

PDC

PORTLAND DEVELOPMENT COMMISSION

DATE: October 14, 2009
TO: Board of Commissioners
FROM: Bruce A. Warner, Executive Director
SUBJECT: Report Number 09-123
2009-10 PHB-PDC Subrecipient Contract Amendment #1

EXECUTIVE SUMMARY

BOARD ACTION REQUESTED

Adopt Resolution No. 6746

ACTION SUMMARY

This action will amend the Subrecipient Contract No. 32000134 with the Portland Housing Bureau that was approved by the Board on July 22, 2009 (Resolution No 6723), to increase the contract amount from \$6,288,324 to \$9,724,209. The increase includes a total of \$3,435,885 for implementation of the Neighborhood Stabilization Program (NSP) and \$186,500 of Community Development Block Grant (CDBG) funding to administer the NSP program.

PUBLIC BENEFIT

The amendment provides PDC with City NSP funds to support the acquisition and rehabilitation of foreclosed and/or vacant and abandoned properties in targeted neighborhoods that have high foreclosure, unemployment and vacancy rates. The properties will be rented or sold to income eligible renters or owners. The NSP program seeks to stabilize neighborhoods that have been severely impacted by a glut of foreclosures. The specific NSP Target Areas are located in portions of Portland, as well as, portions of Multnomah County excluding Gresham. Maps of the NSP Target Areas are included as Attachment B to this report. Oregon Housing and Community Services (OHCS) selected these areas based on their high foreclosure, vacancy and unemployment rates. OHCS may change the NSP Target Areas over time.

PDC will utilize the NSP funds to make loans to eligible borrowers to finance the acquisition and rehabilitation of rental and home ownership housing projects and programs. Eligible borrowers include households earning less than 120% of the Median Family Income, as well as, non-profit or for-profit borrowers selected through a Request for Proposal (RFP) process to be administered by PHB staff. Through PDC, PHB could also decide to directly acquire a property to then be awarded to an eligible owner via an RFP process or some other means.

This action will support the following PDC goals:

- Sustainability and Social Equity
- Healthy Neighborhoods

- A Vibrant Central City
- Strong Economic Growth and Competitive Region
- Effective Stewardship over our Resources and Operations, and Employee Investment

PUBLIC PARTICIPATION AND FEEDBACK

The recommended uses for the NSP funds were presented on various occasions to community partners with the help and support of the Oregon Opportunity Network. While there is not full consensus on the final recommended uses of these funds, PDC and PHB staff, have based and significantly modified their recommendations for the use of funds as a result of the public and partner feedback. Furthermore regarding the proposed use of NSP funds for homebuyer assistance, stakeholders did not like the OHCS-proposed share of appreciation clause or the program's failure to target the resources to lower income first-time homebuyers. Partners felt that the share of appreciation clause is contradictory to local wealth building and Operation HOME goals and the program's approach fell short in terms of targeting the resources to households with the greatest need. As a result PDC and PHB are involved in ongoing discussions with OHCS to remove the share of appreciation clause, as well as, provide a preference to low-income first-time homebuyers earning 80% or less than the Median Family Income (MFI). If OHCS approves these changes the implementation of NSP and specifically, the Own Your Own Program will be revised accordingly.

COMPLIANCE WITH ADOPTED PLANS AND POLICIES

The proposed use of the NSP funds is consistent with the 2005-2010 Consolidated Plan and the annual Housing Evaluation Report which is adopted by City Council. PDC will need to implement the NSP program in accordance with all applicable terms of the NSP Contract #1092 and any future amendments between PHB and OHCS.

FINANCIAL IMPACT

This amendment increases the maximum reimbursable amount under Subrecipient Contract No 32000134 between the PHB and PDC by \$3,435,8844 for the implementation and administration of the NSP program.

The amended Subrecipient Contract, the NSP Grant Agreement #1092 between OHCS and PHB, and the RFP to be developed by PHB establish the financial framework for funding projects that meet programmatic guidelines. PDC will incur expenditures as it originates loans for eligible borrowers to be disbursed from the HCD Contract Fund (210) and, in turn, will submit a monthly billing to seek reimbursement from PHB. PDC may not seek reimbursement for amounts in excess of the established agreement authority for each program.

PDC's FY 2009-10 Revised Budget will need to be amended to fully disburse all additional contract authority. A second budget amendment will be brought to the Commission by January 31,2010 to increase appropriations in the HCD Contract Fund (210). It is estimated that sufficient appropriations currently exist to begin the program until a budget amendment is brought to the Commission. The amount of funding

budgeted for administration will cover 100% of the cost to administer the program in accordance to PDC's Cost Recovery Policy.

RISK ASSESSMENT

PDC has been providing these services to the City of Portland for nearly three decades and is well suited to continue performing these activities for PHB. Considering that expertise; the legal, financial and operational risks resulting from this action should be manageable over the term of this contract.

WORK LOAD IMPACT

All administrative costs associated with implementation of the NSP program are covered by an allocation to PDC of \$186,500 of CDBG (CDBG) Funds.

ALTERNATIVE ACTIONS

The Board could choose to deny the request for amendment in which case PDC would not proceed with implementing the NSP program on behalf of the City, and PHB would need to find other means to implement.

CONCURRENCE

PHB and PDC staff negotiated the terms of the amendment. City Council approval of the contract is also necessary.

BACKGROUND

The Neighborhood Stabilization Program (NSP) was authorized as a part of the federal Housing and Economic Recovery Act (HERA) of 2008 to provide emergency assistance for state and local governments to acquire and rehabilitate foreclosed properties in targeted areas throughout the country. The primary goals of program are to stimulate the local housing market and ensure that vacant foreclosed properties in the NSP Target Areas are quickly put back in service as owner or renter occupied housing. The City of Portland and Multnomah County collaborated to jointly apply for and receive a grant of \$3,538,217 including \$288,834 for administration of the program from OHCS. Originally the City of Gresham was also collaborating with PHB, PDC and Multnomah County, but the City of Gresham will most likely administer the NSP program themselves.

The NSP funds may be used as financial assistance to homebuyers, to purchase and rehabilitate eligible properties, for land banking proposals, to demolish blighted structures or to redevelop demolished or vacant foreclosed properties in the designated target areas. The NSP Target Areas were established by the State of Oregon and may be changed during the implementation of the NSP Program impacting where the NSP funds may be invested.

By law 25% of the funds, \$884,554, must be used for projects or programs serving households earning 50% or less of the Median Family Income (MFI). A total of \$2,066,969 is proposed to be allocated to projects via one or more Request For

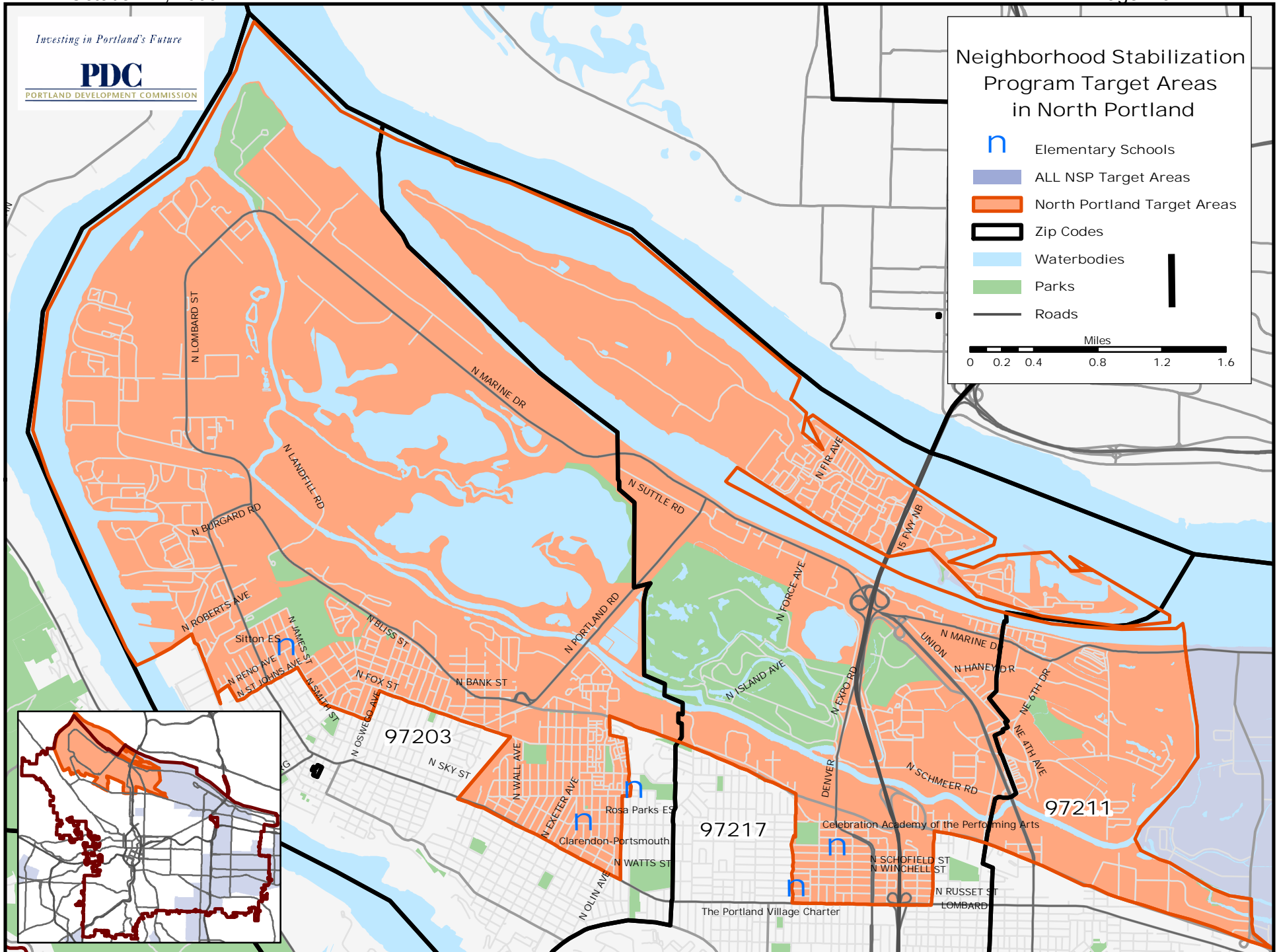
Proposal (RFP) process to be run by the PHB. PDC will manage the loan origination, closing, construction management, servicing and asset management for projects that are awarded funding via the City's RFP process. If PHB identifies eligible property it may elect to first acquire the property through PDC and then issue an RFP for reuse of the specific property. The remaining funds, \$1,182,415, are budgeted to fund a homebuyer assistance program referred to as the Own Your Own (OYO) Program.

