

AGREEMENT FOR SERVICES

#763-PHD0508

*with***SIERRA FOOTHILLS AIDS FOUNDATION***regarding***HOUSING OPPORTUNITIES FOR PEOPLE WITH AIDS (HOPWA)
PROGRAM SERVICES**

THIS AGREEMENT made and entered into by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as "County") and Sierra Foothills AIDS Foundation, Inc., a California Non Profit Public Benefit Corporation, qualified as a tax exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1986, whose principal place of business is 12183 Locksley, #205, Auburn, CA 95603 (hereinafter referred to as "Contractor");

WITNESSETH

WHEREAS, County has a need for a contractor to render Housing Opportunities for People With AIDS (hereinafter referred to as "HOPWA") services for individuals and families in El Dorado and Alpine Counties who are living with HIV/AIDS; and

WHEREAS, Contractor has represented to County that it is specially trained, experienced, expert and competent to perform the special services required hereunder and County has determined to rely upon such representations; and

WHEREAS, it is the intent of the parties hereto that such services be in conformity with all applicable federal, state and local laws; and

WHEREAS, County has determined that the provisions of such services provided by Contractor are in the public's best interest, are more economically and feasibly performed by outside independent Contractors as well as authorized by El Dorado County Charter, Section 210 (b) (6) and/or Government Code 31000;

NOW, THEREFORE, County and Contractor mutually agree as follows:

ARTICLE I

Scope of Services: Contractor shall provide short-term rent, mortgage and utility payment assistance to an estimated fifty-seven (57) unduplicated eligible participants and their families utilizing U.S. Department of Housing and Urban Development (HUD) Housing Opportunities for Person with AIDS (HOPWA) funds. Services shall meet all the requirements listed and referred to in Exhibit A, entitled "Scope of Services."

ARTICLE II

Term: This Agreement shall be effective July 1, 2008 and shall expire June 30, 2009 unless earlier terminated pursuant to the provisions under Article IX herein.

ARTICLE III

Compensation for Services: Payment for HOPWA services shall be monthly in arrears based on a consolidated invoice for all qualifying services provided, plus administrative costs at 3.5% of the total. Documentation as described in Exhibit E-1 (Monthly Budget & Fiscal Report and Client Service Type Detail) shall accompany each invoice and must be furnished to the El Dorado County Public Health Department Fiscal Administration Manager no later than the 15th working day of each month following services. Payment will be within 45 days of approval of the invoice and the accompanying HOPWA report forms. The total maximum payment to Contractor for HOPWA services during the term of this Agreement shall not exceed \$42,371.00, of which a maximum of \$1,537.00 shall be for administrative costs (see Exhibit E-2, Budget, for breakout).

Contractor shall maintain for four years following termination of this Agreement full and complete documentation of all services and expenditures associated with performing the services covered under this Agreement. Expense documentation shall include: time sheets or payroll records for each employee; receipts for supplies; applicable subcontract expenditures; applicable overhead and indirect expenses.

ARTICLE IV

Changes to Agreement: This Agreement may be amended by mutual consent of the parties hereto. Said amendments shall become effective only when in writing and fully executed by duly authorized officers of the parties hereto.

ARTICLE V

Contractor to County: It is understood that the services provided under this Agreement shall be prepared in and with cooperation from County and its staff. It is further agreed that in all matters pertaining to this Agreement, Contractor shall act as Contractor only to County and shall not act as Contractor to any other individual or entity affected by this Agreement nor provide information in any manner to any party outside of this Agreement that would conflict with Contractor's responsibilities to County during term hereof.

ARTICLE VI

Assignment and Delegation: Contractor is engaged by County for their unique qualifications and skills as well as those of their personnel. Contractor shall not subcontract, delegate or assign services to be provided, in whole or in part, to any other person or entity without prior written consent of County.

ARTICLE VII

Independent Contractor/Liability: Contractor is, and shall be at all times, deemed independent and shall be wholly responsible for the manner in which it performs services required by terms of this Agreement. Contractor exclusively assumes responsibility for acts of its employees, associates, and subcontractors, if any are authorized herein, as they relate to services to be provided under this Agreement during the course and scope of their employment.

Contractor shall be responsible for performing the work under this Agreement in a safe, professional, skillful and workmanlike manner and shall be liable for its own negligence and negligent acts of its employees. County shall have no right of control over the manner in which work is to be done and shall, therefore, not be charged with responsibility of preventing risk to Contractor or its employees.

ARTICLE VIII

Fiscal Considerations: The parties to this Agreement recognize and acknowledge that County is a political subdivision of the State of California. As such, El Dorado County is subject to the provisions of Article XVI, Section 18 of the California Constitution and other similar fiscal and procurement laws and regulations and may not expend funds for products, equipment or services not budgeted in a given fiscal year. It is further understood that in the normal course of County business, County will adopt a proposed budget prior to a given fiscal year, but that the final adoption of a budget does not occur until after the beginning of the fiscal year.

Notwithstanding any other provision of this Agreement to the contrary, County shall give written notice of cancellation of this Agreement in the event of adoption of a proposed budget that does not provide for funds for the services, products or equipment subject herein. Such notice shall become effective upon the adoption of a final budget which does not provide funding for this Agreement. Upon the effective date of such notice, this Agreement shall be automatically terminated and County released from any further liability hereunder.

In addition to the above, should the Board of Supervisors during the course of a given year for financial reasons reduce, or order a reduction, in the budget for any County department for which services were contracted to be performed, pursuant to this paragraph in the sole discretion of the County, this Agreement may be deemed to be canceled in its entirety subject to payment for services performed prior to cancellation.

ARTICLE IX

Default, Termination, and Cancellation:

- A. **Default:** Upon the occurrence of any default of the provisions of this Agreement, a party shall give written notice of said default to the party in default (notice). If the party in default does not cure the default within ten (10) days of the date of notice (time to cure), then such party shall be in default. The time to cure may be extended in the discretion of the party giving notice. Any extension of time to cure must be in writing, prepared by the party in default for signature by the party giving notice and must specify the reason(s) for the extension and the date in which the extension of time to cure expires.

Notice given under this section shall specify the alleged default and the applicable Agreement provision and shall demand that the party in default perform the provisions of this Agreement within the applicable period of time. No such notice shall be deemed a termination of this Agreement unless the party giving notice so elects in this notice, or the party giving notice so elects in a subsequent written notice after the time to cure has expired.

- B. Bankruptcy: This Agreement, at the option of the County, shall be terminable in the case of bankruptcy, voluntary or involuntary, or insolvency of Contractor.
- C. Ceasing Performance: County may terminate this Agreement in the event Contractor ceases to operate as a business, or otherwise becomes unable to substantially perform any term or condition of this Agreement.
- D. Termination or Cancellation without Cause: County may terminate this Agreement in whole or in part thirty (30) calendar days upon written notice by County for any reason. If such prior termination is effected, County will pay for satisfactory services rendered prior to the effective dates as set forth in the Notice of Termination provided to Contractor, and for such other services, which County may agree to in writing as necessary for contract resolution. In no event, however, shall County be obligated to pay more than the total amount of the contract. Upon receipt of a Notice of Termination, Contractor shall promptly discontinue all services affected, as of the effective date of termination set forth in such Notice of Termination, unless the notice directs otherwise. In the event of termination for default, County reserves the right to take over and complete the work by contract or by any other means.
- E. Termination for Cause: County may terminate this Agreement for cause immediately upon giving written notice to Contractor should Contractor materially fail to perform any of the covenants contained in this Agreement in the time and/or manner specified. In the event of such termination, County may proceed with the work in any manner deemed proper by County. If notice of termination for cause is given by County to Contractor and it is later determined that Contractor was not in default or the default was excusable, then the notice of termination shall be deemed to have been given without cause pursuant to this paragraph (D) above.

ARTICLE X

Notice to Parties: All notices to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office, postage prepaid and return receipt requested. Notices to County shall be in duplicate and addressed as follows:

EL DORADO COUNTY PUBLIC HEALTH DEPARTMENT
931 SPRING STREET
PLACERVILLE, CA 95667
ATTN: MICHAEL UNGEHEUER
COMMUNITY PUBLIC HEALTH NURSING DIVISION MANAGER

or to such other location as the County directs.

Notices to Contractor shall be addressed as follows:

SIERRA FOOTHILLS AIDS FOUNDATION
12183 LOCKSLEY, #205
AUBURN, CA 95603
ATTN: SUSAN FARRINGTON, EXECUTIVE DIRECTOR

or to such other location as the Contractor directs.

ARTICLE XI

Indemnity: To the fullest extent of the law, Contractor shall defend, indemnify, and hold the County harmless against and from any and all claims, suits, losses, damages and liability for damages of every name, kind and description, including attorneys fees and costs incurred, brought for, or on account of, injuries to or death of any person, including but not limited to workers, County employees, and the public, or damage to property, or any economic or consequential losses, which are claimed to or in any way arise out of or are connected with the Contractor's services, operations, or performance hereunder, regardless of the existence or degree of fault or negligence on the part of the County, the Contractor, subcontractor(s) and employee(s) of any of these, except for the sole, or active negligence of the County, its officers and employees, or as expressly provided by statute. This duty of Contractor to indemnify and save County harmless includes the duties to defend set forth in California Civil Code Section 2778.

ARTICLE XII

Insurance: Contractor shall provide proof of a policy of insurance satisfactory to the El Dorado County Risk Manager and documentation evidencing that Contractor maintains insurance that meets the following requirements:

- A. Full Worker's Compensation and Employers' Liability Insurance covering all employees of Contractor as required by law in the State of California.
- B. Commercial General Liability Insurance of not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage.
- C. Automobile Liability Insurance of not less than \$1,000,000 is required in the event motor vehicles are used by the Contractor in the performance of the Agreement.
- D. In the event Contractor is a licensed professional, and is performing professional services under this Agreement, professional liability (for example, malpractice insurance) is required with a limit of liability of not less than \$1,000,000 per occurrence.
- E. Contractor shall furnish a certificate of insurance satisfactory to the El Dorado County Risk Manager as evidence that the insurance required above is being maintained.
- F. The insurance will be issued by an insurance company acceptable to the Risk Management Division, or be provided through partial or total self-insurance likewise acceptable to the Risk Management Division.

- G. Contractor agrees that the insurance required above shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time or times during the term of this Agreement, Contractor agrees to provide at least thirty (30) days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of term of the Agreement, or for a period of not less than one (1) year. New certificates of insurance are subject to the approval of the Risk Management Division and Contractor agrees that no work or services shall be performed prior to the giving of such approval. In the event the Contractor fails to keep in effect at all times insurance coverage as herein provided, County may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event.
- H. The certificate of insurance must include the following provisions stating that:
1. The insurer will not cancel the insured's coverage without thirty (30) days prior written notice to County, and;
 2. The County of El Dorado, its officers, officials, employees, and volunteers are included as additional insured, but only insofar as the operations under this Agreement are concerned. This provision shall apply to all liability policies except worker's compensation and professional liability insurance policies.
- I. The Contractor's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees or volunteers shall be in excess of the Contractor's insurance and shall not contribute with it.
- J. Any deductibles or self-insured retentions must be declared to and approved by the County, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the County, its officers, officials, employees, and volunteers; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- K. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the County, its officers, officials, employees or volunteers.
- L. The insurance companies shall have no recourse against the County of El Dorado, its officers and employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.
- M. Contractor's obligations shall not be limited by the foregoing insurance requirements and shall survive expiration of this Agreement.
- N. In the event Contractor cannot provide an occurrence policy, Contractor shall provide insurance covering claims made as a result of performance of this Agreement for not less than three (3) years following completion of performance of this Agreement.

