

AGENDA ***Revised**

The Public Hearing has been removed

Thursday, July 18, 2013 - 6:00 PM **Board of County Commissioners Business Meeting**

Beginning Board Order No. 2013-67

I. CALL TO ORDER

- Roll Call
- Pledge of Allegiance

II. HOUSING AUTHORITY CONSENT AGENDA

1. Approval of the Construction Agreement Contract with Nomarco, Inc. for Public Housing Scattered Sites Renovation

III. PRESENTATION *(Following are items of interest to the citizens of the County)*

1. Presentation of the Election Office Integrity Report (Sherry Hall, County Clerk)

IV. CITIZEN COMMUNICATION *(The Chair of the Board will call for statements from citizens regarding issues relating to County government. It is the intention that this portion of the agenda shall be limited to items of County business which are properly the object of Board consideration and may not be of a personal nature. Persons wishing to speak shall be allowed to do so after registering on the blue card provided on the table outside of the hearing room prior to the beginning of the hearing. Testimony is limited to three (3) minutes. Comments shall be respectful and courteous to all.)*

V. PUBLIC HEARING *(The following items will be individually presented by County staff or other appropriate individuals. Persons appearing shall clearly identify themselves and the organization they represent. In addition, a synopsis of each item, together with a brief statement of the action being requested shall be made by those appearing on behalf of an agenda item.)*

- *1. **REMOVED** - *Continued from July 11, 2013 - Second Reading of Ordinance No. 03-2013 Adding Chapter 6.12, Outdoor Mass Gatherings and Limited Gatherings to the Clackamas County Code and Declaring an Emergency – and Approval of Resolution No. _____ Adopting Fees for Outdoor Mass Gatherings and Limited Gatherings (Mike McCallister, Planning Department)*

VI. DISCUSSION ITEMS *(The following items will be individually presented by County staff or other appropriate individuals. Citizens who want to comment on a discussion item may do so when called on by the Chair.)*

~NO DISCUSSION ITEMS SCHEDULED

VII. CONSENT AGENDA *(The following Items are considered to be routine, and therefore will not be allotted individual discussion time on the agenda. Many of these items have been discussed by the Board in Study Session. The items on the Consent Agenda will be approved in one motion unless a Board member requests, before the vote on the motion, to have an item considered at its regular place on the agenda.)*

A. Health, Housing & Human Services

1. Approval of a New Revenue Intergovernmental Grant Agreement with State of Oregon Department of Human Services, Vocational Rehabilitation, for Establishing Cognitive Remediation Classes - *Behavioral Health*
2. Approval of a Renewal Grant Agreement from the US Department of Housing and Urban Development, Supportive Housing Program, for the HOPE Leasing Program for the Purpose of Providing Permanent Housing – *Social Services*
3. Approval of a Renewal Grant Agreement from the US Department of Housing and Urban Development, Supportive Housing Program, for the Jackson Place Program to Provide Transitional Housing and Services for the Homeless – *Social Services*
4. Approval of an Intergovernmental Agreement with the State of Oregon Department of Housing and Community Services to Administer Community Resource Division Funds which Funds a Variety of Social Services Programs – *Social Service*
5. Approval of a Facilities Use Agreement with North Clackamas School District No. 12, for the Women, Infants, and Children WIC Program – *Public Health*
6. Approval of a HOME Loan Agreement with Northwest Housing Alternatives – *Community Development*

B. Department of Transportation & Development

1. Approval of Intergovernmental Agreement No. 27929 with Oregon Department of Transportation for Right-of-Way Services for the Pudding River (Whiskey Hill Road) Bridge Project

VIII. DEVELOPMENT AGENCY

1. Approval of a Disposition and Development Agreement to Convey Real Property from the Clackamas County Development Agency to BD82Boyer, LLC.