To implement the NSP program, PDC and PHB need to amend the Subrecipient Contract 32000134, previously approved by on the Board on July 22, 2009 (Resolution No. 6723). This contract authorizes PDC to administer federal and city affordable housing funds on behalf of the PHB. The primary goals of these programs are to eliminate neighborhood blight and increase the supply of safe and affordable housing. The goals of the NSP program are to stimulate the local housing market, remove blight and get vacant and abandoned homes reoccupied by eligible renters or homeowners.

The amendment adds an additional \$3,249,384 in NSP to the existing contract, as well as, \$186,500 in CDBG funds to cover PDC costs to administer the program. The funds budgeted for administration of the program will cover 100% of PDC's costs in compliance with PDC's Cost Recovery Policy.

ATTACHMENTS:

- A. ItemID 2584-Maps of NSP Target Areas
- B. ItemID 2584-Adopted Resolution 6723 and Subrecipient Contract



Disclaimer: The information on this map was created by the Portland Development Commission (PDC) GIS. Every reasonable effort has been made to assure the accuracy of these maps and associated data. However, inadvertent errors can occur and the PDC does not assume any responsibility for omissions or positional accuracy. This information is presented "as is" and without warranties, either expressed or implied. Information Sources: Portland Development Commission Geographic Information Systems (GIS), City of Portland Corporate GIS. August 2009.

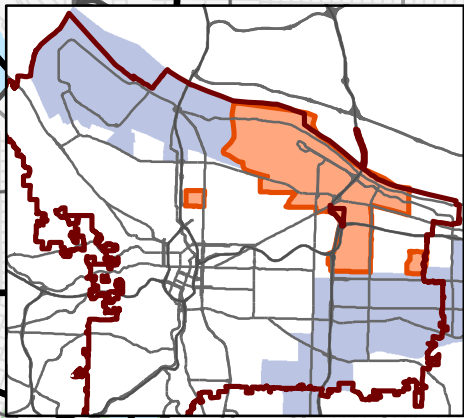
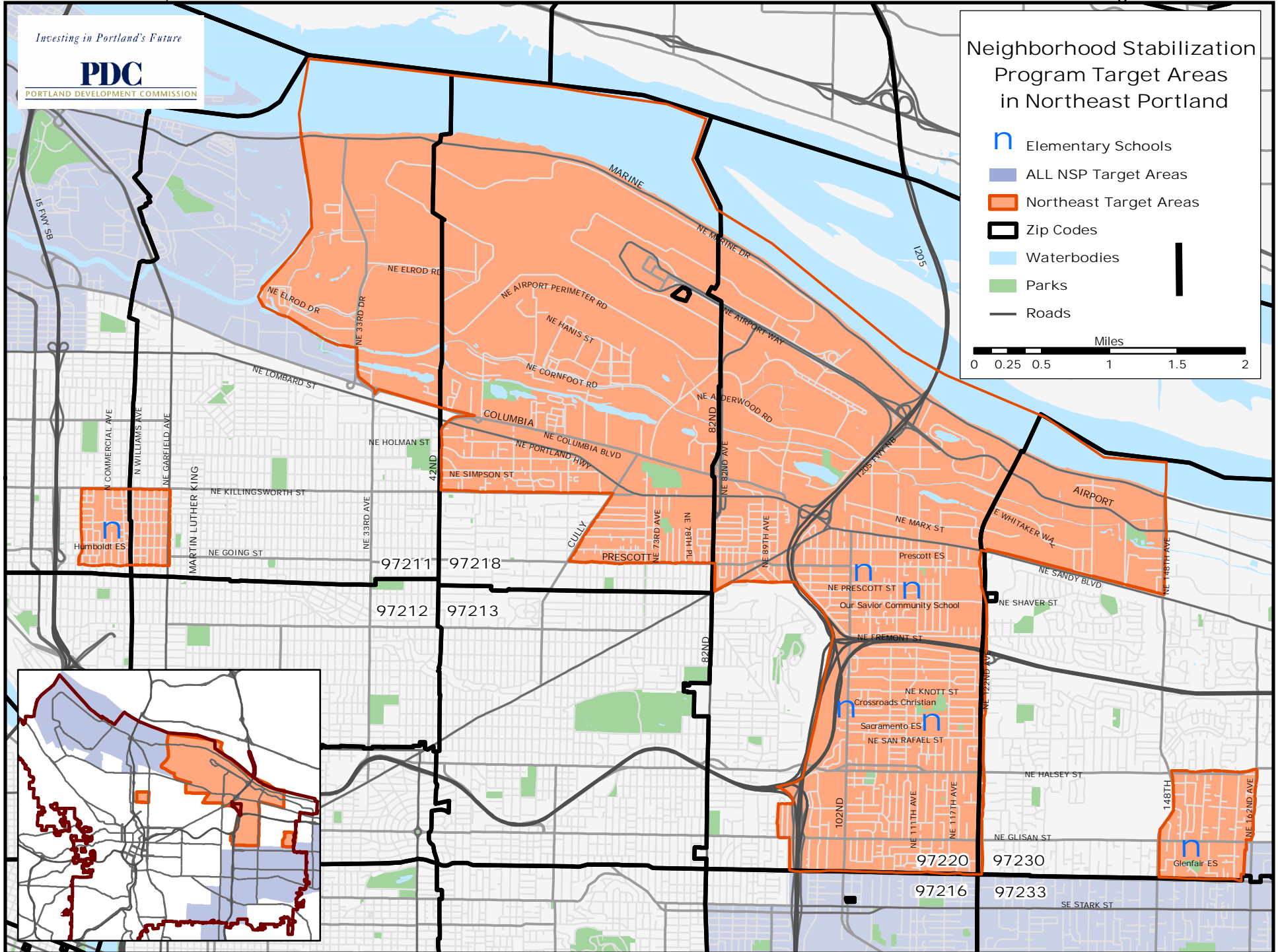
Investing in Portland's Future