- O. Certificate of insurance shall meet such additional standards as may be determined by the contracting County Department either independently or in consultation with the Risk Management Division, as essential for protection of the County.

ARTICLE XIII

Interest of Public Official: No official or employee of County who exercises any functions or responsibilities in review or approval of services to be provided by Contractor under this Agreement shall participate in or attempt to influence any decision relating to this Agreement which affects personal interest or interest of any corporation, partnership, or association in which he/she is directly or indirectly interested; nor shall any such official or employee of County have any interest, direct or indirect, in this Agreement or the proceeds thereof.

ARTICLE XIV

Interest of Contractor: Contractor covenants that Contractor presently has no personal interest or financial interest, and shall not acquire same in any manner or degree in either: 1) any other contract connected with or directly affected by the services to be performed by this Agreement; or, 2) any other entities connected with or directly affected by the services to be performed by this Agreement. Contractor further covenants that in the performance of this Agreement no person having any such interest shall be employed by Contractor.

ARTICLE XV

California Residency (Form 590): All independent Contractors providing services to the County must file a State of California Form 590, certifying their California residency or, in the case of a corporation, certifying that they have a permanent place of business in California. The Contractor will be required to submit a Form 590 prior to execution of an Agreement or County shall withhold seven (7) percent of each payment made to the Contractor during term of the Agreement. This requirement applies to any agreement/contract exceeding \$1,500.00.

ARTICLE XVI

Taxpayer Identification / Form W9: All individuals/sole proprietors, corporations, partnerships, associations, organizations or public entities providing services to the County shall provide a fully executed Department of the Treasury Internal Revenue Service Form W-9, "Request for Taxpayer Identification Number and Certification".

ARTICLE XVII

County Business License: It is unlawful for any person to furnish supplies or services, or transact any kind of business in the unincorporated territory of El Dorado County, without possessing a County business license, unless exempt under County Code, Section 5.08.070.

ARTICLE XVIII

Venue: Any dispute resolution action arising out of this Agreement, including, but not limited to, litigation, mediation, or arbitration, shall be brought in El Dorado County, California, and shall be resolved in accordance with the laws of the State of California. Contractor waives any removal rights it might have under Code of Civil Procedure Section 394.

ARTICLE XIX

HIPAA: Under this Agreement, Contractor will provide services to County, and in conjunction with the provision of such services, certain Protected Health Information ("PHI") may be made available to Contractor for the purposes of carrying out its obligations. Contractor agrees to comply with all the terms and conditions of Exhibit B, HIPAA Business Associate Agreement, attached hereto and made by reference a part hereof, regarding the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the regulations promulgated thereunder.

ARTICLE XX

Other Funding Grant Provisions:

1. NONDISCRIMINATION IN EMPLOYMENT, SERVICE, BENEFITS AND FACILITIES

- A. Contractor agrees and assures County that Contractor shall comply with all applicable federal, State, and local anti-discrimination laws, regulations, and ordinances and to not unlawfully discriminate, harass, or allow harassment against any employee, applicant for employment, employee or agent of County or Sacramento County, or recipient of services contemplated to be provided or provided under this Agreement because of race, ancestry, marital status, color, religious creed, political belief, national origin, ethnic group identification, sex, sexual orientation, age (over 40), medical condition (including HIV and AIDS), or physical or mental disability. Contractor shall insure that the evaluation and treatment of its employees and applicants for employment, the treatment of County or Sacramento County employees and agents, and recipients of services are free from such discrimination and harassment.
- B. Contractor represents that it is in compliance with and agrees that it will continue to comply with the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.) and regulations and guidelines issued pursuant thereto.
- C. Contractor agrees to compile data, maintain records and submit reports to permit effective enforcement of all applicable anti-discrimination laws and this provision.

2. LICENSES, PERMITS, AND STAFFING

- A. Contractor warrants that it and all its employees shall possess and maintain all necessary licenses, permits, certificates and credentials required by the laws of the United States, the State of California, County of Sacramento and all other appropriate governmental agencies, including any certification and credentials required by County for the duration of this Agreement. Failure to maintain the licenses, permits, certificates, and credentials shall be deemed a breach of this Agreement and constitutes grounds for termination of this Agreement by County.
- B. Contractor shall make available to County, on request of the El Dorado County Public Health Department Aids Program Coordinator, a list of the persons who will provide services under this agreement. This shall state the name, title, professional degree, and work experience of such persons.

3. CONFIDENTIALITY

- A. Contractor agrees to comply and require its employees to comply with the provisions of Sections 827 and 10850 of the Welfare and Institutions Code and Division 19-000 of the SDSS Manual of Policies and Procedures, to assure that all applications and records concerning an individual made or kept by the Contractor, County, or any public officer or agency in connection with the administration of any

provision of the Welfare and Institutions Code relating to any form of public social services or for services provided under this Agreement for which grants-in-aid are received by this State from the federal government shall be confidential and shall not be open to examination for any purpose not directly connected with the administration of such public social services.

- B. No person will publish or disclose, or use or permit or cause to be published, disclosed, or used any confidential information pertaining to an applicant or recipient.
- C. Contractor shall inform all of its officers, employees, agents, subcontractors and partners of the above provisions and that any person knowingly and intentionally violating the said provisions of state law is guilty of a misdemeanor.

4. COPYRIGHT ACCESS

County shall have a royalty free, nonexclusive and irrevocable license to publish, translate, or use, now, or hereafter, all material developed under this contract including those covered by copyright.

5. EQUIPMENT OWNERSHIP

County shall have and retain ownership and title to all equipment, computers, computer equipment and software purchased by Contractor under this Agreement. Contractor shall furnish, and amend as necessary, a list of all equipment purchased under this Agreement together with bills of sale and any other documents as may be necessary to show clear title and reasonableness of the purchase price. The equipment list shall specify the quantity, name, description, purchase price, and date of purchase of all equipment. County shall inventory tag all equipment and shall conduct or require Contractor to conduct an annual physical inventory of the equipment. Contractor shall make all equipment available to County during normal business hours for tagging or inventory.

6. CLAIMS FOR PAYMENT/AUDIT

- A. It is understood that the validity of any billings, in terms of their compliance with state regulations, is subject to the review of the State of California and/or Sacramento County (Fiscal Agent) and that County will be making payment on said billings in advance of said review and approval by the State or the Fiscal Agent, and in advance of the reimbursement by the Fiscal Agent to County for sums expended thereunder. In the event any claim is disapproved by the State or the Fiscal Agent, Contractor shall take all actions necessary to obtain such approval. In the event that County is not reimbursed by the Fiscal Agent for any amount it has paid to Contractor hereunder, on the basis of or as a result of the failure of Contractor to comply with any terms of this Agreement, or any of the state regulations governing the operation of this Agreement, Contractor shall reimburse County in the amount of such overpayment within thirty (30) days.
- B. It is understood that any records of revenues or expenditures under this contract may be subject to compliance with federal or state regulations and may be audited by the appropriate federal, state, or county agency. In the event of audit disallowance of any claimed cost which is subject to compliance with federal or state regulations, County shall not be liable for any lost revenue resulting therefrom.
- C. Contractor shall maintain full and complete documentation of all expenses associated with performing these services covered under this Agreement. Expense documentation shall include: time sheets or payroll records for each employee; receipts for supplies; applicable subcontract expenditures; applicable overhead and indirect expenditures; and other such documentation required to substantiate overall costs of delivering the required services. All cost claims are subject to audit verification.

Documentation of all expenses associated with performing these services covered under this Agreement shall be maintained for four (4) years following termination of this Agreement.

- D. If a post-agreement audit, conducted in accordance with generally accepted auditing standards, finds that the actual aggregate costs for services furnished pursuant to this Agreement are lower than the payments made by County, the difference shall be repaid by Contractor forthwith by cash payment within 30 days of notice from County. If such post-agreement audit finds that the actual costs of services furnished hereunder are higher than the payments made by County, then the difference shall be paid to Contractor, up to the maximum obligation of this Agreement.
- E. In the event Contractor fails to comply with any provision of this Agreement, County shall withhold payment until such noncompliance has been corrected.

7. SUB-RECIPIENTS OF FEDERAL ASSISTANCE

As a sub-recipient of federal assistance funds, Contractor must comply with the requirements of Exhibit D attached hereto and incorporated herein.

8. DISPUTES

In the event of any dispute arising out of or relating to this Agreement, the parties shall attempt, in good faith, to promptly resolve the dispute mutually between themselves. If the dispute cannot be resolved by mutual agreement, nothing herein shall preclude either party's right to pursue remedy or relief by civil litigation, pursuant to the laws of the State of California.

ARTICLE XXI

Administrator: The County Officer or employee with responsibility for administering this Agreement is Michael Ungeheuer, Community Public Health Nursing Division Manager, or successor.

ARTICLE XXII

Authorized Signatures: The parties to this Agreement represent that the undersigned individuals executing this Agreement on their respective behalf are fully authorized to do so by law or other appropriate instrument and to bind upon said parties to the obligations set forth herein.

ARTICLE XXIII

Partial Invalidity: If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will continue in full force and effect without being impaired or invalidated in any way.

ARTICLE XXIV

Entire Agreement: This document and the documents referred to herein or exhibits hereto are the entire Agreement between the parties and they incorporate or supersede all prior written or oral Agreements or understandings.

DEPARTMENT HEAD CONCURRENCE

By: Gayle Erbe-Hamlin
Gayle Erbe-Hamlin, Director
Public Health Department

Date: 6/10/08

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates indicated herein above.

CONTRACTOR

By: Susan Farrington
Susan Farrington, Executive Director
Sierra Foothills AIDS Foundation

Date: 6-20-08

COUNTY OF EL DORADO

By: Bonnie H. Rich
Bonnie H. Rich, Purchasing Agent
El Dorado County Chief Administrative Office

Date: 8/20/08

AGREEMENT NO. DHA-CS-ELD-01-08
ATTACHMENT I

HOPWA MONTHLY REPORT

This Report is an electronic form, all reports are to be submitted
electronically to the DHA HOPWA Program Planner
Please note exception for Part 3 Stewardship

EXHIBIT A
SCOPE OF SERVICES

I. DESCRIPTION OF SERVICES

- A. Contractor shall provide short-term rent, mortgage and utility payment assistance to fifty-seven (57) unduplicated eligible participants and their families utilizing U.S Department of Housing and Urban Development (HUD) Housing Opportunities for Persons with AIDS (HOPWA) funds.
- B. Contractor shall verify tenancy and the household's short-term housing needs; verify low-income status; and verify HIV/AIDS. Verification shall be evident in Contractor's files for HOPWA Short-Term Rent, Mortgage, and Utility (STRMU) eligible participants. STRMU funds can only be used to assist eligible participants currently in housing as an intervention to prevent homelessness and cannot be used to assist participants who are currently homeless.
- C. Contractor shall establish an Individual Housing Service Plan (ISP) for each household through an intake interview and written assessment of need; and provide access to other permanent housing options for HOPWA eligible persons and their families. The ISP shall include efforts to restore self-sufficiency and future independence from the need for housing support and coordinate related housing efforts to assess the housing needs.
- D. Contractor shall provide each assisted participant with an opportunity, if eligible to receive case management services through the appropriate social services agencies, per Section 574.330(e).