IX. WATER ENVIRONMENT SERVICES

1. Approval of an Intergovernmental Agreement between Clackamas County Service District No. 1 and Metro for the Award of a Nature in Neighborhoods Grant for the Rock Creek Confluence Restoration Project
2. Approval of an Intergovernmental Agreement between North Clackamas Parks & Recreation District and Clackamas County Service District No. 1 (CCSD#1) for Maintenance Activities on Designated CCSD#1-Owned Resource Properties
3. Approval of a Construction Services Contract between Clackamas County Service District and T. Edge Construction Inc, for the Echo Valley Meadows Wetlands Restoration Project

X. COUNTY ADMINISTRATOR UPDATE

XI. COMMISSIONERS COMMUNICATION

NOTE: Regularly scheduled Business Meetings are televised and broadcast on the Clackamas County Government Channel. These programs are also accessible through the County's Internet site. DVD copies of regularly scheduled BCC Thursday Business Meetings are available for checkout at the Clackamas County Library in Oak Grove by the following Saturday. You may also order copies from any library in Clackamas County or the Clackamas County Government Channel. <http://www.clackamas.us/bcc/business.html>

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<http://www.clackamas.us/bcc/business.html>

July 18, 2013

Housing Authority Board of Commissioners
 Clackamas County

Members of the Board:

Approval of Construction Agreement Contract with Nomarco, Inc.
for Public Housing Scattered Sites Renovation

Purpose/Outcomes	Approve a Construction Agreement Contract with Nomarco, INC to renovate six scattered site Public Housing units.
Dollar Amount and Fiscal Impact	Not to Exceed \$505,000
Funding Source	Housing Authority of Clackamas County- HUD Capital Fund Program
Safety Impact	N/A
Duration	July 18 th 2013 through February 15 th , 2014
Previous Board Action	N/A
Contact Person	Dan Potter- Interim Director, Housing Authority 503-650-3537
Contract No.	H3S Contract Number 6321

BACKGROUND:

The Housing Authority of Clackamas County (HACC), a Division of the Health, Housing, and Human Services (H3S) Department, requests approval of a Construction Agreement with Normarco, INC for renovation of six Scattered Site Public Housing units.

The six scattered site units slated for renovation were identified through the Housing Authority's inspection program as being in need of improvements due to their deteriorated condition. This work needs to be done now as the quality of the housing falls below Federal Housing Quality Standards that are used to rate the Housing Authority's performance. Residents have been temporarily relocated in anticipation of the beginning of this work. Work includes roof, window and siding replacement, interior cabinet and flooring replacement, heating system replacement, electrical upgrades, painting, and selected foundation repairs. This contract is a continuation of the Housing Authority's Public Housing Capital Fund improvement program that is designed to minimize the level of deferred maintenance.

In the event these units are sold in the next few years the completed work will increase the value and marketability of the units.

The contractor Nomarco, INC was selected through a competitive open bid process per HUD Capital Fund procurement guidelines. The term is 18 months from contract approval with an amount not to exceed \$505,000.

No county general funds are involved.

RECOMMENDATION:

Staff recommends the Board approval of this contract and authorizes Cindy Becker, H3S Director to sign on behalf of Clackamas County.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Cindy Becker", with a long horizontal flourish extending to the right.

Cindy Becker, Director

MODERNIZATION OF 6 DWELLING UNITS – PROJECT #13005
for the
HOUSING AUTHORITY OF CLACKAMAS COUNTY
P.O BOX 1510, 13900 S. GAIN STREET, OREGON CITY, OR 97045

FORM OF CONTRACT
PROJECT #13005
Contract #c021-13

THIS AGREEMENT made this 8 day of July in the year 2013 by and between **Nomarco, Inc.** a business entity organized and existing under the laws of the state of Oregon, hereinafter call the "Contractor", and **the Housing Authority of Clackamas County** hereinafter call the "PHA".

WITNESSETH, That the Contractor and the PHA for the consideration stated herein mutually agreed as follows:

ARTICLE 1. Statement of Work. The Contractor shall furnish all labor, material, equipment and services, and perform and complete all work required for **MODERNIZATION OF 6 DWELLING UNITS AT PUBLIC HOUSING**, a prevailing wage project, #13005, in strict accordance with the Specifications referred to herein, all as prepared by the Housing Authority of Clackamas County, which said Specifications and any Addenda are incorporated herein by reference and made a part hereof.