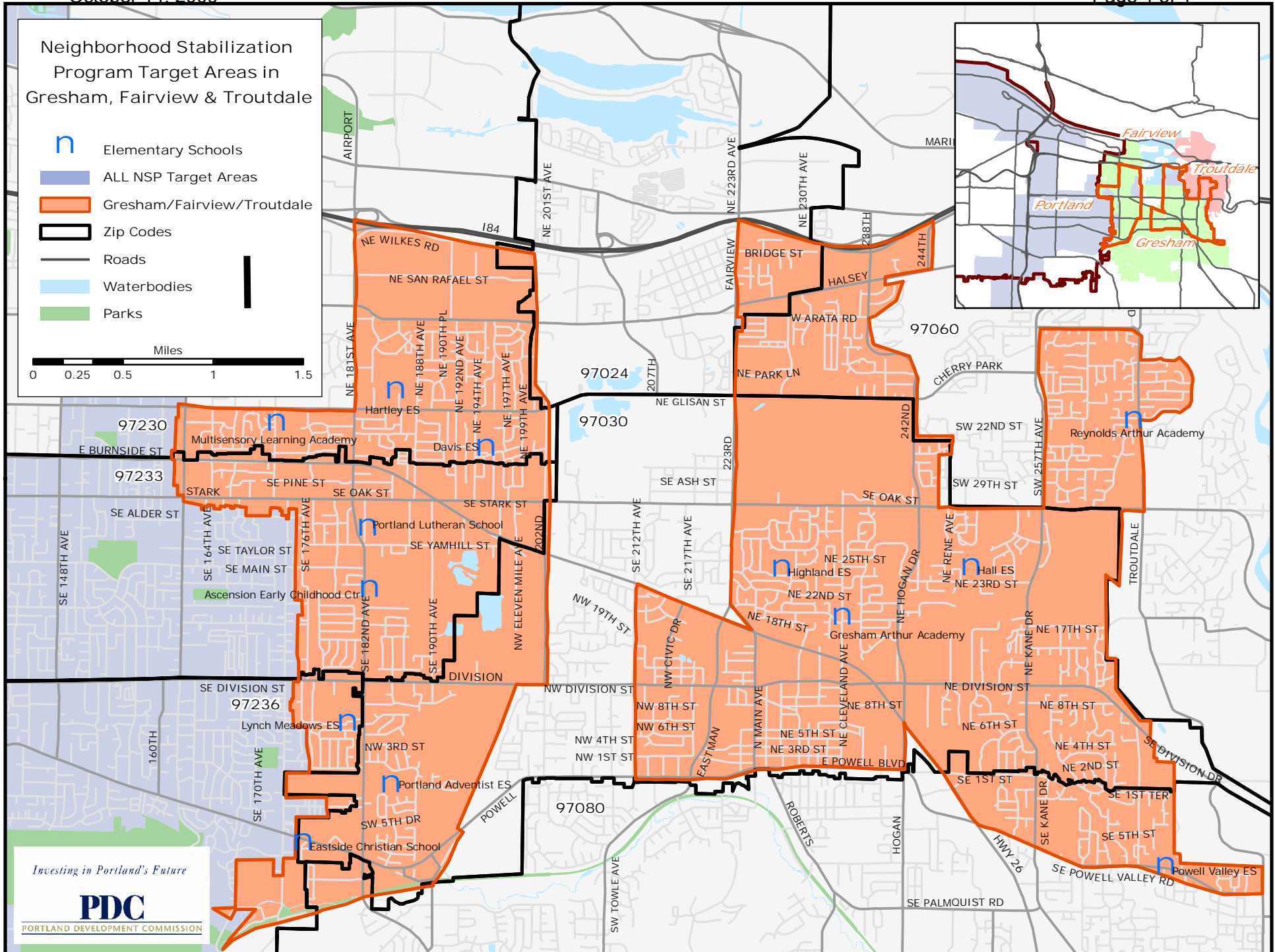
PDC

PORTLAND DEVELOPMENT COMMISSION

Neighborhood Stabilization Program Target Areas in Northeast Portland

- Elementary Schools
- ALL NSP Target Areas
- Northeast Target Areas
- Zip Codes
- Waterbodies
- Parks
- Roads





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PORTLAND DEVELOPMENT COMMISSION
Portland, Oregon

RESOLUTION NO. 6723

**AUTHORIZING A SUBRECIPIENT CONTRACT WITH THE PORTLAND
HOUSING BUREAU TO PRODUCE HOUSING PROJECTS AND PROGRAMS
FOR FY 2009-10 WITH APPROXIMATELY \$6,288,324 IN FEDERAL AND CITY
FUNDS**

WHEREAS, the City of Portland, through the Portland Housing Bureau (PHB formerly known as the Bureau of Housing and Community Development-BHCD), has available to it funds from the Federal Department of Housing and Urban Development (HUD) for use as authorized under the HUD regulations for Community Development Block Grants (CDBG) and the HOME Investment Partnership Program;

WHEREAS, PHB also makes available additional federal and city funds for the purpose of developing affordable housing for low and moderate income households, including the Housing Opportunities for Persons with AIDS, and general funds;

WHEREAS, as part of the CDBG program, the City has previously contracted with the PDC for projects and activities, and the Commission is capable and willing to perform services for the CDBG program;

WHEREAS, PHB has previously contracted with PDC to provide various services related to the funding and monitoring of housing projects and activities, and PDC is capable and willing to continue performing these services; and

WHEREAS, the City Council is expected to continue this long standing partnership by authorizing the attached Agreement between the City of Portland and PDC for approximately \$6,288,324; and

WHEREAS, funds from this agreement have been included in the FY 2009-10 PDC budget.

NOW, THEREFORE, BE IT RESOLVED that the Executive Director is hereby authorized to enter into an agreement with the City of Portland to produce housing projects and programs, implementing activities under the city and federal funds, including CDBG and HOME programs, for approximately \$6,288,324 in a form substantially similar to the Agreement attached as Exhibit A;

BE IT FURTHER RESOLVED that this Agreement shall be in effect for the fiscal year period starting July 1, 2009, and ending June 30, 2010;

BE IT FURTHER RESOLVED that any budget adjustments necessitated by this Agreement shall be processed as part of the budget amendment process;

BE IT FURTHER RESOLVED that the Executive Director is authorized to amend or revise the Agreement if necessary to give effect to any budget adjustments or if those amendments relate to procedural or administrative processes; and

BE IT FURTHER RESOLVED that this resolution shall become effective immediately upon its adoption.

Subrecipient Contract
Contract No. _____
Housing Projects

This subrecipient contract is between the City of Portland, acting by and through the Portland Housing Bureau (PHB) hereafter called "City" and the Portland Development Commission (PDC) hereafter called "Subrecipient" for the provision of affordable rental housing development and the joint coordination of city-wide Homeownership activities.

1. Effective Date and Duration

This contract shall become effective on July 1, 2009. This contract shall terminate on June 30, 2010.

2. Contract Manager

Each party has designated a contract manager to be the formal representative for this project. All reports, notices, and other communications required under or relating to this subrecipient contract shall be directed to the appropriate individual identified below. The City contract manager is authorized to approve work and billings hereunder, to give notices referred to herein, to terminate the Contract as provided herein, and to approve all changes except those that increase the total contract amount.

PHB	Subrecipient
Contract Manager: Daniel Ledezma	Contract Manager: Tony Barnes
421 SW Sixth Ave., Suite 1100	222 NW Fifth Avenue
Portland, OR 97204	Portland, OR 97204
(503) 823-4136 (phone)	503-823-1692 (phone)
(503) 823-2387 (fax)	503-823-3368 (fax)
	barnest@pdc.us
	EEO: Exempt
	Business License No.: Exempt

3. Scope of Services

The statement of work is contained in Section I.

4. Compensation

The amount of compensation shall not exceed \$6,288,324 (\$2,002,313 CDBG, \$2,005,399 in HOME, \$696,859 in HOPWA, \$1,458,611 in City General Fund, and \$125,142 in HIF). The compensation requirements are contained in Section V.

5. Reporting

The reporting requirements are contained in Section IV. Final invoice and report for projects are due July 10, 2010, with a reconciling invoice for program delivery/indirect allocation due no later than August 15, 2010.

6. Funding

This subrecipient contract may be paid fully or in part with funding from the U.S. Housing and Urban Development Department (HUD) and the City of Portland. This contract includes \$1,293,462 to cover PDC's administrative costs.

List of Exhibits

The following Exhibits are attached hereto and incorporated by reference into this contract:

<u>Document</u>	<u>Description</u>	<u>No. of Pages</u>
Exhibit A	Contract Budget	1
Exhibit B	Underwriting Guidelines	1
Exhibit C	Payment Invoice	2
Exhibit D	Principles and Priorities	3
Exhibit E	Definitions	1
Exhibit F	General Contract Provisions	13

I. SCOPE OF WORK

A. The Program

1. The Program refers only to the City and federal funds solely administered by PHB, unless otherwise specifically identified in the FY 2009-2010 contract.
2. The Program will provide financing for selected projects, through a public notice (e.g., a Request for Proposals) consistent with City housing policies as directed. Specific allocation will be provided in attached budget (EXHIBIT A). To ensure compliance with public notice provisions of the Consolidated Plan's Citizen Participation Plan as well as maintain a transparent process, PHB will provide PDC sufficient written notice of funds available, policy targets and preference criteria ahead of publication and customer meeting dates. Changes to projects and project allocations require an amended budget that is approved by PHB and PDC contract managers and, when applicable, an amendment to this contract signed by the parties.
3. The City's portion of funding for the acquisition, construction and/or rehabilitation costs ("Construction Costs") of each housing project financed under this Program ("Project") will be paid from the Program and any other funds which may be made available. PDC staff and the City staff will meet regularly to discuss and consult on Program needs.