Such case management shall include, but not be limited to:

- 1. Health, mental health, assessment,
- 2. Drug and alcohol abuse treatment and counseling,
- 3. Day care,
- 4. Personal assistance,
- 5. Nutritional services,
- 6. Intensive care when required; and
- 7. Assistance in gaining access to local, State and Federal government benefits and services, except that health services may only be provided to participants with AIDS and AIDS-related diseases and not to family members of these participants.

II. STANDARDS FOR STRMU PAYMENTS

- A. For households experiencing a financial crisis resulting from issues arising from HIV/AIDS. Eligible activities to prevent homelessness are:
 - 1. Rent payments for households with a lease, or legal document showing participant's tenancy or residency.
 - 2. Mortgage payment (but not down-payment support for new units)

3. Payment for taxes or insurance, fees or other building operation cost only if the cost are part of monthly mortgage payments, or part of terms of the mortgage.
4. Utility payments (gas, electric, water and sewer, but not firewood)

B. Confidentiality of Eligible Participant Information.

The provision of HOPWA funding involves information on the HIV/AIDS status of participants for the purpose of determining eligibility for program support. Such information is subject to confidentiality requirements, as mandated by Section 856 of the AIDS Housing Opportunity Act. Contractor must ensure that information is used for the limited purpose of establishing program eligibility. HIV/AIDS status, along with related participant eligibility documentation, should only be accessible by qualified participants who determine eligibility or provide support, of who oversee the provision of this federal assistance. Contractor must have written procedures and training efforts in place to maintain confidentiality. Precautions may include, but are not limited to, maintaining paper files in locked cabinets accessible only be designated individuals, and installing security software for electronic files.

Contractor shall conduct periodic monitoring of confidentiality procedures and undertake related training efforts. To protect participant confidentiality, questions should only be asked and recorded when a program or project has adequate confidentiality protections in place. However, such actions shall not limit the collection of non-personal data necessary to demonstrate sound management of program resources, such as aggregated non-identifying information collected for program performance reports, or controlled access by an authorized governmental official to adequately conduct a program management or financial audit.

Failure to comply with this section shall be considered a default of contract responsibilities, which, after notice, may give rise to suspension and/or loss of contract funds, as well as other potential actions or liability.

C. Connection to Permanent Housing.

As a short-term intervention tool, STRMU assistance is not intended to provide continuous or perpetual assistance. Other types of HOPWA assistance, such as rental assistance, residency in community residences or other housing facilities and, or assistance with access to other housing programs should be employed when participant assessments indicate that little or no improvement of the "conditions" that caused this financial burden are likely during or after the 21-week benefit period. (See Section III. below)

D. Eligibility for STRMU

1. To receive STRMU assistance, the participant must be "a person with acquired immunodeficiency syndrome (AIDS) or related disease who is a low income individual, and the person's family. A participant or a participant and his family shall be considered a household for purposes of data collection. STRMU is to provide short-term interventions to help maintain stable living environment for households experiencing a financial crisis as a result of issues arising from HIV/AIDS condition. Contractor must maintain documentation that the assisted person is HIV positive or has a diagnosis of AIDS, as determined by a health professional competent to make such a determination. Documentation must also confirm that the eligible person and his family are low income, as measured 80 percent of area median income, and provide for periodic updating of income information. Documentation providing evidence of eligibility for STRMU must be

maintained on the premises of the Programs Sponsor's primary office that provides STRMU assistance.

2. Current Resident

To receive STRMU assistance the participant must be a current resident, already in a housing situation, and not homeless. There must be evidence of participant's tenancy or ownership and residency. For rental payments, there must be a valid lease. For mortgage payment, the eligible person must be the resident owner of the mortgaged real property. For utility assistance, the eligible person must have an account in his name with a utility company or proof of responsibility to make utility payments, such as cancelled checks, or receipts in their name from a utility company. Other utility needs may be authorized by written request of Contractor to the DHA HOPWA Program Planner to HUD.

3. Risks of Homelessness

HOPWA is a "needs-based" program; therefore participants must demonstrate the level of benefits needed through verifiable documentation. Contractor shall verify and document the participant's inability to make required payments. Contractor shall assess that the household's needs are for actual costs; that other resources, such as household income, are not reasonable available to address the unmet housing need; that the STRMU payment will alleviate the payment delinquency so as to avoid the eviction and result in, at least temporary stability for that household; and that the household's on-going housing needs were assessed or will be assessed in connection with the development of an individual housing service plan for the household. STRMU payments cannot be made to an eligible person and their family for the same period of time or housing costs if assistance is also being provided for those costs and period of time through HOPWA or another federal, state or local housing subsidy program.

E. Payment Limitations

The average expenditure of short-term HOPWA funds per eligible participant is \$716 (calculated by the amount available divided by the number of participants to be served). Short-term HOPWA funds may only be used to provide short-term interventions that help maintain stable living environments for households who are experiencing a financial crisis as a result of issues arising from their HIV/AIDS condition. Payments are limited to 21 weeks in any 52-week period. (See section III. below).

F. Suitable Housing Units

Contractor shall assess whether the housing is safe, decent and sanitary as part of their required on-going assessment of the housing assistance provided through STRMU. A Housing quality standard inspection is not required initially for the use of the time-limited STRMU payments, if needed to prevent the homelessness of the household and the unit is safe and decent. However, it is strongly recommended that continued occupancy of any HOPWA-supported housing be shown to meet HUD's habitability standards found at 24 CFR 574.310(b)(2), and that any observed deficiencies noted in an individual housing service plan are addressed appropriately, consistent at a minimum with state and local standards.

III. ELIGIBLE STRMU PERIOD AND STANDARD METHOD TO TRACK

Beneficiaries should be prompted to make at least a partial payment for their housing costs. Assistance may not be provided for costs accruing over a period of more than 21 weeks in any

52-week period. Contractor shall examine the period of time covered by rental, mortgage and utility bills to assure that payments are not made in excess of amounts incurring over 21 weeks, and shall document it in the participant's file. Short-term support should be connected to helping households with more long-term needs with other forms of support. All STRMU costs may be equated to the actual calendar days of assistance provided.

The County has chosen to use "Rounding a month to four weeks" as the tracking method for all STRMU contractors for this jurisdiction. Contractor shall use this method consistently for all of its participants. This method rounds each month to four weeks, allowing for up to 21 weeks in the benefits period. Rental and mortgage costs generally cover a calendar month period consisting of slightly more than four full weeks. This method allows for 5 months and one week of assistance as the limit, regardless of the number of days in those months. Example: A rental period of June 1 through June 30 is rounded down to 4 weeks. If payment was made for 75% of a month's rent it would be tracked as 3 weeks; 50% of a month's rent would be tracked as 2 weeks, and 25% of a month's rent would be tracked as 1 week.

Monthly utility service periods generally do not coincide with rent or mortgage periods, rather they likely span parts of 2 calendar months. When assisting only the utility costs, the monthly assistance period is rounded down to 4 weeks of STRMU support. Example: A utility period of May 7 through June 6 is rounded down to 4 weeks. If payment was made for 75% of a utility bill it would be tracked as 3 weeks; 50% of a utility bill would be tracked as 2 weeks, and 25% of a utility bill would be tracked as 1 week.

If both a housing bill and a utility bill are paid to address the household's STRMU need, but the dates of service do not coincide, the benefit period would be calculated as follows: Count this overall assistance as one month (4 weeks) if at least 14 days of the utility period coincide with the rent/mortgage period. In situations where less than 14 days coincide, the remaining portion of the utility period will be attributed to the next month for tracking purposes. Example #1: A rental period of May 1-31 is rounded down to 4 weeks. The utility period of May 7 through June 6 results in 25 days coinciding with the rental period; therefore, a total of 4 weeks is counted in May for the payment of both rent and utilities. Example #2: If the utility bill had coincided with the May rental period for less than 14 days (e.g., May 20 – June 19, equaling 12 days rounded up to 2 weeks in May), part of this assistance (19 days) would be attributed to June, as 3 additional weeks of assistance added to the 4 weeks attributed to May for rent assistance.

IV. HUD HOPWA STRMU OBJECTIVE AND OUTCOME

Contractor shall provide short-term rent, mortgage and utility payment assistance with these objectives and outcomes.

- A. Objective = Decent and affordable housing
Contractor shall provide STRMU to 57 participants to address immediate housing needs and provide support to prevent or reduce the pressing risks of homelessness for recipients.
- B. Outcome = Sustainability
Contractor shall create an Individual Service Plan for each eligible participant identifying the goals to sustain housing by reducing the risks of homelessness and improving access to health care and other support services through other public and private resources in order to assist recipients in maintaining current housing.

V. COOPERATION

Contractor shall coordinate with other service providers who are providing support services and/or lodging for the homeless population and with agencies necessary to carry out its services in the most efficient manner possible and to enable referrals to appropriate agencies/programs.

VI. RECORD-KEEPING AND REPORTING**A. Contractor shall:**

1. Prepare and maintain confidential case files on each participant served, which will include all verifications for eligibility, intake documents, and calculations of rental assistance which includes the rounding method used as described above in Section III.
2. Keep records of dates and referrals to other services needed by participant, expected outcomes, and follow-up with participant to establish results of referral.
3. Maintain records indicating case management service, Individual Housing Services Plan, and all other services required under this Agreement as detailed above in Section III.

B. Contractor's records will be made available upon request for inspection by the County.

C. Contractor shall e-mail the New HOPWA Monthly Report, which covers the data needed for reporting within HUD requirements to the HOPWA Program Planner in the DHA Homeless Programs Division.

D. Contractor must provide leveraging information, including, but not limited to, other monetary funds or in-kind donations that Contractor receives over and above HOPWA funding.

E. Monthly reporting forms and requirements are subject to change. County shall notify Contractor if the Attachments to this Exhibit change.

VII. EVALUATION

County may at any time, evaluate this program. Adequate notice shall be given to Contractor of such action, and Contractor shall be given the opportunity to participate in the evaluation process and to respond.

VIII. ATTACHMENTS

Attachment I – County of Sacramento, Homeless Programs, New HOPWA Monthly Report

EXHIBIT B
HIPAA Business Associate Agreement

This HIPAA Business Associate Agreement is made part of the base contract (“Underlying Agreement”) to which it is attached, as of the date of commencement of the term of the Underlying Agreement (the “Effective Date”).