ARTICLE 2. The Contract Price. The PHA shall pay the Contractor for the performance of the Contract, in current funds, subject to additions and deductions as provided in the Specifications, the not to exceed sum of five hundred five thousand dollars (**\$505,000.00**)

ARTICLE 3. Contract Documents. The Contract shall consist of the following component parts:

- a. This Instrument
- b. Bid Documents
- c. General Conditions
- d. Addendum(s)
- e. Special Conditions
- f. Specifications
- g. Scope of Work
- h. Drawings

This instrument, together with the other documents enumerated in this Article 3, which said other documents are as fully a part of the Contract as if hereto attached or herein repeated, form the Contract. In the event that any provision in any component part of this Contract conflicts with any provision of any other component part, the provision of the component part first enumerated in this Article 3 shall govern, except as otherwise specifically stated. The various provisions in Addenda shall be construed in the order of preference of the component part of the Contract which each modifies.

ARTICLE 4. Indemnity. The CONTRACTOR agrees to indemnify, save harmless and defend the PHA, its officers, commissioners, employees and agents from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the CONTRACTOR or the CONTRACTOR'S employees.

MODERNIZATION OF 6 DWELLING UNITS – PROJECT #13005

for the

HOUSING AUTHORITY OF CLACKAMAS COUNTY

P.O BOX 1510, 13900 S. GAIN STREET, OREGON CITY, OR 97045

ARTICLE 5. No person shall be employed for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency, or where the public policy absolutely requires it, and in such cases, except in cases of contracts for personal services as described in ORS 279.051, the employee shall be paid at least time and a half pay. All subject employers working under this contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.

ARTICLE 6. The Contractor agrees that in the event the Contractor fails to pay for labor and services, the PHA will pay for them and withhold these amounts from payments to the Contractor per ORS 279C.515; OAR 839-025-0200(2)(a).

ARTICLE 7. The Contractor agrees to pay daily, weekly, weekend and holiday overtime as required by ORS 279C.520; OAR 839-025-0020(2)(b)

ARTICLE 8. The Contractor agrees that all employees/workers working on this project, whether employed by the Contractor or any subcontractor, shall be given written notice of the number of hours per day and days per week they may be required to work per OAR 839-025-0020(2)(c).

ARTICLE 9. The Contractor agrees to make prompt payment for all medical services for which the Contractor has agreed to pay, and for all amounts for which the Contractor collects or deducts from worker's wages per ORS 279C.530; OAR 839-025-0020(2)(d).

ARTICLE 10. The Contractors agrees to pay no less than the applicable state or federal prevailing wage rate, whichever is higher per ORS 279C.830(1)(c); OAR 839-025-0020(3).

ARTICLE 11. The Contractor agrees to have a public works bond filed with the Construction Contractors Board before starting any work on the project per ORS 279C.830(3)(a).

ARTICLE 12. The Contractor agrees that every subcontract shall include a provision requiring all subcontractors to have a public works bond filed with the Construction Contractors Board before starting any work on the project per ORS 279C.830(3)(b).

MODERNIZATION OF 6 DWELLING UNITS – PROJECT #13005
for the
HOUSING AUTHORITY OF CLACKAMAS COUNTY
P.O BOX 1510, 13900 S. GAIN STREET, OREGON CITY, OR 97045

IN WITNESS WHEREOF, the parties hereto have caused This Instrument to be executed in **three** original counterparts as of the day and year first above written.

(This document consists of four sections)

Attest:

Nomarco, Inc.

(Contractor)



7/8/13

(Authorized Representative's Signature / Date)

Jess Doman – Vice President

(Authorized Representative's Name / Title - Print or Type)

93-0567667

(Federal I.D. Number)

4066 S. Elliot Prairie Road, Woodburn, OR 97071

(Business Address - Street, City, State, Zip)

71958

(State of Oregon CCB License Number)

Attest:

Housing Authority of Clackamas County

(Owner)

(Authorized Representative's Signature / Date)

Cindy Becker – Director H3S

(Authorized Representative's Name / Title - Print or Type)

**HACC, P.O. Box 1510, 13900 S. Gain St., Oregon City,
OR 97045**

(Business Address - Street, City, State, Zip)

MODERNIZATION OF 6 DWELLING UNITS – PROJECT #13005

for the

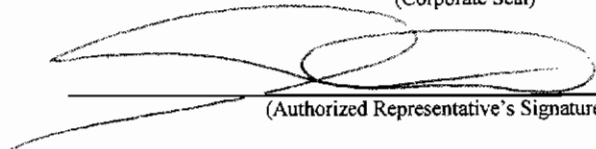
HOUSING AUTHORITY OF CLACKAMAS COUNTY

P.O BOX 1510, 13900 S. GAIN STREET, OREGON CITY, OR 97045

CERTIFICATION

I Jess Doman
certify that I am the Vice President
at the corporation named as Contractor herein, that Jess Doman
who signed this Contract on behalf of the Contractor, was then Vice President
of said corporation; that said Contract was duly signed for and in behalf of said corporation by
authority of its governing body, and is within the scope of its corporate powers.