4. It is anticipated that the funding for the Project will be in the form of no or low interest loans (“Loans”) made to individual applicants (“Sponsors”) for each Project. In addition, funding may be through grants if such a product is approved by PDC.
5. The specific amount of the funding for each Project will be based on PDC’s analysis of the financial needs of the Sponsor. The final decision on allocation will be based on a joint decision between PDC, PHB and other funding selection committee, if any.
6. Because the financial assistance to Sponsors will be in the form of grants or loans, PDC and the City may or may not receive any repayment from the Sponsors.
7. In addition to the aforementioned items, the City and PDC mutually agree to coordinate on the following activities under the contract:
 - a. Citywide Preservation Strategy and Central City No Net Loss
 - b. Resource Access Center (RAC)
 - c. Federal Base Realignment and Closure
 - d. Block 49 – Veteran’s Housing project
 - e. Housing Investment Fund (HIF) Program Income management
 - f. Affordable Housing pipeline/portfolio management
 - g. Streamlining Compliance Project
 - h. Homeownership and Homeownership Retention
 - i. Economic Development Initiative (EDI)

B. PDC Obligations

1. PDC will manage the financing of Projects. PDC will underwrite the proposal, configure each proposed Project, and perform other proposed Project planning activities, as more fully described herein.
2. PDC will comply with all Federal and City compliance obligations applicable to PDC and adopted City or PDC resolutions and will conduct the Program prudently and with sensitivity to the impact of the Funds.
3. At the request of the City, PDC shall provide such information as shall be necessary to enable the City to fulfill its compliance obligations and program evaluation with respect to the Funds of the Program.
4. PDC General Counsel shall be responsible for approving as to form all legal documents for Projects funded from this Program.

5. PDC shall provide quarterly reporting to the PHB Director on all HIF Program Income projections and actuals.
6. PDC may agree to undertake additional responsibilities as defined under subsequent agreement(s).

C. PDC will provide the following services on behalf of the City as to each Grant or Loan made pursuant to this FY 2009-20010 Contract:

1. **Underwriter/Finance Coordinators.** PDC staff will originate, underwrite, structure, and participate in the closing of the Grant or Loan request for each PHB funded project consistently and according to PDC Program Guidelines, including modifications indicated in Exhibit B;
2. **Underwriting Modifications.** The City has adopted revised underwriting guidelines designed to provide for successful residents, stable properties and portfolios as well as strong and competent owners. In response to these recommendations and for all projects solely funded by PHB sources, PDC will implement the underwriting guideline modifications indicated in Exhibit B to the extent these recommendations are compatible with other project funding sources. These modifications are subject to the availability of and eligible use of federal funds. PDC will provide ongoing evaluation and data comparing projects with the underwriting modifications and projects underwritten with traditional PDC guidelines.
3. **Loan Processor/Closer.** PDC staff will coordinate and monitor the Project application for financing, review approved loan files, facilitate information collection and review due diligence to process loan closings, draft required legal documents, and coordinate information flow between project participants.
4. **Construction Coordinator.** PDC staff will provide analysis and oversight of construction related issues on the Project, including design and budget review, evaluation of development team capacity, construction monitoring, draw and disbursement review, and completion of HUD environmental review where applicable;
5. **Compliance.** PDC staff will ensure that funding under this Contract will be used to support projects that comply with all regulations governing the federal funds (CDBG, HOPWA, LEAD, HOB, NSP, CDBG-R, EDI, CDBG Section 108, and/or the HOME program), including limited compliance for projects within the Consortium in Gresham, and such funding be informed and guided by the adopted *2005-2010 Consolidated*

Plan. (Principles and priorities are detailed in Exhibit D.). All funding will be in compliance with PDC's published Business Equity policies and monitoring for projects shall be the responsibility of PDC.

6. Asset Management. PDC staff will:

- a. Enforce ongoing, or post-closing (as distinguished for compliance on prior page) compliance, reporting and performance of terms tied to the financial assistance provided for the development or rehabilitation of the Project;
- b. Perform on-site visits, physical inspections, and maintain a "watch list" that provides early warning of troubled projects. A project will be placed on PDC's (internal) Asset Management "WATCH LIST" for any of the following:
 - i. Project has requested consideration of debt restructure/modification. (submitted either letter and/or CAP Corrective Action Plan);
 - ii. Project has been through a financial restructure and is in a 2 year monitoring period (or appropriate period);
 - iii. Project's PDC debt has been deferred (through the appropriate period);
 - iv. Project has received an over all "POOR" rating on its annual BARR (Borrower's Annual Results Report);
 - v. Through the Asset Management monitoring process specific information that adversely or has a potential adverse impact to the financial stability of the project (loss of funding, sustained project damage etc.);
 - vi. Out of Compliance for reporting and or for required HOME inspection corrections.
- c. Provide analysis and information in cooperation with Loan Servicing and Finance sections by providing regular reporting on the financial status and physical condition of the affordable housing portfolio;
- d. Provide information and assistance as requested by PHB to facilitate the comprehensive analysis of the performance of the Affordable Housing Portfolio intended to provide industry wide lessons learned, to inform future underwriting, and aid planning for

future allocations.

- e. Participate in industry wide planning groups to develop best practices for growth and sustainability of the affordable housing portfolio;
- f. Work with the citywide asset management group to develop the affordable housing section of the yearly City of Portland Asset Management Report;
- g. Cooperate with Streamlining Compliance project team, including OHCS and other jurisdictions, to develop single reporting system and interagency agreements for shared compliance and project oversight;
- h. Provide limited HOME program compliance and monitoring oversight to the City of Gresham on behalf of the HOME consortium.
- i. Provide to PHB regular and as requested reports on status of Affordable Housing portfolio.

7. Loan Servicing:

- a. PDC staff will service affordable housing loans.
- b. As appropriate, provide data on current project performance (e.g. average operating expenses for various types of projects) to the development community;

8. Housing Policy and Planning. PDC staff will:

- a. Participate in public outreach activities related to communication regarding the policy objectives of affordable housing and specific issues related to project siting; and
- b. Assist in the development of public participation/outreach strategies, as necessary.
- c. Provide financial analysis and budget planning to the City to maintain the affordable housing portfolio;

D. Joint Housing, Policy and Planning Efforts

1. Citywide Preservation Strategy and Central City No Net Loss

- a. The City has a number of key housing preservation policies in which a comprehensive strategy is needed to prioritize projects, development funding strategies, and identify clear agency roles and responsibilities. The policies include:
 - i. City Preservation Ordinance, which applies to all federally, state and locally subsidized rental housing;
 - ii. Central City No Net Loss (“No Net Loss”) which establishes a policy to retain the current number of low and moderate income housing units in the Central City through either preservation or replacement.
- b. The City has determined that the preservation priority for the coming fiscal year is the preservation of HUD Housing Assistance Payment contracts associated with the 12 expiring-use Section 8 properties located within the city of Portland. PDC will be responsible for determining TIF resources available for projects in URAs. PHB will be responsible for determining funding resources for projects not in URAs.
- c. As the agency that holds and services the loans for the affordable housing portfolio, the Commission has determined that a broad citywide preservation strategy that includes PDC-owned Section 8 housing (“PDC Section 8”), Section 8 housing with HUD Housing Assistance Payment contracts (“HUD Section 8”), expiring Low Income Housing Tax Credit projects (“LIHTC”) and locally subsidized properties (“City Funded Projects”), HAP owned public housing (“Public Housing”), and privately owned low income housing in the Central City (“CC Open Market Low Income”) is necessary to prioritize preservation funding requests, resource development and other related activities.
- d. PDC and PHB staff will jointly work on policy and funding related to expiring HUD Section Projects.
- e. PDC and PHB staff will meet regularly to coordinate Affordable Housing pipeline/portfolio activities
- f. PDC and PHB staff will meet regularly to coordinate Homeownership activities

- g. PDC and PHB staff will meet regularly to coordinate Homeowner Retention activities

2. **Project Planning and Implementation**

- a. Resource Access Center (RAC) / Transition Projects Relocation
 - i. The Contract outlines the specific manner in which PDC will support the development and deliver a clear and feasible service program to support the RAC. Commission staff will:
 - Provide additional technical assistance and undertake due diligence activities, including partnering with the Housing Authority of Portland, City and community team to identify RAC housing and service physical program and housing affordability; make available financial and staff resources to support these due diligence activities; perform financial and feasibility analyses; perform and lead all other duties as outlined in section 1 (c) of this contract.
 - May undertake additional responsibilities as defined under subsequent agreement(s) between the City & PDC.
 - ii. PDC staff will:
 - Act as lead organization and project manager for BRAC reuse planning process.
 - Manage contracting and oversight of outside consultants related to the reuse planning process.
 - Manage communications with Department of Defense, Office of Economic Adjustment (OEA), and City of Portland staff.
 - Complete and submit BRAC funding grant application to OEA and will manage grant monies.
 - Provide staff time and technical assistance related to creation of BRAC reuse plan and potential disposition of properties.
 - Participate in the creation and administration of the
- b. Federal Base Realignment and Closure (BRAC)
 - i. Provide staffing and project management in the capacity of Local Redevelopment Authority for the federal Base Realignment and Closure process for the two identified properties in Portland.
 - ii. PDC staff will:
 - Act as lead organization and project manager for BRAC reuse planning process.
 - Manage contracting and oversight of outside consultants related to the reuse planning process.
 - Manage communications with Department of Defense, Office of Economic Adjustment (OEA), and City of Portland staff.
 - Complete and submit BRAC funding grant application to OEA and will manage grant monies.
 - Provide staff time and technical assistance related to creation of BRAC reuse plan and potential disposition of properties.
 - Participate in the creation and administration of the

- project's public participation plan.
- iii. City staff will:
- Manage all project activities related to the creation of the required homeless assistance submission.
 - Collect and evaluate proposals received from homeless assistance providers through the formal Notice of Interest (NOI) solicitation.
 - Ensure compatibility of reuse plan with City's 10-Year Plan to End Homelessness.
 - Coordinate and communicate with City's 10-Year Plan to End Homelessness Steering Committee in regards to evaluations of formal NOI submissions.
 - Provide staff time and technical assistance related to creation of BRAC reuse plan and potential disposition of properties.
 - Participate in the creation and administration of the project's public participation plan.