RECITALS

WHEREAS, County and Contractor entered into the Underlying Agreement pursuant to which Contractor provides services to County, and in conjunction with the provision of such services, certain Protected Health Information (“PHI”) and Electronic Protected Health Information (“EPHI”) may be made available to Contractor for the purposes of carrying out its obligations under the Underlying Agreement; and

WHEREAS, the provisions of the Health Insurance Portability and Accountability Act, Pub. L. No. 104-161 of 1996 (“HIPAA”), more specifically the regulations found at Title 45, CFR, Parts 160 - 164 (the “Privacy and Security Rule”), as may be amended from time to time, which are applicable to the protection of any disclosure of PHI pursuant to the Underlying Agreement; and

WHEREAS, County is a Covered Entity, as defined in the Privacy Rule; and

WHEREAS, Contractor, when a recipient of PHI from County, is a Business Associate as defined in the Privacy Rule; and

WHEREAS, “Individual” shall have the same meaning as the term “individual” in 45 CFR § 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.202(g); and

WHEREAS, the parties agree that any disclosure or use of PHI or EPHI be in compliance with the Privacy and Security Rule or other applicable law;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties agree as follows:

1. **Definitions.** Unless otherwise provided in this Business Associate Agreement, capitalized terms shall have the same meanings as set forth in the Privacy Rule, as may be amended from time to time.
2. **Scope of Use and Disclosure by Contractor of County Disclosed PHI**
 - A. Contractor shall be permitted to use PHI disclosed to it by the County:
 - (1) on behalf of the County, or to provide services to the County for the purposes contained herein, if such use or disclosure would not violate the Privacy Rule if done by the County, or the minimum necessary policies and procedures of the County
 - (2) as necessary to perform any and all of its obligations under the Underlying Agreement.
 - B. Unless otherwise limited herein, in addition to any other uses and/or disclosures permitted or authorized by this Business Associate Agreement or Required by Law, Contractor may:
 - (1) use the PHI in its possession for its proper management and administration and to fulfill any legal obligations.
 - (2) disclose the PHI in its possession to a third party for the purpose of

Contractor's proper management and administration or to fulfill any legal responsibilities of Contractor. Contractor may disclose PHI as necessary for Contractor's operations only if:

- (a) The disclosure is Required by Law; or
 - (b) Contractor obtains written assurances from any person or organization to which Contractor will disclose such PHI that the person or organization will:
 - (i) hold such PHI in confidence and use or further disclose it only for the purpose of which Contractor disclosed it to the third party, or as Required by Law; and,
 - (ii) the third party will notify Contractor of any instances of which it becomes aware in which the confidentiality of the information has been breached.
 - (3) aggregate the PHI and/or aggregate the PHI with that of other data for the purpose of providing County with data analyses related to the Underlying Agreement, or any other purpose, financial or otherwise, as requested by County.
 - (4) not disclose PHI disclosed to Contractor by County not authorized by the Underlying Agreement or this Business Associate Agreement without patient authorization or de-identification of the PHI as authorized in writing by County.
 - (5) de-identify any and all PHI of County received by Contractor under this Business Associate Agreement provided that the de-identification conforms to the requirements of the Privacy Rule, 45 CFR and does not preclude timely payment and/or claims processing and receipt.
- C. Contractor agrees that it will neither use nor disclose PHI it receives from County, or from another business associate of County, except as permitted or required by this Business Associate Agreement, or as Required by Law, or as otherwise permitted by law.

3. Obligations of Contractor. In connection with its use of PHI disclosed by County to Contractor, Contractor agrees to:
- A. Use or disclose PHI only as permitted or required by this Business Associate Agreement or as Required by Law.
 - B. Use reasonable and appropriate safeguards to prevent use or disclosure of PHI other than as provided for by this Business Associate Agreement.
 - C. To the extent practicable, mitigate any harmful effect that is known to Contractor of a use or disclosure of PHI by Contractor in violation of this Business Associate Agreement.
 - D. Report to County any use or disclosure of PHI not provided for by this Business Associate Agreement of which Contractor becomes aware.
 - E. Require sub-contractors or agents to whom Contractor provides PHI to agree to the same restrictions and conditions that apply to Contractor pursuant to this Business Associate Agreement.

- F. Use appropriate administrative, technical and physical safeguards to prevent inappropriate use or disclosure of PHI created or received for or from the County.
 - G. Implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic PHI that it creates, receives, maintains, or transmits on behalf of the County and to follow generally accepted system security principles as required in final rule 45 CFR Parts 160-164.
 - H. Contractor will report any security incident of which it becomes aware to the County. Security incident means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations. This does not include trivial incidents that occur on a daily basis, such as scans or "pings".
 - I. Obtain and maintain knowledge of the applicable laws and regulations related to HIPAA, as may be amended from time to time.
 - J. May use PHI to report violations of law to appropriate Federal and State Authorities, consistent with § 164.502(j) (1).
4. PHI Access, Amendment and Disclosure Accounting. Contractor agrees to:
- A. Provide access, at the request of County, within five (5) days, to PHI in a Designated Record Set, to the County, or to an Individual as directed by the County.
 - B. To make any amendment(s) to PHI in a Designated Record Set that the County directs or agrees to at the request of County or an Individual within sixty (60) days of the request of County.
 - C. To assist the County in meeting its disclosure accounting under HIPAA:
 - (1) Contractor agrees to document such disclosures of PHI and information related to such disclosures as would be required for the County to respond to a request by an Individual for an accounting of disclosures of PHI.
 - (2) Contractor agrees to provide to County or an Individual, within sixty (60) days, information collected in accordance with this section to permit the County to respond to a request by an Individual for an accounting of disclosures of PHI.
 - (3) Contractor shall have available for the County the information required by this section for the six (6) years preceding the County's request for information (except the Contractor need have no information for disclosures occurring before April 14, 2003).
 - D. Make available to the County, or to the Secretary of Health and Human Services, Contractor's internal practices, books and records relating to the use of and disclosure of PHI for purposes of determining Contractor's compliance with the Privacy Rule, subject to any applicable legal restrictions.
 - E. Within thirty (30) days of receiving a written request from County, make available any and all information necessary for County to make an accounting of disclosures of County PHI by Contractor.
 - F. Within sixty (60) days of receiving a written request from County,

incorporate any amendments or corrections to the PHI in accordance with the Privacy Rule in the event that the PHI in Contractor's possession constitutes a Designated Record Set.

- G. Not make any disclosure of PHI that County would be prohibited from making.

5. Obligations of County.

- A. County agrees that it will make its best efforts to promptly notify Contractor in writing of any restrictions on the use and disclosure of PHI agreed to by County that may affect Contractor's ability to perform its obligations under the Underlying Agreement, or this Business Associate Agreement.
- B. County agrees that it will make its best efforts to promptly notify Contractor in writing of any changes in, or revocation of, permission by any Individual to use or disclose PHI, if such changes or revocation may affect Contractor's ability to perform its obligations under the Underlying Agreement, or this Business Associate Agreement.
- C. County agrees that it make it's best efforts to promptly notify Contractor in writing of any known limitation(s) in its notice of privacy practices to the extent that such limitation may affect Contractor's use of disclosure of PHI.
- D. County shall not request Contractor to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by County, except as may be expressly permitted by the Privacy Rule.
- E. County will obtain any authorizations necessary for the use or disclosure of PHI, so that Contractor can perform its obligations under this Business Associate Agreement and/or the Underlying Agreement.

6. Term and Termination.

- A. Term – this Business Associate Agreement shall commence upon the Effective Date and terminate upon the termination of the Underlying Agreement, as provided therein when all PHI provided by the County to Contractor, or created or received by Contractor on behalf of the County, is destroyed or returned to the County, or, or if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.
- B. Termination for Cause. Upon the County's knowledge of a material breach by the Contractor, the County shall either:
- (1) Provide an opportunity for the Contractor to cure the breach or end the violation and terminate this Agreement if the Contractor does not cure the breach or end the violation within the time specified by the County.
 - (2) Immediately terminate this Agreement if the Contractor has breached a material term of this Agreement and cure is not possible; or
 - (3) If neither termination nor cures are feasible, the County shall report the violation to the Secretary.

C. Effect of Termination.

- (1) Except as provided in paragraph (2) of this section, upon termination of this Agreement, for any reason, the Contractor shall return or destroy all PHI received from the County, created or received by the Contractor on behalf of the County. This provision shall apply to PHI that is in the possession of subcontractors or agents of the Contractor. Contractor shall retain no copies of the PHI.
- (2) In the event that the Contractor determines that returning or destroying the PHI is infeasible, Contractor shall provide to the County notification of the conditions that make return or destruction infeasible. Upon {negotiated terms} that return or destruction of PHI is infeasible, Contractor shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as the Contractor maintains such PHI.

7. HIPAA Business Associate Indemnity

Contractor shall indemnify and hold harmless all Agencies, Districts, Special Districts and Departments of the County, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives from any liability whatsoever, based or asserted upon any services of Contractor, its officers, employees, subcontractors, agents or representatives arising out of or in any way relating to this Business Associate Agreement, including but not limited to property damage, bodily injury, or death or any other element of any kind or nature whatsoever including fines, penalties or any other costs and resulting from any reason whatsoever arising from the performance of Contractor, its officers, agents, employees, subcontractors, agents or representatives from this Business Associate Agreement. Contractor shall defend, at its sole expense, all costs and fees including but not limited to attorney fees, cost of investigation, defense and settlements or awards all Agencies, Districts, Special Districts and Departments of the County, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives in any claim or action based upon such alleged acts or omissions.

With respect to any action or claim subject to indemnification herein by Contractor, Contractor shall, at their sole cost, have the right to use counsel of their choice, subject to the approval of County, which shall not be unreasonably withheld, and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of County; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes Contractor's indemnification to County as set forth herein. Contractor's obligation to defend, indemnify and hold harmless County shall be subject to County having given Contractor written notice within a reasonable period of time of the claim or of the commencement of the related action, as the case may be, and information and reasonable assistance, at Contractor's expense, for the defense or settlement thereof. Contractor's obligation hereunder shall be

satisfied when Contractor has provided to County the appropriate form of dismissal relieving County from any liability for the action or claim involved.

The specified insurance limits required in the Underlying Agreement of this Business Associate Agreement shall in no way limit or circumscribe Contractor's obligations to indemnify and hold harmless the County herein from third party claims arising from the issues of this Business Associate Agreement.

In the event there is conflict between this clause and California Civil Code Section 2782, this clause shall be interpreted to comply with Civil Code 2782. Such interpretation shall not relieve the Contractor from indemnifying the County to the fullest extent allowed by law.

In the event there is a conflict between this indemnification clause and an indemnification clause contained in the Underlying Agreement of this Business Associate Agreement, this indemnification shall only apply to the subject issues included within this Business Associate Agreement.

8. Amendment – the parties agree to take such action as is necessary to amend this Business Associate Agreement from time to time as is necessary for County to comply with the Privacy Rule, 45 CFR, and HIPAA generally.
9. Survival – the respective rights and obligations of this Business Associate Agreement shall survive the termination or expiration of this Business Associate Agreement.
10. Regulatory References – a reference in this Business Associate Agreement to a section in the Privacy Rule means the section as in effect or as amended.
11. Conflicts – any ambiguity in this Business Associate Agreement and the Underlying Agreement shall be resolved to permit County to comply with the Privacy Rule, 45 CFR, and HIPAA generally.