(Corporate Seal)


(Authorized Representative's Signature / Date)

7/8/13

Jess Doman – Vice President

(Authorized Representative's Name / Title - Print or Type)

(Print or type the names underneath all signatures)



CLACKAMAS COUNTY

2

Office of County Clerk

SHERRY HALL
CLERK

2051 KAEN ROAD, 2ND FLOOR
OREGON CITY, OR 97045
503.650.5686
FAX 503.650.5687

July 18, 2013

Board of County Commissioners
Clackamas County

Members of the Board:

Presentation of the Election Integrity Committee Report

Purpose/Outcome	The Committee was formed to decide what enhancements, if any, should be made to Clackamas County's Election practices and procedures to prevent the possibility of ballot tampering in the future; and to review Election Procedures from the point of view of Election Observers in order to improve transparency. The Outcome enhances the integrity of the election.
Safety Impact	Enhances the integrity of the election
Contact Person	Sherry Hall, County Clerk 503-722-6086

BACKGROUND:

The Committee was formed as a direct result of the ballot tampering incident that occurred during the November 2012 General Election.

Several immediate changes were made as a result of the Committee's discussions. The changes should deter any individual from tampering with ballots. Changes include:

- Processing tables where ballot envelopes are opened and ballots are inspected (location where the ballot tampering incident occurred) are now realigned to perpendicular position rather than parallel to Observer area. This allows Observers to, more easily, see the entire process.
- The Oath all temporary workers swear to (for each Election) has been revised. Before this revision, there were separate oaths for separate tasks. The new oath includes all tasks that may be performed by any Election Temporary Worker. Attached is a copy.
- Only green or purple pens are allowed at the processing tables. Our decision took effect immediately and then Secretary of State issued a directive to all Counties in Oregon requiring that "distinctive" ink colors be used at the processing tables.
- The number of supervisors in the processing area has been increased. It has become a standard that one supervisor handles no more than 5 tables. While

the November ballot tampering was detected by a table worker, not a supervisor, more supervisors in the area will deter an individual from wrongdoing.

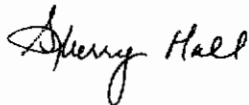
- Only the complete processing team (members of different political affiliations) will be seated at the table at any one time. Team members will remain standing until each has arrived at the table and at all times when one member is temporarily absent, no matter how no matter how short the absence.

It should be noted that these changes were put into place for the May 2013 Special District Election and the processing teams (**without exception**) welcomed the changes listed above.

Another change, not yet fully implemented, is to enhance all doors leading to the processing area to require all individuals to "card out" of the processing area to record when a person leaves the area. Presently individuals are required to only "card in" to the processing area. We hope to have this change in place before the May 2014 Primary Election. This change includes the installation of new card readers inside the doors to be completed by Facilities staff.

Unresolved item is the addition of cameras in the ballot inspection area. Cameras **would not detect ballot tampering** since we would not have a person reviewing each team of ballot processors either on the other end of each camera in "real time" or in hindsight. None of the Counties, which have cameras, review the activity in real time or hindsight. Nevertheless, since cameras would give us the ability to follow up on allegations of wrong doing, it seems appropriate to have cameras installed in the ballot inspection area. It's my understanding is that the Secretary of State's Office is looking into making this a requirement in all Counties. If this becomes the case, it's likely funding for camera installation will be made available at that time.

Respectfully submitted,



Sherry Hall, County Clerk
Elections Division



CLACKAMAS COUNTY

Office of County Clerk

SHERRY HALL
CLERK

Election Integrity Committee Report June 5, 2013

The Committee was formed as a direct result of the ballot tampering incident that occurred during the November 2012 General Election.