3. HIF Program Income Management:

The City of Portland's ordinance # 181701 transferred the management of the Housing Investment Fund (Fund) to PHB effective July 1, 2008. It stated all program earnings from activities financed through the Fund, unless otherwise committed to other purposes through bond indentures, intergovernmental agreements, or other binding agreements, shall be returned annually to the Fund, to generate an on-going stream to support housing development and homeless services and all expenditures will be approved through the City's annual budget process.

PDC shall provide quarterly reporting to the PHB Director on all HIF Program Income projections and actual. The PHB in collaboration with PDC and OMF, will jointly analyze and program all HIF monies to most efficiently and effectively support housing development and homeless services.

4. State Historic Preservation Office (SHPO):
- i. PDC staff will perform SHPO reviews.

II. JOINT OPERATING PRINCIPLES

- A. With this contract, PHB and PDC desire to begin implementing the intent of City

Council and the PDC Commission to consolidate and coordinate the development of housing policy and the implementation of housing activities that will:

1. enhance the City's ability to end chronic homelessness,
 2. protect its most vulnerable residents,
 3. preserve and expand its affordable housing supply,
 4. assure housing stability,
 5. support families and schools in vibrant, equitable neighborhoods
 6. reduce blight and blighting conditions in the City's urban renewal areas
 7. promote homeownership, and
 8. connect its investments in housing to other applicable strategies.
- B. Under this contract, PDC serves as a primary implementing entity for housing activities, including performing due diligence, underwriting, and property acquisition, legal documentation, loan servicing, and asset management on behalf of the City.
- C. PHB serves as the City's lead housing agency and advises Council on policy direction, assists Council in establishing funding priorities, and administers both federal and local housing and community development funds.
- D. PDC serves as the City's urban renewal agency focused on revitalization and the elimination of blight and implements the City's housing preservation, development and homeowner programs.
- E. To ensure accurate and timely communication between PDC and PHB, the following communications protocol will be followed:
1. Communications regarding the scope of work described in this contract will occur between the staff designated by PHB Housing Program Manager and the PDC Housing Development Finance Manager or as appropriate between the PHB Director and PDC Housing Director (or the equivalent, pending any PDC reorganization). Staffing has been identified in the "PHB/PDC Contacts Matrix" (Exhibit F).
 2. Communications regarding the development of new policy or program guidelines will occur between the staff designated by PHB Housing Program Manager and the PDC Housing Development Finance Manager or as appropriate between the PHB Director and PDC Housing Director.
 3. Requests for additional information not specified in this contract will be made by the designated PHB Housing Program Manager and the PDC Housing Development Finance Manager or as appropriate between the

PHB Director and PDC Housing Director.

4. All other project or program specific communications may occur at a staff level subject to joint PHB management and PDC Housing management agreement on roles and responsibilities anticipated to be developed in joint agency management and planning exercise.
5. The PHB Director and PDC Executive Director will periodically review project and Program roles and responsibilities designated under the Contract to ensure concurrence.
6. The PHB Director and the PDC Executive Director will identify and designate the specific Managers to fill the aforementioned (2d6) primary communications roles.

IV. REPORTING

- A. The subrecipient shall furnish quarterly reports detailing progress made to date on the financial and unit production for the Program. Reports are due no later than October 15, 2009, January 15, 2010, April 15, 2010 and July 15, 2010. Disbursement of funds will be delayed if reports are not turned in by these dates without adequate written notice of delay and approval of the contract manager.
- B. The subrecipient shall identify year to date spending for each program area. All reporting shall be coordinated through the subrecipient Housing department with the exception of the finance reporting which will be coordinated through the Finance Department.
- C. The purpose of these reports is to accurately track performance for the City, to track compliance with all federal regulations of the CDBG and HOME programs, and to provide information required by HUD's IDIS system.
- D. All project set-ups and draw-downs will be processed by the City through the HUD IDIS systems. The Subrecipient will generally be responsible for preparing necessary forms for the IDIS systems for project set-up, project draw-down, and project completions. The City will process these forms and will work with the Subrecipient to make available standardized blank forms for these purposes and to establish time frames for their submission to the City. The City will provide the Subrecipient with written verification that information provided by the Subrecipient has been accurately input into the IDIS system. If the City finds that any transaction can not be processed, the City will return the documents to the Subrecipient for correction.
- E. PHB will provide PDC with monthly reports of all IDIS balances; PDC will

reconcile the IDIS reports to project balances in PDC's financial systems. If discrepancies exist, PDC and PHB will work immediately to determine the source of the discrepancy and the required corrective action.

- F. PHB will PDC provide PDC with quarterly reports on Risk Mitigation Pool activity including information on specific projects accessing the fund.
- G. All funds received by the Subrecipient must be disbursed within 15 days of receipt.
- H. All repayment income generated from HOME funded activities will be returned by the Subrecipient to the Local HOME Account maintained by the City. Repayment income will be re-programmed for eligible activities under the HOME Program as determined by the City.
- I. HOME program income shall be reported and accounted for on a monthly basis.
- J. CDBG program income may be retained to be used only for CDBG-eligible activities included in this contract. All CDBG program income shall be reported during the quarter and shall be traced and reported on the quarterly billings submitted to PHB. The program income reported will be subtracted from the actual expenditures for the net draw on federal funds.
- K. An indirect rate may be used to determine funding allocations to Loan Servicing and Asset Management activities. As required by HUD, PHB must approve the cost allocation plan that determined the indirect rate. Additionally, PDC shall seek input from PHB when the allocation plan is reviewed and/or changed.
- L. Report to PHB when Grant or Loan structures do not conform to adopted financial assistance guidelines.

V. COMPENSATION AND METHOD OF PAYMENT

- A. The subrecipient will be provided \$2,002,313 in CDBG funding.
- B. The subrecipient will be provided \$2,005,399 in HOME funding.
- C. The subrecipient will be provided \$696,859 in HOPWA funding.
- D. The subrecipient will be provided \$1,458,611 in City General Fund.
- E. The subrecipient will be provided \$125,142 in HIF (Housing Investment Funds)
- F. Payments to the subrecipient for eligible expenses will be made upon submission

of an itemized statement of actual or anticipated expenditures (EXHIBIT C). Both parties prior to approving expenditure under new budget categories, projects or amounts, must approve changes to the approved budget in writing.

- G. It is agreed to that the total compensation under this contract shall not exceed SIX MILLION TWO HUNDRED AND EIGHTY EIGHT THOUSAND THREE HUNDRED AND TWENTY FOUR DOLLARS (\$6,288,324)
- H. It is agreed that PDC will receive full cost recovery and reimbursement for expenses incurred in connection with this contract and any amendments.
- I. Billings shall be submitted to PHB monthly and will include expenses accrued in each calendar month. PHB will review, modify if necessary, approve, and then forward them to the Grants Compliance Division in the Office of Management and Finance (OMF) for payment. Periodic requests between monthly draws may be made on an interim basis as approved by both PDC and PHB. PHB shall make payment to PDC within two weeks of receiving a billing. If for some reason payment can not be made due to errors or omissions then PHB will request from PDC a corrected billing within the two-week period. The request for corrected billing shall detail all deficiencies in the billing which have caused payment to be withheld.

VI. GENERAL CONTRACT PROVISIONS

General Contract Provisions are included in Exhibit F as incorporated by reference.

VII. PERIOD OF AGREEMENT AND CONTRACT

The obligations and duties of this Contract shall be binding on the Subrecipient during any period the Subrecipient has control of funds or program income under this Contract, or during any period of affordability relative to any project funded under this Contract.