EXHIBIT C

(Intentionally left blank)

There is no Exhibit C

HOPWA Regulations

Exhibit D

Features

- ▶ Subpart A - General
- ▶ Subpart B - Formula Entitlements
- ▶ Subpart C - Competitive Grant Funds
- ▶ Subpart D - Uses of Grant Funds
- ▶ Subpart E - Special Responsibilities of Grantees and Project Sponsors
- ▶ Subpart F - Grant Administration
- ▶ Subpart G - Other Federal Requirements

Part 574 -- Housing Opportunities For Persons With AIDS Program

Subpart A - General - pdf

Section	Title
574.3	Definitions

Subpart B - Formula Entitlements - pdf

Section	Title
574.100	Eligible Applicants
574.110	Overview of formula allocations
574.120	Responsibility of applicant to serve EMSA
574.130	Formula allocations
574.190	Reallocations of grant amounts

Subpart C - Competitive Grant Funds - pdf

763-PHD0508

09-0956.C.25

Section	Title
574.200	Amounts available for competitive grants
574.210	Eligible applicants
574.240	Application requirements
574.260	Amendments

Subpart D - Uses of Grant Funds - pdf

Section	Title
574.300	Eligible Activities
574.310	General standards for eligible housing activities
574.320	Additional standards for rental assistance
574.330	Additional standards for short-term supported housing
574.340	Additional standards for community residences

Subpart E - Special Responsibilities of Grantees and Project Sponsors - pdf

Section	Title
574.400	Prohibition of substitution of funds
574.410	Capacity
574.420	Cooperation
574.430	Fee prohibitions
574.440	Confidentiality
574.450	Financial records

Subpart F - Grant Administration - pdf

Section	Title
574.500	Responsibility for grant administration
574.510	Environmental procedures and standards
574.520	Performance reports
574.530	Recordkeeping
574.540	Deobligation of funds

Subpart G - Other Federal Requirements - pdf

Section	Title
574.600	Cross-reference
574.603	Nondiscrimination and equal opportunity
574.605	Applicability of OMB circulars
574.625	Conflict of interest

574.630	Displacement, relocation and real property acquisition
574.635	Lead-based paint
574.640	Flood insurance protection
574.645	Coastal barriers
574.650	Audit
574.655	Wage rates

U.S. Department of Housing and Urban Development
451 7th Street, S.W., Washington, DC 20410
Telephone: (202) 708-1112 TTY: (202) 708-1455

TITLE 24—HOUSING AND URBAN DEVELOPMENT

SECRETARY FOR COMMUNITY PLANNING AND DEVELOPMENT, DEPARTMENT OF
HOUSING AND URBAN DEVELOPMENT

PART 574—HOUSING OPPORTUNITIES FOR PERSONS WITH AIDS

Subpart A—General

Subpart A—General

Sec. 574.3 Definitions.

The terms Grantee and Secretary are defined in 24 CFR part 5.

Acquired immunodeficiency syndrome (AIDS) or related diseases means the disease of acquired immunodeficiency syndrome or any conditions arising from the etiologic agent for acquired immunodeficiency syndrome, including infection with the human immunodeficiency virus (HIV).

Administrative costs mean costs for general management, oversight, coordination, evaluation, and reporting on eligible activities. Such costs do not include costs directly related to carrying out eligible activities, since those costs are eligible as part of the activity delivery costs of such activities.

Applicant means a State or city applying for a formula allocation as described under Sec. 574.100 or a State, unit of general local government, or a nonprofit organization applying for a competitive grant as described under Sec. 574.210.

City has the meaning given it in section 102(a) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302).

Eligible Metropolitan Statistical Area (EMSA) means a metropolitan statistical area that has a population of more than 500,000 and has more than 1,500 cumulative cases of AIDS.

Eligible person means a person with acquired immunodeficiency syndrome or related diseases who is a low-income individual, as defined in this section, and the person's family. A person with AIDS or related diseases or a family member regardless of income is eligible to receive housing information services, as described in Sec. 574.300(b)(1). Any person living in proximity to a community residence is eligible to participate in that residence's community outreach and educational activities regarding AIDS or related diseases, as provided in Sec. 574.300(b)(9).

Eligible State means a State that has:

- (1) More than 1,500 cumulative cases of AIDS in those areas of the State outside of eligible metropolitan statistical areas that are eligible to be funded through a qualifying city; and
- (2) A consolidated plan prepared, submitted, and approved in accordance with 24 CFR part 91 that covers the assistance to be provided under this part. (A State may carry out activities anywhere in the State, including within an EMSA.)

Family means a household composed of two or more related persons. The term family also includes one or more eligible persons living with another person or persons who are determined to be important to their care or well being, and the surviving member or members of any family described in this definition who were living in a unit assisted under the HOPWA program with the person with AIDS at the time of his or her death.

Low-income individual has the meaning given it in section 853(3) of the AIDS Housing Opportunity Act (42 U.S.C. 12902).

Metropolitan statistical area has the meaning given it in section 853(5) of the AIDS Housing Opportunity Act (42 U.S.C. 12902).

Nonprofit organization means any nonprofit organization (including a State or locally chartered, nonprofit organization) that:

- (1) Is organized under State or local laws;
- (2) Has no part of its net earnings inuring to the benefit of any member, founder, contributor, or individual;
- (3) Has a functioning accounting system that is operated in accordance with generally accepted accounting principles, or has designated an entity that will maintain such an accounting system; and

(4) Has among its purposes significant activities related to providing services or housing to persons with acquired immunodeficiency syndrome or related diseases.

Non-substantial rehabilitation means rehabilitation that involves costs that are less than or equal to 75 percent of the value of the building after rehabilitation.

Population means total resident population based on data compiled by the U.S. Census and referable to the same point in time.

Project sponsor means any nonprofit organization or governmental housing agency that receives funds under a contract with the grantee to carry out eligible activities under this part. The selection of project sponsors is not subject to the procurement requirements of 24 CFR 85.36.

Qualifying city means a city that is the most populous unit of general local government in an eligible metropolitan statistical area (EMSA) and that has a consolidated plan prepared, submitted, and approved in accordance with 24 CFR part 91 that covers the assistance to be provided under this part.

Rehabilitation means the improvement or repair of an existing structure, or an addition to an existing structure that does not increase the floor area by more than 100 percent.

State has the meaning given it in section 853(9) of the AIDS Housing Opportunity Act (42 U.S.C. 2902).

Substantial rehabilitation means rehabilitation that involves costs in excess of 75 percent of the value of the building after rehabilitation.

Unit of general local government means any city, town, township, parish, county, village, or other general purpose political subdivision of a State; Guam, the Northern Mariana Islands, the Virgin Islands, American Samoa, the Federated States of Micronesia and Palau, the Marshall Islands, or a general purpose political subdivision thereof; and any agency or instrumentality thereof that is established pursuant to legislation and designated by the chief executive to act on behalf of the jurisdiction with regard to provisions of the National Affordable Housing Act.

[57 FR 61740, Dec. 28, 1992, as amended at 59 FR 17199, Apr. 11, 1994; 60 FR 1917, Jan. 5, 1995; 61 FR 5209, Feb. 9, 1996; 61 FR 7963, Feb. 29, 1996]

TITLE 24—HOUSING AND URBAN DEVELOPMENT

SECRETARY FOR COMMUNITY PLANNING AND DEVELOPMENT, DEPARTMENT OF
HOUSING AND URBAN DEVELOPMENT

PART 574—HOUSING OPPORTUNITIES FOR PERSONS WITH AIDS

Subpart B—Formula Entitlements

- 574.100 Eligible applicants
- 574.110 Overview of formula allocations.
- 574.120 Responsibility of applicant to serve EMSA.
- 574.130 Formula allocations.

Reallocations of grant amounts. Subpart B— Formula Entitlements

Sec. 574. 100 Eligible applicants.

(a) Eligible States and qualifying cities, as defined in Sec. 574.3, qualify for formula allocations under HOPWA.

(b) HUD will notify eligible States and qualifying cities of their formula eligibility and allocation amounts and EMSA service areas annually.

[57 FR 61740, Dec. 28, 1992, as amended at 59 FR 17199, Apr. 11, 1994; 60 FR 1917, Jan. 5, 1995]

Sec. 574. 110 Overview of formula allocations.

The formula grants are awarded upon submission and approval of a consolidated plan, pursuant to 24 CFR part 91, that covers the assistance to be provided under this part. Certain states and cities that are the most populous unit of general local government in eligible metropolitan statistical areas will receive formula allocations based on their State or metropolitan population and proportionate number of cases of persons with AIDS. They will receive funds under this part (providing they comply with 24 CFR part 91) for eligible activities that address the housing needs of persons with AIDS or related diseases and their families (see Sec. 574.130(b)).

[61 FR 7963, Feb. 29, 1996]

Sec. 574.120 Responsibility of applicant to serve EMSA.

The EMSA's applicant shall serve eligible persons who live anywhere within the EMSA, except that housing assistance shall be provided only in localities within the EMSA that have a consolidated plan prepared, submitted, and approved in accordance with 24 CFR part 91 that covers the assistance to be provided under this part. In allocating grant amounts among eligible activities, the EMSA's applicant shall address needs of eligible persons who reside within the metropolitan statistical area, including those not within the jurisdiction of the applicant.

[60 FR 1917, Jan. 5, 1995]

Sec. 574. 130 Formula allocations.

(a) *Data sources.* HUD will allocate funds based on the number of cases of acquired immunodeficiency syndrome reported to and confirmed by the Director of the Centers for Disease Control, and on population data provided by the U.S. Census. The number of cases of acquired immunodeficiency syndrome used for this purpose shall be the number reported as of March 31 of the fiscal year immediately preceding the fiscal year for which the amounts are appropriated and allocated.

(b) *Distribution of appropriated funds for entitlement awards.*

(1) Seventy-five percent of the funds allocated under the formula is distributed to qualifying cities and eligible States, as described in Sec. 574.100, based on each metropolitan statistical area's or State's

proportionate share of the cumulative number of AIDS cases in all eligible metropolitan statistical areas and eligible States.

(2) The remaining twenty-five percent is allocated among qualifying cities, but not States, where the per capita incidence of AIDS for the year, April 1 through March 31, preceding the fiscal year of the appropriation is higher than the average for all metropolitan statistical areas with more than 500,000 population. Each qualifying city's allocation reflects its EMSA's proportionate share of the high incidence factor among EMSA's with higher than average per capita incidence of AIDS. The high incidence factor is computed by multiplying the population of the metropolitan statistical area by the difference between its twelve-month-per-capita-incidence rate and the average rate for all metropolitan statistical areas with more than 500,000 population. The EMSA's proportionate share is determined by dividing its high incidence factor by the sum of the high incidence factors for all EMSA's with higher than average per capita incidence of AIDS.

(c) *Minimum grant.* No grant awarded under paragraph (b) of this section shall be less than \$200,000. Therefore, if the calculations under paragraph (b) of this section would result in any eligible metropolitan statistical area or eligible State receiving less than \$200,000, the amount allocated to that entity is increased to \$200,000 and allocations to entities in excess of \$200,000 are proportionately reduced by the amount of the increase.

Sec. 574.190 Reallocation of grant amounts.

If an eligible State or qualifying city does not submit a consolidated plan in a timely fashion, in accordance with 24 CFR part 91, that provides for use of its allocation of funding under this part, the funds allocated to that jurisdiction will be added to the funds available for formula allocations to other jurisdictions in the current fiscal year. Any formula funds that become available as a result of deobligations or the imposition of sanctions as provided for in Sec. 574.540 will be added to the funds available for formula allocations in the next fiscal year.

[57 FR 61740, Dec. 28, 1992, as amended at 60 FR 1918, Jan. 5, 1995]

TITLE 24—HOUSING AND URBAN DEVELOPMENT

SECRETARY FOR COMMUNITY PLANNING AND DEVELOPMENT, DEPARTMENT OF
HOUSING AND URBAN DEVELOPMENT

PART 574—HOUSING OPPORTUNITIES FOR PERSONS WITH AIDS

Subpart C—Competitive Grant Funds

574.200 Amounts available for competitive grants.

574.210 Eligible applicants.

574.240 Application requirements.

574.260 Amendments.

Subpart C - Competitive Grants

Sec. 574. 200 Amounts available for competitive grants.