Committee Members:

Nancy Benthin, Elections Division Retired
Arleigh Dodson, Clackamas County Democratic Party
Vicki Greenwood, Clerk's Office Retired
Sherry Hall, County Clerk
Margie Hughes, Clackamas County Republican Party
Steve Kindred, Elections Division Manager
Scot Sideras, County Counsel
Larry Skidmore, Clackamas County Democratic Party
Jennifer Wessels, Election Division Staff

A total of 5 meetings took place: December 2012. January, March, May, June 2013.

The March meeting included a trip to Multnomah County Elections Division for a tour of that facility, explanation of their procedures and a Q & A session.

The committee was given two tasks:

1. Deciding what enhancements, if any, should be made to Clackamas County's Election practices and procedures in order to prevent the possibility of ballot tampering in the future. The November incident was truly an anomaly. In its wake, County Staff reacted promptly and properly. There must never be another incident that might compromise an election. The committee was asked to consider any reasonable safeguards that must be put into place.
2. Reviewing Election Procedures from the point of view of Elections Observers in order to possibly improve transparency. The Clerk's Office views Observers as partners in the process. Observers are experienced and independent. They are encouraged to ask questions. Observers are an asset to County Elections, not only in making sure the process is working perfectly, but also in letting the public know that all is truly going well in the Elections Division.

The result of the Committee's discussions were several immediate changes. The desired result of the changes would be to deter any individual from tampering with ballots. Ballot processing security must be first and foremost in everyone's mind at all times. Changes include:

- Processing tables where ballot envelopes are opened and ballots are inspected (location where the ballot tampering incident occurred) are now realigned to perpendicular position rather than parallel to Observer area. This allows Observers to, more easily, see the entire process.
- The Oath all temporary workers swear to (for each Election) has been revised. Before this revision, there were separate oaths for separate tasks. The new oath includes all tasks that may be performed by any Election Temporary Worker. Attached is a copy.

- Only green or purple pens are allowed at the processing tables. Our decision took effect immediately and then Secretary of State issued a directive to all Counties in Oregon requiring that "distinctive" ink colors be used at the processing tables.
- The number of supervisors in the processing area has been increased. It has become a standard that one supervisor handles no more than 5 tables. While the November ballot tampering was detected by a table worker, not a supervisor, more supervisors in the area will deter an individual from wrongdoing.
- Only the complete processing team (members of different political affiliations) will be seated at the table at any one time. Team members will remain standing until each has arrived at the table and at all times when one member is absent temporarily, no matter how short the absence.

It should be noted that these changes were put into place for the May 2013 Special District Election and the processing teams (**without exception**) welcomed the changes listed above.

Another change, not yet fully implemented, is to enhance all doors to the processing areas so that individuals will be tracked as they "card in" as well as "card out" of the area. Presently individuals only "card in" and there is no precise record of when a person leaves the area. We hope to have this change in place before the May 2014 Primary Election. This change includes the installation of new card readers by Facilities staff on the inside of the doors.

One discussion item, still unresolved, is the addition of cameras in the ballot inspection area. It should be noted that cameras are already in the ballot tally room - and were present here long before the Secretary of State mandated their presence. Cameras are also in place at each entry point and exit point from the ballot processing areas as well as the front counter in the Elections Office area. Cameras **would not detect ballot tampering** since we would not have a person reviewing each team of ballot processors either on the other end of each camera in "real time" or in hindsight. This is the job our supervisors do when they're in the room with the processing teams. Some Counties in Oregon have cameras in the ballot inspection area but none, that I'm aware of, have a focus which would have detected the type of ballot incident we experienced in November 2012. None of the Counties, which have cameras, review the activity in real time or hindsight. Nevertheless, since cameras would give us the ability to follow up on allegations of wrong doing, it seems appropriate to have cameras installed in the ballot inspection area. My understanding is that the Secretary of State's Office is looking into making this a requirement in all Counties. If this becomes the case, it's likely funding for camera installation will be made available at that time.

This concludes my report.