**PORTLAND DEVELOPMENT
COMMISSION**

CITY OF PORTLAND

Bruce Warner, Director

Date

Nick Fish

Date

Commissioner-in-Charge

EXHIBIT A

FY 09-10 Contract Budget

HOME	IDIS	Base	CHDO	Mult Co.	Unobligated CO	Obligated	Total
Rental Housing							
Base Budget		\$686,085	\$575,154	\$26,606	\$0		\$1,287,845
FY 2007-08 Obligations							\$0
Shaver Green (38521)	3709					\$47,411	\$47,411
Miraflores (38542)	3743					\$44,042	\$44,042
Eastgate						\$0	\$0
FY 2008-09 Obligations							\$0
Rockwood Pre-Dev (38589)	3947					\$114,769	\$114,769
Rockwood Permanent	TBD					\$511,333	\$511,333
Sacred Heart Villa	TBD					\$0	\$0
HOME Total		\$686,085	\$575,154	\$26,606	\$0	\$717,554	\$2,005,399
CDBG		Base	Overage		Unobligated CO	Obligated	Total
Rental Housing							
Base Budget		\$0	\$0		\$0		\$0
FY 2007-08 Obligations							
Sawash Hsg (38534-07)	3722					\$243,145	\$243,145
FY 2008-09 Obligations							\$0
Sacred Heart Villa	TBD					\$0	\$0
CSI	TBD					\$0	\$0
Kehillah Housing	TBD					\$275,000	\$275,000
Butte Hotel	TBD					\$190,706	\$190,706
Program Delivery							\$0
SHPO/Rehab Admin		\$20,000					\$20,000
Rental Program Delivery		\$783,557					\$783,557
Loan Servicing		\$326,998					\$326,998
Asset Management		\$152,907					\$152,907
EDI 108 Admin/EcDev		\$10,000					\$10,000
CDBG Total		\$1,293,462	\$0	\$0	\$0	\$708,851	\$2,002,313
CDBG-R		Base					
Base Budget		\$0					
CDBG-R Total		\$0	\$0	\$0	\$0	\$0	\$0
HOPWA		Base	Overage		Unobligated CO	Obligated	Total
FY 2007-08 Obligations							
Luke-Dorf (38546)	3725					\$39,859	\$39,859
Rosewood	TBD	\$0	\$0		\$0	\$657,000	\$657,000
Total		\$0	\$0	\$0	\$0	\$696,859	\$696,859
HIF		Base	Overage		Unobligated CO	Obligated	Total
FY 2007-08 Obligations							
Eastgate (38429)		\$0	\$0	\$0	\$0	\$125,142	\$125,142
GF		Base	Overage		Unobligated CO	Obligated	Total
FY 2007-08 Obligations							
333 Oak (38562)		\$0	\$0	\$0	\$0	\$1,178,611	\$1,178,611
Rosewood						\$280,000	\$280,000
Total		\$0	\$0	\$0	\$0	\$1,458,611	\$1,458,611
Total		\$1,979,547	\$575,154	\$26,606	\$0	\$3,707,017	\$6,288,324

EXHIBIT B

UNDERWRITING GUIDELINES

I. Developer Fees

Increase PDC's maximum allowable developer fees to match 2007-2008 Oregon Housing and Community Services percentages:

Low degree of complexity

Minimal layers of funding
Project size over 50 units
Excellent site
Repetitive project plan

Normally

5-8% Developer Fee

Mid-range complexity

Average layers of funding
Project size 35-50 units

Normally

9-12 % Developer Fee

High degree of

complexity

Special needs population
Multiple layers of funding
Project size 1-35 units

Normally

13-15% Developer Fee

II. Operating Expenses

- a. Asset Management fees of \$200-\$300 PUPY funded above the line and escalating at 3% annually.
- b. Resident Service fees of \$300-\$600 PUPY funded above the line and escalating at 3% annually.
- c. Allow Enhanced Property Management to address needs of projects serving specific hard to house populations (e.g. Security, 24 hour staffing, added maintenance or turnover costs).

III. Minimum Net Cash Flow, or "Cushion"

- a. Underwrite all projects such that net cash flow equals a minimum of 8% of operating expenses in Year 15 to allow cushion against variances in revenues and expenses.
- b. Net cash flow minimums at underwriting should meet the current program guidelines of \$600 PUPY.
- c. For projects that cannot achieve this with no debt, capitalize or build operating reserves to assure funds to break even until Year 20.

IV. Cash Flow Splits

- a. Eliminate Cash Flow Splits for all projects where the majority of the units are below 50% MFI.
- b. For projects where cash flow split requirements are eliminated, require project operating reserve contributions when cash flow rises above \$600 PUPY threshold, accelerating annually at 3%.

EXHIBIT C
Payment Invoice

Sample Invoice (on PDC Letterhead)
Portland Development Commission

Contract #: _____ **Invoice Period:** _____ **Invoice #:** _____

Organization: Portland Development Commission	Total Grant Award:	\$6,288,324
Mailing Address: 222 NW Fifth Avenue Portland, OR 97204	Funding Award(s)/Amount:	CDBG: \$2,002,313 HOME: \$2,005,399 HOPWA: \$696,859 GF: \$1,458,611 HIF: \$125,142
Contact Name/Title: Tony Barnes		
Phone/Fax: 503-823-1692	Grant Period: July 1, 2008– June 30, 2009	

CDBG

Activity	Budget	Expense This Period	Expenses YTD Including This Invoice	Balance From Budget
Rental Development (New)	\$0			
SHPO/Rehab Admin	\$20,000			
Rental Development (Obligated Carryover)	708,851			
Rental Housing Program Delivery	783,557			
Loan Servicing	326,998			
Asset Management	152,907			
EDI 108 Admin	10,000			
Total CDBG	2,002,313			

HOME

Activity	Budget	Expense This Period	Expenses YTD Including This Invoice	Balance From Budget
Rental Development (New)	\$686,085			
Mult Co. CHDO Set Aside	\$26,606			
CHDO Set Aside	575,154			
Rental Development (Obligated Carryover)	717,554			
Total HOME	\$2,005,399			

HOPWA

Activity	Budget	Expense This Period	Expenses YTD Including This Invoice	Balance From Budget
Rental Development	\$696,859			
Total HOPWA	\$696,859			

GF

Activity	Budget	Expense This Period	Expenses YTD Including This Invoice	Balance From Budget
Rental Development	\$1,458,611			
Total GF	\$1,458,611			

HIF

Activity	Budget	Expense This Period	Expenses YTD Including This Invoice	Balance From Budget
Rental Development (Obligated Carryover)	\$125,142			
Total HIF	\$125,142			

Total Amount Requested: _____

Total Balance: _____

Certification: I certify to the best of my knowledge and belief that the invoice is correct and complete and that all the expenses are for the purpose set forth in the award document, and I understand that a portion or this entire request will be funded with federal money and that these expenses are subject to future audit.

Typed or Printed Name and Title: _____

Phone: _____

Signature of Authorized Certifying Official: _____

Date Submitted: _____

FOR OFFICE USE ONLY

I have received this information and have forwarded the invoice for processing

 Contract Manager

 Date Sent to Accounting

EXHIBIT D

Program Principles and Priorities

CDBG funds are made available to the subrecipient to assist in the elimination of neighborhood slum and blight, to increase the supply of safe and affordable housing for qualified individuals, and to help low and moderate income individuals become more economically self-sufficient.

HOME funds are made available to the Subrecipeint to increase the supply of safe, decent, sanitary and affordable housing.

The Subrecipeint's implementation of the CDBG and HOME programs must be guided by the adopted 2005-2006 consolidated Plan. Key principles of the 2006-07 Action Plan include:

Principle I

All resources should be invested to promote long-term systems change. Investments should favor integrated systems that give eligible low-income households access to an array of tools to create sustainable improvements in their housing, economic condition, and general well-being. Evidence-based practices are preferred.

Principle II

Services must be made available fairly to eligible low-income people, including those who have experienced barriers to accessing services due to race, color, religion, gender, ethnicity, culture, or sexual orientation.

- a. All programs should employ culturally competent service delivery models that provide reasonable access to all eligible low-income people. Programs should use culturally specific service providers when necessary to reach members of racial and/or ethnic communities who would not otherwise be well-served.

Principle III

Programs should strike a balance between addressing immediate needs and preparing to meet future needs. Jurisdictions are encouraged to fund programs that are flexible and can respond to changes in market conditions. Jurisdictions should strive for continuous program improvement by incorporating new research and best practices.

Principle IV

- a. Housing programs should focus on housing those with the greatest needs in decent, stable housing. The category of people with the greatest needs includes individuals and families who belong to one or more of these groups:
 - b. individuals and families who are homeless;
 - c. people who have special needs (severe mental illness, serious physical disabilities,

developmental disabilities¹, addiction disorders, or more than one of these disabilities);

- d. people who are experiencing domestic violence;
- e. people who are living in substandard housing that violates safety codes;
- f. low-income households paying more than 50 percent of their income for housing;
- g. people who have historically had limited access to housing opportunities, including members of racial/ethnic/cultural minorities, refugees, immigrants, and farm workers;
- h. people who are particularly vulnerable to housing loss, placing them at great risk of homelessness, including households with incomes under 30% of the area Median Family Income, single parents, youth leaving foster care, and the elderly;
- i. people who face barriers to housing due to poor rental history, poor credit history, and/or criminal history;

Principle V

Both public and private resources are required to meet the community's housing needs.