(a) The Department will set aside 10 percent of the amounts appropriated under this program to fund on a competitive basis:

(1) Special projects of national significance; and

(2) Other projects submitted by States and localities that do not qualify for formula grants.

(b) Any competitively awarded funds that become available as a result of deobligations or the imposition of sanctions, as provided in Sec. 574.540, will be added to the funds available for competitive grants in the next fiscal year.

(c) The competitive grants are awarded based on applications, as described in subpart C of this part, submitted in response to a Notice of Funding Availability published in the Federal Register. All States and units of general local government and nonprofit organizations are eligible to apply for competitive grants to fund projects of national significance. Only those States and units of general local government that do not qualify for formula allocations are eligible to apply for competitive grants to fund other projects.

(d) If HUD makes a procedural error in a funding competition that, when corrected, would warrant funding of an otherwise eligible application, HUD will select that application for potential funding when sufficient funds become available.

[57 FR 61740, Dec. 28, 1992, as amended at 61 FR 7963, Feb. 29, 1996]

Sec. 574. 210 Eligible applicants.

(a) All States, units of general local government, and nonprofit organizations, may apply for grants for projects of national significance.

(b) Only those States and units of general local government that do not qualify for formula grants, as described in Sec. 574.100; may apply for grants for other projects as described in Sec. 574.200(a)(2).

(c) Except for grants for projects of national significance, nonprofit organizations are not eligible to apply directly to HUD for a grant but may receive funding as a project sponsor under contract with a grantee.

Sec. 574. 240 Application requirements.

Applications must comply with the provisions of the Department's Notice of Funding Availability (NOFA) for the fiscal year published in the Federal Register in accordance with 24 CFR part 12. The rating criteria, including the point value for each, are described in the NOFA, including criteria determined by the Secretary.

[61 FR 7963, Feb. 29, 1996]

Sec. 574. 260 Amendments.

(a) After an application has been selected for funding, any change that will significantly alter the scope, location, service area, or objectives of an activity or the number of eligible persons served must be justified to HUD and approved by HUD. Whenever any other amendment to the application is made, the grantee must provide a copy to HUD.

(b) Each amendment request must contain a description of the revised proposed use of funds. Funds may not be expended for the revised proposed use of funds until:

- (1) HUD accepts the revised proposed use; and
- (2) For amendments to acquire, rehabilitate, convert, lease, repair or construct properties to provide housing, an environmental review of the revised proposed use of funds has been completed in accordance with Sec. 574.510.

(Approved by the Office of Management and Budget under control number 2506-0133)

TITLE 24--HOUSING AND URBAN DEVELOPMENT

SECRETARY FOR COMMUNITY PLANNING AND DEVELOPMENT, DEPARTMENT OF
HOUSING AND URBAN DEVELOPMENT

PART 574—HOUSING OPPORTUNITIES FOR PERSONS WITH AIDS

Subpart D—Uses of Grant Funds

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Subpart D—Uses of Grant Funds

Sec. 574.300 Eligible activities.

(a) *General.* Subject to applicable requirements described in Secs. 574.310, 574.320, 574.330, and 574.340, HOPWA funds may be used to assist all forms of housing designed to prevent homelessness including emergency housing, shared housing arrangements, apartments, single room occupancy (SRO) dwellings, and community residences. Appropriate supportive services, as required by Sec. 574.310(a), must be provided as part of any HOPWA assisted housing, but HOPWA funds may also be used to provide services independently of any housing activity.

(b) *Activities.* The following activities may be carried out with HOPWA funds:

(1) Housing information services including, but not limited to, counseling, information, and referral services to assist an eligible person to locate, acquire, finance and maintain housing. This may also include fair housing counseling for eligible persons who may encounter discrimination on the basis of race, color, religion, sex, age, national origin, familial status, or handicap;

(2) Resource identification to establish, coordinate and develop housing assistance resources for eligible persons (including conducting preliminary research and making expenditures necessary to determine the feasibility of specific housing-related initiatives);

(3) Acquisition, rehabilitation, conversion, lease, and repair of facilities to provide housing and services;

(4) New construction (for single room occupancy (SRO) dwellings and community residences only).

(5) Project- or tenant-based rental assistance, including assistance for shared housing arrangements;

(6) Short-term rent, mortgage, and utility payments to prevent the homelessness of the tenant or mortgagor of a dwelling;

(7) Supportive services including, but not limited to, health, mental health, assessment, permanent housing placement, 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 acquired immunodeficiency syndrome or related diseases and not to family members of these individuals;

(8) Operating costs for housing including maintenance, security, operation, insurance, utilities, furnishings, equipment, supplies, and other incidental costs;

(9) Technical assistance in establishing and operating a community residence, including planning and other pre-development or pre-construction expenses and including, but not limited to, costs relating to community outreach and educational activities regarding AIDS or related diseases for persons residing in proximity to the community residence;

(10) Administrative expenses:

(i) Each grantee may use not more than 3 percent of the grant amount for its own administrative costs relating to administering grant amounts and allocating such amounts to project sponsors; and

(ii) Each project sponsor receiving amounts from grants made under this program may use not more than 7 percent of the amounts received for administrative costs.

(11) For competitive grants only, any other activity proposed by the applicant and approved by HUD.

(C) Limitations of assistance to primarily religious organizations—

(1) *Provision of assistance.* (i) Assistance may be provided under this part by a grantee to a project sponsor that is a primarily religious organization if the primarily religious organization agrees to provide all eligible activities under this program in a manner that is free from religious influences and in accordance with the following principles:

(A) It will not discriminate against any employee or applicant for employment on the basis of religion and will not limit employment or give preference in employment to persons on the basis of religion.

(B) It will not discriminate against any person applying for any of the eligible activities under this part on the basis of religion and will not limit such housing or other eligible activities or give preference to persons on the basis of religion.

(C) It will provide no religious instruction or counseling, conduct no religious services or worship, engage in no religious proselytizing, and exert no other religious influence in the provision of eligible activities under this part.

(ii) Assistance will not be provided to a project sponsor that is a primarily religious organization to construct or acquire a structure. Assistance may be provided to a project sponsor that is a primarily religious organization to rehabilitate or convert a structure owned by the organization, only as described in paragraph (c)(2) of this section.

(2) *Rehabilitation or conversion of structures owned by primarily religious organizations.* Grant amounts may be used to rehabilitate or convert a structure that is owned by a primarily religious organization, only if:

(i) The structure (or portion thereof) that is to be rehabilitated or converted with HUD assistance has been leased to an existing or newly established wholly secular organization (which may be established by the religious organization under the provisions of paragraph (c)(3) of this section).

(ii) The HUD assistance is provided to the secular organization (and not the religious organization) to make the improvements.

(iii) The leased structure will be used exclusively for secular purposes available to all persons regardless of religion.

(iv) The lease payments paid to the primarily religious organization do not exceed the fair market rent for the structure before the rehabilitation or conversion was done.

(v) The portion of the cost of any improvements that benefit any unleased portion of the structure will be allocated to, and paid for by, the religious organization.

(vi) The primarily religious organization agrees that if the secular organization does not retain the use of the leased premises for wholly secular purposes for the useful life of the improvements, the primarily religious organization will pay an amount equal to the residual value of the improvements to the original grantee from which the amounts used to rehabilitate or convert the building were derived. While the original grantee is expected to use this amount for eligible HOPWA activities, there is no requirement that funds received after the close of the grant period be used in accordance with the requirements of this part.

(3) *Assistance to a wholly secular private nonprofit organization established by a primarily religious organization.* (i) A primarily religious organization may establish a wholly secular private nonprofit organization to serve as a project sponsor. The secular organization may be eligible to receive all forms of assistance available under this part.

(ii) The secular organization must agree to provide eligible activities under this part in a manner that is free from religious influences and in accordance with the principles set forth in paragraph (c)(1)(i) of this section.

(iii) The secular organization may enter into a contract with the religious organization to operate the housing assistance, supportive services and other eligible activities for the project. In such a case, the religious organization must agree in the contract to carry out its contractual responsibilities in a manner free from religious influences and in accordance with the principles set forth in paragraph (c)(1)(i) of this section.

(iv) The rehabilitation or conversion of structures are subject to the requirements of paragraph (c)(2) of this section.

[57 FR 61740, Dec. 28, 1992, as amended at 59 FR 17200, Apr. 11, 1994]

574.310 General standards for eligible housing activities.

All grantees using grant funds to provide housing must adhere to the following standards:

(a)(1) *General.* The grantee shall ensure that qualified service providers in the area make available appropriate supportive services to the individuals assisted with housing under this subpart. Supportive services are described in Sec. 574.300(b)(7). For any individual with acquired immunodeficiency syndrome or a related disease who requires more intensive care than can be provided in housing assisted under this subpart, the grantee shall provide for locating a care provider who can appropriately care for the individual and for referring the individual to the care provider.

(2) *Payments.* The grantee 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:

(i) Under any State compensation program, under an insurance policy, or under any Federal or State health benefits program; or

(ii) By an entity that provides health services on a prepaid basis.

(b) *Housing quality standards.* All housing assisted under Sec. 574.300(b) (3), (4), (5), and (8) must meet the applicable housing quality standards outlined below.

(1) *State and local requirements.* Each recipient of assistance under this part must provide safe and sanitary housing that is in compliance with all applicable State and local housing codes, licensing requirements, and any other requirements in the jurisdiction in which the housing is located regarding the condition of the structure and the operation of the housing.

(2) *Habitability standards.* Except for such variations as are proposed by the locality and approved by HUD, recipients must meet the following requirements:

(i) *Structure and materials.* The structures must be structurally sound so as not to pose any threat to the health and safety of the occupants and so as to protect the residents from hazards.

(ii) *Access.* The housing must be accessible and capable of being utilized without unauthorized use of other private properties. Structures must provide alternate means of egress in case of fire.

(iii) *Space and security.* Each resident must be afforded adequate space and security for themselves and their belongings. An acceptable place to sleep must be provided for each resident.

(iv) *Interior air quality.* Every room or space must be provided with natural or mechanical ventilation. Structures must be free of pollutants in the air at levels that threaten the health of residents.

(v) *Water supply.* The water supply must be free from contamination at levels that threaten the health of individuals.

(vi) *Thermal environment.* The housing must have adequate heating and/or cooling facilities in proper operating condition.

(vii) *Illumination and electricity.* The housing must have adequate natural or artificial illumination to permit normal indoor activities and to support the health and safety of residents. Sufficient electrical sources must be provided to permit use of essential electrical appliance while assuring safety from fire.

(viii) *Food preparation and refuse disposal.* All food preparation areas must contain suitable space and equipment to store, prepare, and serve food in a sanitary manner.

(ix) *Sanitary condition.* The housing and any equipment must be maintained in sanitary condition.

(c) *Minimum use period for structures.*

(1) Any building or structure assisted with amounts under this part must be maintained as a facility to provide housing or assistance for individuals with acquired immunodeficiency syndrome or related diseases:

(i) For a period of not less than 10 years, in the case of assistance provided under an activity eligible under Sec. 574.300(b) (3) and (4) involving new construction, substantial rehabilitation or acquisition of a building or structure; or

(ii) For a period of not less than 3 years in the cases involving non-substantial rehabilitation or repair of a building or structure.