OATH OF OFFICE FOR ALL TEMPORARY STAFF

OFFICE OF THE CLACKAMAS COUNTY CLERK | ELECTIONS DIVISION

MAY, 2013 SPECIAL DISTRICT ELECTION

We, the undersigned, being first sworn, severally say upon oath:

I will perform the duties of signature verification, ballot inspection, ballot resolution and any other elections work according to law and the directions given by the Elections Division.

I will diligently endeavor to prevent the violation of any provision of law in performing this service and will immediately report any potential violation of law or procedure to the supervisor.

I will keep confidential and not divulge any election results until after 8:00 p.m. on Election Day.

I will not make any sort of mark – including enhancing – on any ballot without the complete agreement of my processing team and the processing supervisor.

While opening and inspecting ballots, I will not handle or use any pens or pencils other than those provided by the Elections Division.

SIGNATURE	PARTY

**Subscribed and sworn to
before me this day**

Signature of Witness to Oath

Date

Title



MIKE McCALLISTER
PLANNING AND ZONING DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

DEVELOPMENT SERVICES BUILDING
150 BEAVERCREEK ROAD OREGON CITY, OR 97045

July 18, 2013 (Revised)

Board of County Commissioners
Clackamas County



Members of the Board:

Second Reading of Ordinance No. 03-2013 Adding Chapter 6.12 - Outdoor Mass Gatherings and Limited Gatherings to the Clackamas County Code and Declaring an Emergency - and Approval of Resolution Adopting Fees for Outdoor Mass Gatherings and Limited Gatherings

Purpose/Outcome	An ordinance to add chapter 6.12 in the Clackamas County Code to regulate Outdoor Mass Gatherings (gatherings of more than 3,000 persons) in compliance with the requirements of Oregon Revised Statutes 433.735-770 and Oregon Administrative Rules Chapter 333, Division 039, and to regulate gatherings of less than 3,000 persons (i.e. Limited Gatherings).
Dollar Amount and Fiscal Impact	The Code Amendment is included in the Planning and Zoning Division work program for 2012-2013.
Funding Source	Permit fees will be considered to cover costs of processing permits for gatherings. The proposed fees are included in this report and also include provisions to collect a deposit to cover the cost of agency response to monitor or enforce conditions of a permit.
Safety Impact	The purpose of code language is to adopt regulations to facilitate a transparent, coordinated review process to authorize gatherings in order to ensure the safety, health, and welfare of the surrounding community, participants and organizers.
Duration	Permanent adoption to the Clackamas County Code
Previous Board Action/Review	A Study Session with the Board of County Commissioners was held on Tuesday, June 11, 2013. The BCC directed staff to proceed with a public hearing as soon as possible. A public hearing and first reading of the proposed code was held on June 20, 2013. The BCC directed staff to proceed with a hearing for a second reading and a proposed fee schedule. The BCC postponed the July 11, 2013 public hearing until July 18, 2013. An additional study session was held on July 16, 2013. The BCC directed staff to make amendments to the minimum number of participants and duration of hours for events relative to Limited Gatherings.
Contact Person	Mike McCallister, Planning Director (503) 742-4522 and Lorraine Gonzales, Senior Planner (503) 742-4541
Contract No.	N/A

EXECUTIVE SUMMARY:

This is the second hearing and reading to consider adoption of an ordinance into the County Code regulating Outdoor Mass Gatherings and Limited Gatherings. The proposed code amendments

will implement current state law which regulates mass gatherings and tailor the process to include more specific review, public notice, agency coordination, decision making and public hearing procedures. In addition to adopting state laws governing outdoor mass gatherings, the proposed code would regulate other gatherings of less than 3,000 persons (referred to as limited gatherings.)

Testimony regarding the proposed code amendment was received at the first hearing on June 20 and at subsequent business meetings on June 27 and July 10 regarding a number of issues. A response to those issues are summarized below.

1. The code applies to unincorporated (urban and rural areas) of the County. The code does not apply to incorporated cities.
2. The code does not apply to activities (parades, road rallies, organized walks, demonstrations, etc.) on a county road. Those types of activities are regulated by the DTD Transportation Division.
3. The code includes a list of exemptions for certain gatherings including normal and customary activities in the underlying zoning district (family wedding, reunions, etc.).
4. The code exempts uses authorized under a land use permit approval, including agritourism events, farmers markets, hosting of commercial events, etc.
5. The code includes provisions for the Planning Director (i.e. Planning Director discretion) to use his or her discretion to waive the need for a permit when there are no significant health, safety or welfare issues anticipated from an event and to waive the 90 day submittal requirement for limited gatherings when it is deemed feasible to process a permit for a limited gathering in a shorter time period.
6. The code does not apply to picnics, weddings reunions or other gatherings permitted or authorized in a local, county or regional park.