- a. Public resources should be directed to housing for those with the greatest need.
- b. Public moneys may also be used to stimulate private investment and fill affordability gaps.
- c. Participation of the philanthropic sector in public-private partnerships should be encouraged.
- d. Market-driven private financing should be the primary source for meeting moderate- and middle-income housing needs.

Principle VI

There should be a direct relationship between the amount of public investment and the number of units affordable for a minimum of sixty (60) years.

- a. Maximizing the number of unit years of affordability is an important use of public investment.
- b. As a condition of receiving public investment, designated affordable units should remain affordable for a minimum of 60 years.
- c. The number of rental units designated to remain affordable should be balanced with the subsidy to the project, so that programs are marketable to private for-profit and nonprofit developers.
- d. Preference should go to programs that increase or preserve the affordable housing inventory, and programs that subsidize ongoing costs.
- e. Sufficient public resources should be invested to assure that affordable housing is designed, constructed, managed, and maintained so that it will be an asset to the community over the long term.

Principle VII

¹Developmental disabilities are used in a broad sense to include a wide range of cognitive disabilities.

To promote economic opportunity, the goal of public investment in community development activities other than housing should be to increase the incomes and/or assets of low-income households and neighborhoods.

- a. Public investment in community development should focus on projects that can demonstrate the capability to increase the income and/or assets of low income (<50% MFI) households and neighborhoods.
- b. Public investment in community development should focus on removing barriers to employment, retaining jobs in the community, and providing adults and youth with access to opportunities to earn, at a minimum, a living wage.
- c. Public investment in community development should focus on low-income households that have not shared in past economic expansions, and low-income neighborhoods.
- d. Public investment in community development should assist households with incomes below 80% MFI that face barriers to building wealth to increase their assets using ownership models that give residents equity holdings in their residences or businesses, e.g. micro-enterprise development, land trusts, homeownership programs, and cooperative ownership arrangements.
- e. Homeownership programs should include a mechanism for recapture and/or retention of the public investment.

Principle VIII

To promote long-term housing stability and reduce the risk of homelessness, a continuum of services must be available to assist individuals and families in locating, obtaining, and maintaining decent affordable housing.

- a. Persons with the greatest need should receive supportive services that will enable them to succeed in housing.
- b. Supportive services should be designed to promote the greatest degree of economic independence and self-sufficiency appropriate for the individual.
- c. Services for locating, obtaining, and maintaining decent, stable, affordable housing should be readily available.
- d. Information and support should be available to enable tenants to pursue a habitable living environment without fear of retaliation.
- e. For people with special needs, medical and behavioral health care services are essential to maintain housing. To the maximum extent feasible, housing and community development funds should be used to leverage funds for these health services.
- f. Fair housing services to address illegal barriers to housing should be widely available.

Principle IX

Public investment in neighborhoods should benefit existing residents as well as further other policy goals.

- a. When significant public investment is contemplated, measures should be taken to

protect low- and moderate-income residents, including established small businesses, from involuntary displacement.

EXHIBIT E

Definitions

- A. Community Housing Development Organization (CHDO): A community based non-profit housing organization as defined at 24 CFR 92.2.
- B. The Housing Opportunity Bond (HOB) is funding provided by the City of Portland directly to project sponsors. PDC is providing staffing for project management and will add individual project data and information into its on-going Asset Management activities, as agreed under a separate Intergovernmental Agreement.
- C. Integrated Disbursement and Information System (IDIS): The system for managing disbursement of funds in the HOME and CDBG programs.
- D. Period of Affordability: The length of time that HUD tenant guidelines, rent affordability, decent, safe & sanitary and other compliance regulations apply to a particular project, or the length of time specified in the Rental Housing Development Program guidelines adopted by PDC on October 18, 1994 or any subsequently approved guidelines. The period of affordability for all HOME-assisted projects shall be sixty years from the date of project completion.
- E. Community Based Development Organization: Non-profit organizations that may be engaged in a number of CDBG eligible activities, including the acquisition of land and/or rehabilitation of housing units, community economic development, energy conservation and/or other neighborhood revitalization activities.
- F. Permanent Supportive Housing Units are defined as having all of the following characteristics:
- Housing with no limit on length of stay and no requirement that tenants move out if their service needs change;
 - Supportive services attached to the units and/or the target occupants that are designed to help people maintain the housing;
 - Designed and intended for chronically homeless individuals and homeless high resource using families.

EXHIBIT F

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, unless the total contract after amendment is less than \$100,000, must be approved by ordinance of the City Council. Compensation changes in which the total contract is less than \$100,000 may be approved by the Bureau Director.

- E. **NON-DISCRIMINATION.** During the performance of this Contract, the Subrecipient agrees as follows:

(a) 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).

(b) 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).

(c) The Subrecipient will comply with the equal employment and affirmative action requirements of Executive Order 11246, as amended by Order 12086 (41 CFR 60).

(d). 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.

(e) Subrecipient will comply with the Americans with Disabilities Act (42 USC 12131, 47 USC 155, 201, 218 and 225), which provides comprehensive civil rights to individuals with disabilities in the areas of employment, public accommodation, state and local government services and telecommunications. The Act also requires the removal of architectural and communication barriers that are structural in nature in existing facilities. For CDBG and/or HOME funded projects, the Subrecipient will also comply with affirmative marketing policy and outreach to minorities and women and to entities owned by minorities and women per 24 CFR 92.351 and/or 24 CFR 570.601(a)(2), if the funds will be used for housing containing 5 or more assisted units.

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 four 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. AUDIT OF PAYMENTS. The City, either directly or through a designated representative, may audit the records of the Subrecipient at any time during the four-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, the Subrecipient shall provide a new policy with the same terms. The 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 the 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 Contract by the City.

In lieu of filing the certificate of insurance required herein, the Subrecipient shall furnish a declaration that the 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 subcontracts, if any, and all employers working under this Contract 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 Contract and shall be incorporated herein and made a term and part of this Contract. The Subrecipient further agrees to maintain worker's compensation insurance coverage for the duration of this Contract.

(b) In the event the Subrecipient's worker's compensation insurance coverage is due to expire during the term of this Contract, the Subrecipient agrees to timely renew 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 the 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 Contractor prior to commencing work under this Contract. In this case, the Questionnaire shall be attached to this Contract and shall be incorporated herein and made a term and part of this Contract. Any misrepresentation of information on the Questionnaire by the Subrecipient shall constitute a breach of this Contract. In the event of breach pursuant to this subsection, City may terminate the Contract immediately and the notice requirement contained in Section A, TERMINATION FOR CAUSE, hereof shall not apply.

- M. SUBCONTRACTING AND ASSIGNMENT. The Subrecipient shall not sub-contract 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 subcontractors 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.

If Subrecipient provides CDBG or HOME funds to for-profit owners or developers, non-profit owners or developers, subrecipients, homeowners, homebuyers, tenants receiving tenant-based rental assistance or contractors, the Subrecipient must have a written agreement that

meets the requirements of 24 CFR 570.503(b) or 92.504(c), respectively.

- N. **INDEPENDENT CONTRACTOR STATUS.** The Subrecipient is engaged as an independent contractor 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.** Per 24 CFR 92.356 and/or 24 CFR 570.611, 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 directors 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 thereof. No City officer or employee who participated in the award of this contract shall be employed by the Subrecipient during the period of this contract.

The Subrecipient shall also comply with the provisions of 24 CFR 84.42 and/or 85.36(b)(3), which require that a written Code of Standards of Conduct be maintained by the agency, as it relates to the performance of employees engaged in the award and administration of contracts.

- P. **CONTRACT ADMINISTRATION, 24 CFR 570.502(b).** The Subrecipient shall comply with the applicable provisions of OMB Circular Nos. A-122, A-21, A-133 and A-110 as described by 24 CFR 570.502(b) and 570.610. If Subrecipient is a public agency, it must comply with the provisions of OMB Circulars A-87 (Cost Principles for State, Local and Indian Tribal Governments) and 24 CFR Part 85 (Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments).

- Q. **OREGON LAWS AND FORUM.** This contract shall be construed according to the laws 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. **PROGRAM INCOME/PERSONAL PROPERTY.** For Community Development Block Grant-funded projects, the Subrecipient shall comply with provisions of 24 CFR 570.504 regarding program income. Program income shall be retained by the Subrecipient provided that it shall be used only for those activities identified in the Scope of Services, and shall be subject to all provisions of this contract.
- T. **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 Community Development Block Grant-funded projects, the Subrecipient shall carry out its activities in compliance with 24 CFR 570 Subpart K, excepting the responsibilities identified in 24 CFR 570.604 and 570.612. For McKinney-Vento Supportive Housing Program funded projects, Subrecipient shall carry out its activities in compliance with 24 CFR 583. For McKinney-Vento Emergency Shelter Grant funded projects, Subrecipient shall carry out its activities in compliance with 24 CFR 576.