(2) *Waiver of minimum use period.* HUD may waive the minimum use period of a building or structure as stipulated in paragraph (c)(1) of this section if the grantee can demonstrate, to the satisfaction of HUD, that:

(i) The assisted structure is no longer needed to provide supported housing or assistance, or the continued operation of the structure for such purposes is no longer feasible; and

(ii) The structure will be used to benefit individuals or families whose incomes do not exceed 80 percent of the median income for the area, as determined by HUD with adjustments for smaller and larger families, if the Secretary finds that such variations are necessary because of construction costs or unusually high or low family incomes.

(d) *Resident rent payment.* Except for persons in short-term supported housing, each person receiving rental assistance under this program or residing in any rental housing assisted under this program must pay as rent, including utilities, an amount which is the higher of:

(1) 30 percent of the family's monthly adjusted income (adjustment factors include the age of the individual, medical expenses, size of family and child care expenses and are described in detail in 24 CFR 813.102);

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

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

(e) *Termination of assistance—(1) Surviving family members.* With respect to the surviving member or members of a family who were living in a unit assisted under the HOPWA program with the person with 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 AIDS. The grantee or project sponsor shall establish a reasonable grace period for continued participation by a surviving family member, but that period may not exceed one year from the death of the family member with AIDS. The grantee or project sponsor shall notify the family of the duration of their grace period and may assist the family with information on other available housing programs and with moving expenses.

(2) *Violation of requirements—(i) Basis.* Assistance to participants who reside in housing programs assisted under this part may be terminated if the participant violates program requirements or conditions of occupancy. Grantees must ensure that supportive services are provided, so that a participant's assistance is terminated only in the most severe cases.

(iii) *Procedure.* In terminating assistance to any program participant for violation of requirements, grantees must provide a formal process that recognizes the rights of individuals receiving assistance to due process of law. This process at minimum, must consist of:

(A) Serving the participant with a written notice containing a clear statement of the reasons for termination;

(B) Permitting the participant to have a review of the decision, in which the participant is given the opportunity to confront opposing witnesses, present written objections, and be represented by their own counsel, before a person other than the person (or a subordinate of that person) who made or approved the termination decision; and

(C) Providing prompt written notification of the final decision to the participant.

(Paragraph (c) approved by the Office of Management and Budget under control number 2506-0133)

[57 FR 61740, Dec. 28, 1992, as amended at 59 FR 17200, Apr. 11, 1994; 61 FR 7963, Feb. 29, 1996]

Sec. 574.320 Additional standards for rental assistance.

(a) If grant funds are used to provide rental assistance, the following additional standards apply:

(1) *Maximum subsidy.* The amount of grant funds used to pay monthly assistance for an eligible person may not exceed the difference between:

(i) The lower of the rent standard or reasonable rent for the unit; and

(ii) The resident's rent payment calculated under Sec. 574.310(d).

(2) *Rent standard.* The rent standard shall be established by the grantee and shall be no more than the published section 8 fair market rent (FMR) or the HUD-approved community-wide exception rent for the unit size. However, on a unit by unit basis, the grantee may increase that amount by up to 10 percent for up to 20 percent of the units assisted.

(3) *Rent reasonableness.* The rent charged for a unit must be reasonable in relation to rents currently being charged for comparable units in the private unassisted market and must not be in excess of rents currently being charged by the owner for comparable unassisted units.

(b) With respect to shared housing arrangements, the rent charged for an assisted family or individual shall be in relation to the size of the private space for that assisted family or individual in comparison to other private space in the shared unit, excluding common space. An assisted family or individual may be assigned a pro rata portion based on the ratio derived by dividing the number of bedrooms in their private

space by the number of bedrooms in the unit. Participation in shared housing arrangements shall be voluntary.

[57 FR 61740, Dec. 28, 1992, as amended at 61 FR 7963, Feb. 29, 1996]

Sec. 574.330 Additional standards for short-term supported housing.

Short-term supported housing includes facilities to provide temporary shelter to eligible individuals as well as rent, mortgage, and utilities payments to enable eligible individuals to remain in their own dwellings. If grant funds are used to provide such short-term supported housing assistance, the following additional standards apply:

(a) *Time limits.* (1) A short-term supported housing facility may not provide residence to any individual for more than 60 days during any six month period. Rent, mortgage, and utilities payments to prevent the homelessness of the tenant or mortgagor of a dwelling may not be provided to such an individual for these costs accruing over a period of more than 21 weeks in any 52 week period. These limitations do not apply to rental assistance provided under Sec. 574.300(b)(5).

(2) *Waiver of time limitations.* HUD may waive, as it determines appropriate, the limitations of paragraph (a)(1) and will favorably consider a waiver based on the good faith effort of a project sponsor to provide permanent housing under subsection (c).

(b) *Residency limitations--(1) Residency.* A short-term supported facility may not provide shelter or housing at any single time for more than 50 families or individuals;

(2) *Waiver of residency limitations.* HUD may waive, as it determines appropriate, the limitations of paragraph (b)(1) of this section.

(c) *Placement.* A short-term supported housing facility assisted under this part must, to the maximum extent practicable, provide each individual living in such housing the opportunity for placement in permanent housing or in a living environment appropriate to his or her health and social needs.

(d) *Assistance to continue independent living.* In addition to the supportive services provided when an individual is relocated to a short-term supported housing facility, supportive services may be provided to individuals when they remain in their residence because the residence is appropriate to the needs of the individual. In the latter case, a rent, mortgage and utilities payments program assisted under this part shall provide, when reasonable, supportive services specifically designed to maintain the individual in such residence.

(e) *Case management services.* A program assisted under this section shall provide each assisted individual with an opportunity, if eligible, to receive case management services from the appropriate social service agencies.

(Paragraph (b) approved by the Office of Management and Budget under control number 2506-0133)

[57 FR 61740, Dec. 28, 1992, as amended at 59 FR 17200, Apr. 11, 1994]

Sec. 574.340 Additional standards for community residences.

(a) A community residence is a multiunit residence designed for eligible persons to provide a lower cost residential alternative to institutional care; to prevent or delay the need for such care; to provide a permanent or transitional residential setting with appropriate services to enhance the quality of life for those who are unable to live independently; and to enable such persons to participate as fully as possible in community life.

(b) If grant funds are used to provide a community residence, except for planning and other expenses preliminary to construction or other physical improvement for a community residence, the grantee must, prior to the expenditure of such funds, obtain and keep on file the following certifications:

(1) *A services agreement.* (i) A certification that the grantee will itself provide services as required by Sec. 574.310(a) to eligible persons assisted by the community residence; or

(ii) A certification that the grantee has entered into a written agreement with a project sponsor or contracted service provider to provide services as required by Sec. 574.310(a) to eligible persons assisted by the community residence;

(2) *The adequacy of funding.* (i) A certification that the grantee has acquired sufficient funding for these services; or

(ii) A certification that the grantee has on file an analysis of the service level needed for each community residence, a statement of which grantee agency, project sponsor, or service provider will provide the needed services, and a statement of how the services will be funded; and

(3) *Capability.* (i) A certification that the grantee is qualified to provide the services; or

(ii) A certification that the project sponsor or the service provider is qualified to provide the services.

[57 FR 61740, Dec. 28, 1992, as amended at 59 FR 17200, Apr. 11, 1994]

TITLE 24--HOUSING AND URBAN DEVELOPMENT

SECRETARY FOR COMMUNITY PLANNING AND DEVELOPMENT, DEPARTMENT OF
HOUSING AND URBAN DEVELOPMENT

PART 574--HOUSING OPPORTUNITIES FOR PERSONS WITH AIDS

Subpart E--Special Responsibilities of Grantees and Project Sponsors

574.400 Prohibition of substitution of funds.

574.410 Capacity

574.420 Cooperation.

574.430 Fee prohibitions.

574.440 Confidentiality.

Subpart E--Special Responsibilities of Grantees and Project Sponsors

Sec. 574. 400 Prohibition of substitution of funds.

Amounts received from grants under this part may not be used to replace other amounts made available or designated by State or local governments through appropriations for use for the purposes of this part.

Sec. 574. 410 Capacity.

The grantee shall ensure that any project sponsor with which the grantee contracts to carry out an activity under this part has the capacity and capability to effectively administer the activity.

Sec. 574. 420 Cooperation.

(a) The grantee shall agree, and shall ensure that each project sponsor agrees, to cooperate and coordinate in providing assistance under this part with the agencies of the relevant State and local governments responsible for services in the area served by the grantee for eligible persons and other public and private organizations and agencies providing services for such eligible persons.

(b) A grantee that is a State shall obtain the approval of the unit of general local government in which a project is to be located before entering into a contract with a project sponsor to carry out an activity authorized under this part.

(c) A grantee that is a city receiving a formula allocation for an EMSA shall coordinate with other units of general local government located within the metropolitan statistical area to address needs within that area.

Sec. 574. 430 Fee prohibitions.

The grantee shall agree, and shall ensure that each project sponsor agrees, that no fee, except rent, will be charged of any eligible person for any housing or services provided with amounts from a grant under this part.

Sec. 574. 440 Confidentiality.

The grantee shall agree, and shall ensure that each project sponsor agrees, to ensure the confidentiality of the name of any individual assisted under this part and any other information regarding individuals receiving assistance.

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PART 574--HOUSING OPPORTUNITIES FOR PERSONS WITH AIDS

Subpart F--Grant Administration

- 574.500 Responsibility for grant administration.
 - 574.510 Environmental procedures and standards.
 - 574.520 Performance reports.
 - 574.530 Recordkeeping.
- Deobligation of funds.

Subpart F--Grant Administration

Sec. 574. 500 Responsibility for grant administration.

(a) *General.* Grantees are responsible for ensuring that grants are administered in accordance with the requirements of this part and other applicable laws. Grantees are responsible for ensuring that their respective project sponsors carry out activities in compliance with all applicable requirements.

(b) *Grant agreement.* The grant agreement will provide that the grantee agrees, and will ensure that each project sponsor agrees, to:

(1) Operate the program in accordance with the provisions of these regulations and other applicable HUD regulations;

(2) Conduct an ongoing assessment of the housing assistance and supportive services required by the participants in the program;

(3) Assure the adequate provision of supportive services to the participants in the program; and

(4) Comply with such other terms and conditions, including recordkeeping and reports (which must include racial and ethnic data on participants) for program monitoring and evaluation purposes, as HUD may establish for purposes of carrying out the program in an effective and efficient manner.

(c) *Enforcement.* HUD will enforce the obligations in the grant agreement in accordance with the provisions of 24 CFR 85.43. A grantee will be provided an opportunity for informal consultation before HUD will exercise any remedies authorized in paragraph (a) of that section.

Sec. 574. 510 Environmental procedures and standards.

Before any amounts under this program are used to acquire, rehabilitate, convert, lease, repair or construct properties to provide housing, HUD shall perform a review in accord with 24 CFR part 50, which implements the National Environmental Policy Act and the related Federal environmental laws and authorities listed under 24 CFR 50.4. In performing its environmental review, HUD may use previously issued environmental reviews prepared by other local, State, or federal agencies for the proposed property. The grantee will cooperate in providing these documents. HUD must, however, conduct the environmental analysis and prepare the environmental review and be responsible for the required environmental findings. An environmental assurance shall be provided by an applicant for formula allocations or competitive awards in accordance with 24 CFR 50.3(i).

[61 FR 7963, Feb. 29, 1996]

Sec. 574. 520 Performance reports.

(a) *Formula grants.* For a formula grant recipient, the performance reporting requirements are specified in 24 CFR part 91.