At the conclusion of the public hearing the Board directed staff to proceed with a second public hearing and reading of the code, including a proposed fee schedule for processing applications that provides full cost recovery and an emergency resolution for the effective date of the proposed code. A copy of the resolution is attached.

In response to direction from the BCC at the July 17, 2013 study session, the number of participants and duration of events for limited gathering have been amended as outlined in the table below:

Limited Gatherings			
# Participants	Duration	Permit	Exempt
Under 500	N/A	No	Yes
Less than 750	Less than 12 hours	No	Yes
500-750	More than 12 hours	Yes	No
Over 750	Up to 120 hours	Yes	No

FEE PROPOSAL:

Staff researched fees from several counties for processing outdoor mass gatherings and other gatherings. Based on the research efforts and information collected the following application fees are proposed for outdoor mass gatherings and limited gatherings. Staff believes these fees are conservative (i.e. may not provide full cost recovery and require use of general fund dollars) and will commit to monitor the cost of processing any applications over the course of the year and make adjustments in the next budget cycle accordingly. The proposed code also provides for the Planning Director or Board of County Commissioner to reduce or waive fees upon a just cause to do so.

Outdoor Mass Gatherings and Limited Gatherings Proposed Fees		
Gathering Type & Estimated # of Participants	Application Fee	**Deposit Fee
Limited Gatherings (LG)		
500 - 750 and more than 12 hours	\$ 250	\$ 250
750- 1,000	\$ 500	\$ 500
1,000- 2,000	\$ 1,500	\$ 1,500
2,000- 3,000	\$ 3,500	\$ 3,500
**The deposit fee <u>may</u> be required at the County's discretion to cover the cost of agencies responding to these events for emergency services or enforcement of conditions. The fee is refundable if no emergency response occurs. Otherwise the deposit would be used to cover agency response services based on a hourly rate of the service provider.		
Outdoor Mass Gatherings (OMG)		
Greater than 3,000	\$ 5,000	\$ 5,000
Extended Outdoor Mass Gatherings (OMG)		
Greater than 3,000	\$ 5,000	\$ 5,000

RECOMMENDATION:

The Planning and Zoning Division respectfully requests the Board of County Commissioners to approve the code amendment, fee schedule and emergency resolution.

Respectfully submitted,

Mike McCallister, Planning Director
 Planning & Zoning Division
 Department of Transportation and Development

ORDINANCE NO. 03-2013

An Ordinance Adding Chapter 6.12 – Outdoor Mass Gatherings and Limited Gatherings to the Clackamas County Code and Declaring an Emergency

WHEREAS, in the past a number of large gatherings have been planned for Clackamas County, generally in summer months; and

WHEREAS, if not regulated these events pose a threat to the surrounding community, their attendees, county resources and infrastructure, and the land; and

WHEREAS, the threat posed by gatherings larger than three hundred people is a matter of county concern and ORS 433.735 through ORS 733.770 specifically empower the county to regulate Outdoor Mass Gatherings and Extended Outdoor Mass Gatherings; and

WHEREAS, the County only has limited authority to regulate events that are not Outdoor Mass Gatherings or Extended Outdoor Mass Gatherings and no formal process for regulating Outdoor Mass Gatherings or Extended Outdoor Mass Gatherings; and

WHEREAS, the Board of County Commissioners directed the Planning Director to prepare an amendment to the Clackamas County Code regulating large gatherings; and

WHEREAS, after consultation with the community and other interested stakeholders, the Planning Director prepared a new chapter addressing these gatherings; and

WHEREAS, because this new chapter is necessary to regulate events likely to occur during the coming summer months, the absence of regulations has created an emergency; now therefore

The Board of Commissioners of Clackamas County ordains as follows:

Section 1: This ordinance is necessary to meet an emergency.

