter 656 of the Oregon Revised Statutes, before its expiration, and the Subrecipient agrees to provide the City of Portland such further certification of worker's compensation insurance as renewals of said insurance occur.

(c) If Subrecipient believes itself to be exempt from the worker's compensation insurance coverage requirement of (a) of this subsection, the Subrecipient agrees to accurately complete the City of Portland's Questionnaire for Worker's Compensation Insurance and Qualification as an Independent Subrecipient prior to commencing work under this Agreement. In this case, the Questionnaire shall be attached to this Agreement and shall be incorporated herein and made a term and part of this Agreement. Any misrepresentation of information on the Questionnaire by the Subrecipient shall constitute a breach of this Agreement. In the event of breach pursuant to this subsection, City may terminate the agreement immediately and the notice requirement contained in subsection (A) TERMINATION FOR CAUSE, hereof shall not apply.

**M. SUBCONTRACTING AND ASSIGNMENT.** The Subrecipient shall not subcontract its work under this contract, in whole or in part, without the written approval of the City. The Subrecipient shall require any approved subcontractor to agree, as to the portion subcontracted, to fulfill all obligations of the Subrecipient as specified in this contract. Notwithstanding City approval of a subcontractor, the Subrecipient shall remain obligated for full performance hereunder, and the City shall incur no obligation other than its obligations to the Subrecipient hereunder. The Subrecipient agrees that if sub-contractors are employed in the performance of

this contract, the Subrecipient and its subcontractors are subject to the requirements and sanctions of ORS Chapter 656, Workers' Compensation. The Subrecipient shall not assign this contract in whole or in part or any right or obligation hereunder, without prior written approval of the City.

The subcontractor shall be responsible for adhering to all regulations cited within this contract.

- N. **INDEPENDENT SUBRECIPIENT STATUS.** The Subrecipient is engaged as an independent subrecipient and will be responsible for any federal, state, or local taxes and fees applicable to payments hereunder.

The Subrecipient and its subcontractors and employees are not employees of the City and are not eligible for any benefits through the City, including without limitation, federal social security, health benefits, workers' compensation, unemployment compensation, and retirement benefits.

- O. **CONFLICTS OF INTEREST.** No City officer or employee, during his or her tenure or for one year thereafter, shall have any interest, direct, or indirect, in this contract or the proceeds thereof.

No board of director member or employee of the Subrecipient, during his or her tenure or for one year thereafter, shall have any interest, direct, or indirect, in this contract or the proceeds.

No City Officer or employees who participated in the award of this contract shall be employed by the Subrecipient during the contract.

On HOPWA-funded projects, the Subrecipient shall further comply with the conflict of interest provisions cited in 24 CFR 574.625.

- P. **CONTRACT ADMINISTRATION, 24 CFR 574.605.** The Subrecipient shall comply with the policies, guidelines and requirements of OMB Circular Nos. A-122 and A-110 with regard to the acceptance and use of funds.

- Q. **OREGON LAWS AND FORUM.** This contract shall be construed according to the law of the State of Oregon.

Any litigation between the City and the Subrecipient arising under this contract or out of work performed under this contract shall occur, if in the state courts, in the Multnomah County court having jurisdiction thereof, and if in the federal courts, in the United States District Court for the State of Oregon.

- R. **AVAILABILITY OF FUNDS.** It is understood by all parties to this contract that the funds used to pay for services provided herein are provided to the City through a grant from the U.S. Department of Housing and Urban Development. In the event that funding is reduced, recaptured, or otherwise made unavailable to the City as a result of federal action, the City reserves the right to terminate the contract as provided under Section B hereof, or change the scope of services as provided under Section D hereof.

- S. **COMPLIANCE WITH LAWS.** In connection with its activities under this contract, the Subrecipient shall comply with all applicable federal, state, and local laws and

regulations. For HOPWA-funded projects, the Subrecipient shall carry out its activities in compliance with 24 CFR 574.500.

In the event that the Subrecipient provides goods or services to the City in the aggregate in excess of \$2,500 per fiscal year, the Subrecipient agrees it has certified with the City's Equal Employment Opportunity certification process.

- T. **PROGRAM AND FISCAL MONITORING.** The City through the Bureau of Housing & Community Development shall monitor on a regular basis to assure contract compliance. Such monitoring may include, but are not limited to, on site visits, telephone interviews, and review of required reports and will cover both programmatic and fiscal aspects of the contract. The frequency and level of monitoring will be determined by the City Project Manager.
- U. **PROGRAM ACCESS BY THE DISABLED.** The Subrecipient shall, to the maximum feasible extent, follow the Bureau of Housing and Community Development's guidelines on ensuring interested persons can reasonably obtain information about, and access to, HUD-funded activities.
- V. **SEVERABILITY.** If any provision of this agreement is found to be illegal or unenforceable, this agreement nevertheless shall remain in full force and effect and the provision shall be stricken.
- W. **INTEGRATION.** This agreement contains the entire agreement between the City and the Subrecipient and supersedes all prior written or oral discussions or agreements.
- X. **FUND-RAISING.** City-funded dollars may be used to cover expenses directly related to the contracted project. Costs associated with general agency fund-raising activities are not eligible.
- Y. **PUBLICITY.** Publicity regarding the project shall note participation of the City through the Bureau of Housing & Community Development.
- Z. **LOBBYING.** The Subrecipient shall not utilize these funds for lobbying the Executive or Legislative branches of the Federal Government, in compliance with 24 CFR 87.