(b) *Competitive grants.* A grantee shall submit to HUD annually a report describing the use of the amounts received, including the number of individuals assisted, the types of assistance provided, and any other information that HUD may require. Annual reports are required until all grant funds are expended.

[60 FR 1918, Jan. 5, 1995]

Sec. 574. 530 Recordkeeping.

Each grantee must ensure that records are maintained for a four-year period to document compliance with the provisions of this part. Grantees must maintain current and accurate data on the race and ethnicity of program participants.

[57 FR 61740, Dec. 28, 1992, as amended at 60 FR 1918, Jan. 5, 1995]

TITLE 24--HOUSING AND URBAN DEVELOPMENT

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PART 574—HOUSING OPPORTUNITIES FOR PERSONS WITH AIDS

Subpart G—Other Federal Requirements

- 574.600 Cross-reference.
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Subpart G—Other Federal Requirements

Sec. 574. 600 Cross-reference.

The Federal requirements set forth in 24 CFR part 5 apply to this program as specified in this subpart.

[61 FR 5209, Feb. 9, 1996]

Sec. 574. 603 Nondiscrimination and equal opportunity.

Within the population eligible for this program, the nondiscrimination and equal opportunity requirements set forth in 24 CFR part 5 and the following requirements apply:

(a) *Fair housing requirements.* (1) Grantees and project sponsors shall comply with the applicable provisions of the Americans with Disabilities Act (42 U.S.C. 12101-12213) and implementing regulations at 28 CFR part 35 (States and local government grantees) and part 36 (public accommodations and requirements for certain types of short-term housing assistance).

(2) Executive Order 11246, as amended by Executive Orders 11375, 11478, 12086, and 12107 (3 CFR, 1964-1965 Comp., p. 339; 3 CFR, 1966-1970 Comp., p. 684; 3 CFR, 1966-1970 Comp., p. 803; 3 CFR 1978 Comp., p. 230; and 3 CFR, 1978 Comp., p. 264) (Equal Employment Opportunity) does not apply to this program.

(b) *Affirmative outreach.* A grantee or project sponsor must adopt procedures to ensure that all persons who qualify for the assistance, regardless of their race, color, religion, sex, age, national origin, familial status, or handicap, know of the availability of the HOPWA program, including facilities and services accessible to persons with a handicap, and maintain evidence of implementation of the procedures.

[57 FR 61740, Dec. 28, 1992, as amended at 59 FR 33894, June 30, 1994.
Redesignated and amended at 61 FR 5209, Feb. 9, 1996; 61 FR 7964, Feb. 29, 1996]

Sec. 574. 605 Applicability of OMB circulars.

The policies, guidelines, and requirements of 24 CFR part 85 (codified pursuant to OMB Circular No. A-102) and OMB Circular No. A-87 apply with respect to the acceptance and use of funds under the program by States and units of general local government, including public agencies, and Circulars Nos. A-110 and A-122 apply with respect to the acceptance and use of funds under the program by private non-profit entities. (Copies of OMB Circulars may be obtained from E.O.P. Publications, room 2200, New Executive Office Building, Washington, DC 20503, telephone (202) 395-7332. (This is not a toll-free number.) There is a limit of two free copies.

Sec. 574. 625 Conflict of interest.

(a) In addition to the conflict of interest requirements in OMB Circular A-102 and 24 CFR 85.36(b)(3), no person who is an employee, agent, consultant, officer, or elected or appointed official of the grantee or project sponsor and who exercises or has exercised any functions or responsibilities with respect to assisted activities, or who is in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for himself or herself or for those with whom he or she has family or business ties, during his or her tenure or for one year thereafter.

(b) *Exceptions: Threshold requirements.* Upon the written request of the recipient, HUD may grant an exception to the provisions of paragraph (a) of this section when it determines that the exception will serve to further the purposes of the HOPWA program and the effective and efficient administration of the recipient's program or project. An exception may be considered only after the recipient has provided the following:

(1) A disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and

(2) An opinion of the recipient's attorney that the interest for which the exception is sought would not violate State or local law.

(c) *Factors to be considered for exceptions.* In determining whether to grant a requested exception after the recipient has satisfactorily met the requirements of paragraph (b) of this section, HUD will consider the cumulative effect of the following factors, where applicable:

(1) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project that would otherwise not be available;

(2) Whether the person affected is a member of a group or class of eligible persons and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;

(3) Whether the affected person has withdrawn from his or her functions or responsibilities, or the decision making process with respect to the specific assisted activity in question;

(4) Whether the interest or benefit was present before the affected person was in a position as described in paragraph (a) of this section;

(5) Whether undue hardship will result either to the recipient or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and

(6) Any other relevant considerations.

Sec. 574. 630 Displacement, relocation and real property acquisition.

(a) *Minimizing displacement.* Consistent with the other goals and objectives of this part, grantees and project sponsors must assure that they have taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of a project assisted under this part.

(b) *Relocation assistance for displaced persons.* A displaced person (defined in paragraph (f) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4601-4655) and implementing regulations at 49 CFR part 24.

(c) *Real property acquisition requirements.* The acquisition of real property for a project is subject to the URA and the requirements described in 49 CFR part 24, subpart B.

(d) *Appeals.* A person who disagrees with the grantee's or project sponsor's determination concerning whether the person qualifies as a "displaced person," or the amount of relocation assistance for which the person is eligible, may file a written appeal of that determination with the grantee. A low-income person who is dissatisfied with the grantee's determination on his or her appeal may submit a written request for review of that determination to the HUD Field Office.

(e) *Responsibility of grantee.* (1) Each grantee shall certify (i.e., provide assurance of compliance as required by 49 CFR part 24) that it will comply with the URA, the regulations at 49 CFR part 24, and the requirements of this section, and shall ensure such compliance notwithstanding any third party's contractual obligation to the grantee to comply with these provisions.

(2) The cost of required relocation assistance is an eligible project cost in the same manner and to the same extent as other project costs. Such costs also may be paid for with funds available from other sources.

(3) The grantee shall maintain records in sufficient detail to demonstrate compliance with these provisions.

(f) *Definition of displaced person.* (1) For purposes of this section, the term "displaced person" means a person (family, individual, business, nonprofit organization, or farm) that moves from real property, or moves personal property from real property, permanently, as a direct result of acquisition, rehabilitation, or demolition for a project assisted under this part. This includes any permanent, involuntary move for an assisted project including any permanent move for an assisted project, including any permanent move from the real property that is made:

(i) After notice by the grantee, project sponsor, or property owner to move permanently from the property, if the move occurs on or after the date that the grantee submits to HUD an application for assistance that is later approved and funded;

(ii) Before the submission of the application to HUD, if the grantee, project sponsor, or HUD determines that the displacement resulted directly from acquisition, rehabilitation, or demolition for the assisted project; or

(iii) By a tenant-occupant of a dwelling unit, if any one of the following three situations occurs:

(A) The tenant moves after the "initiation of negotiations" and the move occurs before the tenant has been provided written notice offering him or her the opportunity to lease and occupy a suitable, decent, safe and sanitary dwelling in the same building/complex, under reasonable terms and conditions, upon completion of the project. Such reasonable terms and conditions include a monthly rent and estimated average monthly utility costs that do not exceed the greater of:

(1) The tenant's monthly rent before the initiation of negotiations and estimated average utility costs, or

(2) 30 percent of gross household income; or

(B) The tenant is required to relocate temporarily, does not return to the building/complex and either:

(1) The tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, or

(2) Other conditions of the temporary relocation are not reasonable; or

(C) The tenant is required to move to another unit in the same building/complex but is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move, or other conditions of the move are not reasonable.

(2) Notwithstanding the provisions of paragraph (f)(1) of this section, a person does not qualify as a "displaced person" (and is not eligible for relocation assistance under the URA or this section), if:

(i) The person has been evicted for serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation or applicable Federal, State or local law, or other good cause, and HUD determines that the eviction was not undertaken for the purposes of evading the obligation to provide relocation assistance;

(ii) The person moved into the property after the submission of the application and, before signing a lease and commencing occupancy, was provided written notice of the project, its possible impact on the person (e.g., the person may be displaced, temporarily relocated, or suffer a rent increase) and the fact that the person would not qualify as a "displaced person" (or for any assistance provided under this section), if the project is approved;

(iii) The person is ineligible under 49 CFR 24.2(g)(2); or

(iv) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for the project.

(3) The grantee or project sponsor may request, at any time, HUD's determination of whether a displacement is or would be covered under this section.

(g) *Definition of initiation of negotiations.* For purposes of determining the formula for computing the replacement housing assistance to be provided to a residential tenant displaced as a direct result of privately undertaken rehabilitation, demolition, or acquisition of the real property, the term "initiation of negotiations" means the execution of the agreement between the grantee and the project sponsor.

Sec. 574. 635 Lead-based paint.

The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at part 35, subparts A, B, H, J, K, M, and R of this part apply to activities under this program.

[64 FR 50226, Sept. 15, 1999]

Effective Date Note: At 64 FR 50226, Sept. 15, 1999, Sec. 574.635 was revised, effective Sept. 15, 2000. For the convenience of the user, the superseded text is set forth as follows:

Sec. 574. 635 Lead-based paint.

The grantee and project sponsor must comply with the requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846) and implementing regulations at 24 CFR part 35, as applicable. In addition, the grantee and project sponsor must also meet the following requirements relating to inspection and abatement of defective lead-based paint surfaces;

(a) Treatment of defective paint surfaces must be performed before final inspection and approval of the renovation, rehabilitation or conversion activity under this part; and

(b) Appropriate action must be taken to protect facility occupants from the hazards associated with lead-based paint abatement procedures.

(Approved by the Office of Management and Budget under control number 2506-0133)

Sec. 574. 640 Flood insurance protection.

No property to be assisted under this part may be located in an area that has been identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless:

(a)(1) The community in which the area is situated is participating in the National Flood Insurance Program and the regulations thereunder (44 CFR parts 59 through 79); or

(2) Less than a year has passed since FEMA notification regarding such hazards; and

(b) The grantee will ensure that flood insurance on the structure is obtained in compliance with section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 et seq.).

Sec. 574. 645 Coastal barriers.

In accordance with the Coastal Barrier Resources Act, 16 U.S.C. 3501, no financial assistance under this part may be made available within the Coastal Barrier Resources System.

Sec. 574. 650 Audit.

The financial management system used by a State or unit of general local government that is a grantee must provide for audits in accordance with 24 CFR part 44. A nonprofit organization that is a grantee or a project sponsor is subject to the audit requirements set forth in 24 CFR part 45.

Sec. 574. 655 Wage rates.

The provisions of the Davis-Bacon Act (40 U.S.C. 276a-276a-5) do not apply to this program, except where funds received under this part are combined with funds from other Federal programs that are subject to the Act.

[59 FR 17201, Apr. 11, 1994]

EXHIBIT E-2

MONTHLY BUDGET AND FISCAL REPORT

Agency: County of El Dorado, Public Health Department

Program: Emergency Housing Assistance

Funding Source: HOPWA Funding DFDA #@ 14.238

Term of Contract: 7/1/08 through 6/30/09

Budget Period: From: _____ To: _____

Budget Items	Actual Expenses		Annual Allocated Budget	Funds Remaining
	Current Period	Cumulative To Date		
Short Term Emergency Housing Assistance			\$40,834.00	
Administrative Costs			\$1,537.00	
Total			\$42,371.00	

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