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.

- U. **PROGRAM AND FISCAL MONITORING.** The City through the Bureau of Housing and 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.

- V. **EXPIRATION/REVERSION OF ASSETS.** For Community Development Block Grant-funded projects, the Subrecipient shall comply with the Reversion of Assets provision of 24 CFR 570.503 (b)(7).

For Emergency Shelter Grant funded projects, the Subrecipient shall transfer to the City any ESG funds on hand at the time of expiration and any accounts receivable attributable to the use of ESG funds. Any real property under the Subrecipient's control that was acquired or improved in whole or in part with ESG funds in excess of \$25,000 shall be disposed of in a manner which results in the City being reimbursed in the amount of the current fair market value of the property less any portion thereof attributable to expenditures of non-ESG funds for acquisition of, or improvement to, the property. Such reimbursement is not required after a five-year period after expiration of this Contract.

The Subrecipient shall require that the language of this certification be included in the award documents at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative Contract) and that all subcontractors shall certify and disclose accordingly.

Upon expiration of the contract, the Subrecipient must transfer to the CITY any HOME funds on hand at the time of expiration and any accounts receivable attributable to the use of HOME funds [92.504©(2)(vii)].

- W. **RELOCATION, ACQUISITION AND DISPLACEMENT.** The Subrecipient agrees to comply with 24 CFR 570.606, 574.630 or 576.80 relating to the acquisition and disposition of all real property utilizing grant funds, and to the displacement of persons, businesses, non-profit organizations and farms occurring as a direct result of any acquisition of real property utilizing grant funds. The Subrecipient agrees to comply with applicable City of Portland ordinances, resolutions and policies concerning displacement of individuals from their residences.

- X. **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.

- Y. SEVERABILITY. If any provision of this Contract is found to be illegal or unenforceable, this Contract nevertheless shall remain in full force and effect and the provision shall be stricken.
- Z. INTEGRATION. This Contract contains the entire agreement between the City and the Subrecipient and supersedes all prior written or oral discussions or agreements.
- AA. LABOR STANDARDS. The Subrecipient agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act as amended, the provisions of Contract Work Hours, the Safety Standards Act, the Copeland "Anti-Kickback" Act (40 U.S.C 276, 327-333) and all other applicable federal, state and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this contract. The Subrecipient shall maintain documentation that demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to the City of Portland for review upon request.

The Subrecipient agrees that, except with respect to the rehabilitation or construction of residential property designed for residential use for less than eight (8) households, all contractors engaged under contracts in excess of \$2,000.00 for construction, renovation or repair of any building or work financed in whole or in part with assistance provided under this contract, shall comply with federal requirements adopted by the City of Portland pertaining to such contracts and with the applicable requirements of the regulations of the Department of Labor, under 29 CFR, Parts 3, 15 and 7 governing the payment of wages and ratio of apprentices and trainees to journeymen; provided, that if wage rates higher than those required under the regulations are imposed by state or local law, nothing hereunder is intended to relieve the Subrecipient of its obligation, if any, to require payment of the higher wage. The Subrecipient shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions meeting the requirements of this paragraph, for such contracts in excess of \$100,000.

- BB. FLOOD DISASTER PROTECTION. The Subrecipient agrees to comply with the requirements of the Flood Disaster Protection Act of 1973 (P.L.-2234) in regard to the sale, lease or other transfer of land acquired, cleared or improved under the terms of this contract, as it may apply to the provisions of this contract.
- CC. LEAD-BASED PAINT. The Subrecipient agrees that any construction or rehabilitation of residential structure with assistance provided under this contract shall be subject to HUD Lead-Based Paint Regulations at 24 CFR 570.608, 574.635 and 24 CFR Part 35, and in particular Sub-Part B thereof. Such regulations pertain to all HUD-assisted housing and require that all owners, prospective owners, and tenants or properties constructed prior to 1978 be properly notified that such properties may include lead-based paint. Such notification shall point out the hazards of lead-based paint and explain symptoms, treatment and precautions that should be taken when dealing with lead-based paint poisoning.
- DD. 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. No Emergency Shelter Grant (ESG) fund dollars may be used to cover expenses associated with general agency fund raising activities not directly related to ESG-funded projects.
- EE. PUBLICITY. Publicity regarding the project shall note participation of the City through the Bureau of Housing and Community Development.
- FF. LOBBYING. No Federal appropriated funds have been paid or will be paid, by or on behalf of the Subrecipient, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in

connection with this Federal contract, grant, loan, or cooperative agreement, the Subrecipient shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The Subrecipient shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans and cooperative agreement) and that all Subcontractors shall certify and disclose accordingly.

- GG. CHURCH/STATE. The Subrecipient agrees to comply with the applicable provisions of 24 CFR 570.200(j) or 24 CFR 576.22 regarding the use of federal funds by religious organizations.
- HH. INDEPENDENT FINANCIAL AUDITS/REVIEWS. Any subrecipient expending \$500,000 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. Two copies of the audit will be submitted to the designated City Project Manager within 30 days of its completion.
- II. DRUG-FREE WORKPLACE. The Subrecipient will maintain a drug-free workplace in conformance with 24 CFR part 24, subpart F.
- JJ. ENVIRONMENTAL REVIEW. Subrecipient must comply with the requirements of the National Environmental Policy Act of 1959 [24 CFR Part 58]. No funds may be committed and no work may be carried out on any project until the environmental review is complete and a Release of Funds is issued by HUD, if applicable.
- KK. DEBARRED, SUSPENDED OR INELIGIBLE CONTRACTORS. Federal funds may not be used to directly or indirectly employ, award contracts to or otherwise engage the services of any contractor or subrecipient during any period of debarment, suspension or placement of ineligibility status [24 CFR Part 24]. Contractors and subrecipients are responsible for checking the Federal publications that list debarred, suspended and ineligible contractors to assure compliance.
- LL. SMALL AND MINORITY FIRMS, WOMEN'S BUSINESS ENTERPRISES AND LABOR SURPLUS AREA FIRMS. Contractors and County must comply with the requirements of Executive Orders 11625, 12432 and 12138 and 24 CFR 85.36(e), which require that contractors and subrecipients take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible. Such affirmative steps would include: (i) placing qualified small and women's business enterprises on solicitation lists; (ii) assuring that small and minority businesses and women's business enterprises are solicited whenever they are potential sources; (iii) dividing total requirements,

when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women’s business enterprises; (iv) establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women’s business enterprises; (v) using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and (vi) requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed above.

MM. PERIOD OF AFFORDABILITY. The HOME-assisted housing (Homeownership Unit) must meet the affordability requirements for not less than the applicable period specified in the following table, beginning after the transfer of the property to the HOME-assisted buyer. The homeowner must occupy the principal resident throughout the HOME period of affordability.

Homeownership HOME amount per unit	Minimum Period of Affordability in years.
Under \$15,000	5
\$15,000 to \$40,000	10
Over \$40,000	15

NN. OCCUPYING. Occupying means the real property receiving HOME/ADDI/CDBG is the principle residence, the place the homeowner intends to return to whenever homeowner goes away. It is the address that appears on the homeowner’s driver’s license or voter registration card. Homeowner may have only one principle residence at a time.

OO. LOCATION POLICY AND SITING. All housing developed under this Contract is required to comply with the City’s Location Policy, which is designed to maximize housing choice for low-income households and discourage the concentration of low-or no-income households in any one area of the City. At the initiation of eligible housing projects, the Subrecipient agrees to contact the City’s Siting Coordinator at the Bureau of Housing and Community Development to determine Location Policy compliance requirements for each specific project.

The Subrecipient will consult with the Siting Coordinator regarding resources available to assist with the development of Good Neighbor Policies, facilitate dispute resolution, and other siting issues as appropriate.

PP. CONSULTANT SERVICES. No person providing consultant services in an employer-employee type relationship shall receive more than a reasonable rate of compensation for personal services paid with HOME funds. In no event, however, shall such compensation exceed the limits in effect under the provision of any applicable statute. Such services shall be evidenced by written agreements between parties which detail the responsibilities, standards and compensation. Consultant services provided under an independent contractor relationship are not subject to the compensation limitation of Level IV of the Executive Schedule (24 CFR 92.358).

QQ. DISBURSEMENT OF FUNDS. The Subrecipient may not request disbursement of HOME

funds under this contract until the funds are needed for payment of eligible costs. The amount of each request must be limited to the amount needed. Program income must be disbursed before Subrecipient requests funds from the CITY.