- AA. CHURCH-STATE. The Subrecipient agrees to comply with the applicable provisions of 24 CFR 574.300(c).
- BB. DRUG-FREE WORKPLACE. The Subrecipient will maintain a drug-free workplace in conformance with 24 CFR part 24, subpart F.
- CC. INDEPENDENT FINANCIAL AUDITS/REVIEWS. Any subrecipient receiving \$300,000 or more in federal funds, from all sources, in any program year is required to obtain an independent audit of the federally-funded program(s), in compliance with federal OMB Circular A-133. Any subrecipient receiving between \$25,000 and \$300,000 in federal funds, from all sources, in any program year, is required to obtain an independent financial review. Additionally, contractors receiving between \$25,000 and \$300,000 in federal funds may be required to obtain an A-133 audit, if the City believes it is warranted. Two copies of all required financial audits or reviews will be submitted to the designated City Project Manager within thirty days of their completion.
- DD. PAYMENTS. The Subrecipient shall ensure that grant funds will not be used to make payments for health services for any item or service to the extent that payment has been made, or can reasonably be expected to be made, with respect to that item or service by any state compensation program, under an insurance policy, or under federal or state health benefits program; or by entities that provides health services on a prepaid basis.
- EE. TERMINATION OF ASSISTANCE. With respect to the surviving members of a family who were living in a unit assisted under the HOPWA program with the person with HIV/AIDS at the time of his or her death, housing assistance and supportive services under the HOPWA program shall continue for a grace period following the death of the person with HIV/AIDS. The grantee or project sponsor shall establish a reasonable grace period, in the lease agreement, subject to City approval, for continued participation by a surviving family member, but that period may not exceed one year from the death of the family member with HIV/AIDS. The Subrecipient shall notify the family of the duration of the grace period through a lease clause and written notification and may assist the family with information on other available housing and moving expenses.
- FF. CONFIDENTIALITY. The Subrecipient shall agree, and shall ensure the confidentiality of the name of any individual assisted and any other information regarding individuals receiving assistance.

X. Period of Agreement

The term of this Agreement shall be effective October 1, 2001 and shall remain in effect during any period the SUBRECIPIENT has control of CITY funds, including program income. Covenants deemed herein to run with the land shall remain in effect for the minimum use period or as otherwise specified herein. All requests for payment hereunder shall be completed by June 30, 2002.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2001.

**CITY OF PORTLAND**

**HOUSING AUTHORITY OF PORTLAND**

\_\_\_\_\_  
Erik Sten  
Commissioner of Public Works

\_\_\_\_\_  
Steven D. Rudman  
Executive Director

STATE OF OREGON  
COUNTY OF MULTNOMAH

This Agreement and Restrictive Covenant was acknowledged before me on \_\_\_\_\_, 2001 by Steven D. Rudman, representing the Housing Authority of Portland.

\_\_\_\_\_  
NOTARY PUBLIC FOR OREGON  
My Commission Expires:

APPROVED AS TO FORM:

\_\_\_\_\_  
Jeffrey L Rogers  
City Attorney



## HOPWA HOUSING PRODUCTION COMPLETION REPORT

To be completed and filed with BHCD within 90 days of project completion

Name of Project:

Address of Project:

Name of Developer that received HOPWA funds:

Who completed this form:

Date Completed:

Phone Number:

### Units Assisted With HOPWA Assistance By unit type

| SRO<br>Units | 0 Bdrms | 1 Bdrms | 2 Bdrms | 3 Bdrms | 4 Bdrms | 5+ Bdrms |
|--------------|---------|---------|---------|---------|---------|----------|
|              |         |         |         |         |         |          |

Date of Closing on the Building: \_\_\_\_/\_\_\_\_/\_\_\_\_

Date Construction/Rehab:

Started \_\_\_\_/\_\_\_\_/\_\_\_\_

Completed \_\_\_\_/\_\_\_\_/\_\_\_\_

Date Operations Staff Hired: \_\_\_\_/\_\_\_\_/\_\_\_\_

Date Residents Begin to Occupy: \_\_\_\_/\_\_\_\_/\_\_\_\_

USE OF HOPWA FUNDING IN PROJECT  
Site Expenditures

|                                       |    |
|---------------------------------------|----|
| ACQUISITION                           | \$ |
| REHAB/REPAIR                          | \$ |
| LEASE OF UNITS                        | \$ |
| NEW CONSTRUCTION                      | \$ |
| OPERATING COSTS                       | \$ |
| TECHNICAL ASSISTANCE                  | \$ |
| RENTAL ASSISTANCE                     | \$ |
| OTHER<br>(describe at right)          | \$ |
| TOTAL<br>(should total project draws) | \$ |

## HOPWA SUPPORTIVE SERVICES

Complete report only if your organization provided supportive services with HOPWA funds

Date Supportive Services Began: \_\_\_\_/\_\_\_\_/\_\_\_\_

Enter dollar amount spent for each category of supportive services you provided during the period for which you are reporting:

|  |    |
|--|----|
| OUTREACH   | \$ |
| CASE MANAGEMENT/CLIENT ADVOCACY/ACCESS TO BENEFITS | \$ |
| LIFE MANAGEMENT (OUTSIDE OF FORMAL CASE MANAGEMENT | \$ |
| NUTRITIONAL SERVICES/MEALS                         | \$ |
| ADULT DAY CARE AND PERSONAL ASSISTANCE             | \$ |
| CHILD CARE AND CHILDREN'S SERVICES                 | \$ |
| EDUCATION  | \$ |
| EMPLOYMENT ASSISTANCE                              | \$ |
| ALCOHOL/DRUG ABUSE SERVICES                        | \$ |
| MENTAL HEALTH SERVICES                             | \$ |
| HEALTH/MEDICAL/INTENSIVE CARE SERVICES             | \$ |
| PERMANENT HOUSING PLACEMENT                        | \$ |
| OTHER (Describe below)                             | \$ |

## HOPWA HOUSING ASSISTANCE

### Demographics of Participants

For Housing Production, count at initial occupancy

For Housing Services, report only new, unduplicated counts for reporting period

|  |  |           |
|--|--|-----------|
|  |  | RECEIVING |
|--|--|-----------|

|                               | RECEIVING<br>HOUSING<br>ASSISTANCE | RECEIVING<br>SUPPORTIVE<br>SERVICES<br>ONLY | HOUSING<br>INFORMATION<br>ONLY |
|-------------------------------|------------------------------------|---|--------------------------------|
| PERSONS WITH HIV/AIDS         |                                    |   |                                |
| OTHER PERSONS IN FAMILY UNITS |                                    |   |                                |
| TOTALS                        |                                    |   |                                |

**AGE/GENDER OF CLIENTS SERVED DURING PERIOD**

For Housing Production, count initial occupants of HOPWA Units

For Housing Services, report only new, unduplicated clients served during period

| AGE AND GENDER | UNDER 18 | 18-30 | 31-50 | 50+ | TOTAL |
|----------------|----------|-------|-------|-----|-------|
| MALE           |          |       |       |     |       |
| FEMALE         |          |       |       |     |       |

**INCOME GROUP OF CLIENTS SERVED DURING REPORTING PERIOD**

Enter Total Number of New Beneficiaries (individuals and family units) that populated the following gross monthly family income categories at the time of their entry into the program or at the time of initial occupancy of HOPWA housing units.

| \$0 – 250 | \$251 – 500 | \$501 – 1000 | \$1001 – 1500 | \$1501 – 2000 | Over \$2000 |
|-----------|-------------|--------------|---------------|---------------|-------------|
|           |             |              |               |               |             |

**RACE, NATIONAL ORIGIN AND ETHNIC GROUP OF CLIENTS SERVED**

Enter Total Number of New Beneficiaries (individuals and family units) that fell into the following demographic categories at the time of their entry into the program or at the time of initial occupancy of HOPWA housing units.

| White | Black | Hispanic | Asian/Pacific<br>Islander | Native<br>American | Other |
|-------|-------|----------|---------------------------|--------------------|-------|
|       |       |          |                           |                    |       |

**PROGRAM DEPARTURE COUNTS**

Categorize the number of persons leaving the program or housing during the reporting period based upon total duration of assistance and reason for leaving

| # of months<br>in Program                | <3 | 3-6 | 7-12 | >12 |
|--|----|-----|------|-----|
| VOLUNTARY<br>(Left Before<br>Completing) |    |     |      |     |
| COMPLETED<br>PROGRAM                     |    |     |      |     |
| NONPAYMENT<br>OF<br>RENT                 |    |     |      |     |
| SOCIAL<br>SERVICE<br>NONCOMPLIANCE       |    |     |      |     |
| UNKNOWN                                  |    |     |      |     |
| CRIMINAL<br>ISSUES                       |    |     |      |     |
| DEATH                                    |    |     |      |     |
| OTHER<br>(Describe)                      |    |     |      |     |

**RECENT LIVING SITUATION COUNTS**

Count the number of new clients who entered

The program or HOPWA units from the following circumstances

|                                     |  |
|-------------------------------------|--|
| HOMELESS/STREETS                    |  |
| TRANSITIONAL HOUSING                |  |
| EMERGENCY SHELTER                   |  |
| PSYCHIATRIC FACILITY                |  |
| SUBSTANCE ABUSE<br>TREATMENT        |  |
| HOSPITAL/MEDICAL                    |  |
| INCARCERATION                       |  |
| DOMESTIC VIOLENCE                   |  |
| LIVING WITH FRIENDS OR<br>RELATIVES |  |
| RENTAL HOUSING                      |  |
| PARTICIPANT-OWNED<br>HOUSING        |  |
| OTHER (DESCRIBE)                    |  |