Section 2: Chapter 6.12, shown in Exhibit A and hereto attached, is added to the Clackamas County Code.

Section 3: This ordinance shall be effective immediately upon adoption.

ADOPTED this 18th day of July, 2013

BOARD OF COUNTY COMMISSIONERS

Chair

Recording Secretary

Chapter 6.12 - OUTDOOR MASS GATHERINGS AND LIMITED GATHERINGS

Revised Draft 6-18-2013

Subtitles:

6.12.010	Purpose
6.12.020	Definitions
6.12.030	Permit requirements
6.12.040	Prohibitions
6.12.050	Exemptions
6.12.060	Permit fees
6.12.070	General application requirements
6.12.080	Application submittal deadlines
6.12.090	Notice requirements
6.12.100	Review & appeal procedures
6.12.110	Approval Criteria
6.12.120	Contact, insurance and clean-up requirements
6.12.130	Inspection Requirements
6.12.140	Enforcement

6.12.010 Purpose

The purpose of this chapter is to allow Gatherings while protecting the health, safety and welfare of the surrounding community, participants and organizers of the Gatherings.

6.12.020 Definitions

For the purposes of this title, unless otherwise apparent from the context, certain words and phrases used in this title are defined as follows and where appropriate shall include their plural form:

- A. ADEQUATE means that the requirement:
 - 1. accommodates the number of persons reasonably anticipated to attend the Gathering for the duration of the Gathering;
 - 2. meets the standards required for that level of Gathering; and
 - 3. accommodates the location and nature of the Gathering.
- B. APPLICANT means a person who seeks a permit authorizing a Gathering.
- C. COUNTY OFFICIAL means any employee of Clackamas County, whether elected, employed, or appointed, conducting official business on behalf of Clackamas County.
- D. EXTENDED OUTDOOR MASS GATHERING (EOMG) means an actual or reasonably anticipated assembly of more than 3,000 persons, which continues, or can reasonably be expected to continue, for more than 120 hours (more than five days) within any three-month period and any primarily held in open spaces.
- E. GATHERING means an Extended Outdoor Mass Gathering, an Outdoor Mass Gathering or a Limited Gathering. The determination of whether a Gathering is an Extended Outdoor Mass

Gathering, an Outdoor Mass Gathering, or a Limited Gathering shall be based on the actual or reasonably anticipated number of persons assembled at the event site at any one time including persons waiting for admission to the event site. The duration shall be based on the earlier of when the first attendee can or is anticipated to arrive at the Gathering and when the last attendee has left the Gathering.

- F. LIMITED GATHERING means a Gathering that does not qualify as an Extended Outdoor Mass Gathering or an Outdoor Mass Gathering and:
1. Is an actual or reasonably anticipated assembly of ~~more than 300~~ 500 ~~–750~~ persons which continues or can reasonably be expected to continue for more than ~~twenty-four~~ twelve hours but up to 120 hours (five days); or
 2. Is an actual or reasonably anticipated assembly of more than ~~500~~ 750 persons which continues or can reasonably be expected to continue for up to 120 hours (five days).
- G. ORGANIZER includes any person who holds, stages, sponsors, promotes, organizes, or advertises a Gathering. Organizer also includes the applicant for a permit under this title, the owner, lessee, possessor, or lessor of the real property upon which the Gathering is to take place and the agent designated to conduct the Gathering.
- H. OUTDOOR MASS GATHERING (OMG) means an actual or reasonably anticipated assembly of more than 3,000 persons, which continues or can reasonably be expected to continue for more than twenty-four consecutive hours but less than 120 hours (five days), within any three-month period and which is held primarily in open spaces and not in any permanent structure.
- I. OWNER includes the owner, lessee, or possessor of the real property upon which the Gathering is to take place.
- J. PERSON, for purposes other than determining attendance at a Gathering, means any individual or group of individuals, corporation, partnership, or organization. For purposes of determining attendance at a Gathering, “person” means an individual regardless of age.
- K. PLANNING COMMISSION means the Clackamas County Planning Commission.
- L. PLANNING DIRECTOR means the director of the Clackamas County Planning and Zoning Division.
- M. PUBLIC HEALTH SERVICES means the Clackamas County Public Health Division employees and representatives thereof.
- N. SHERIFF means the Sheriff of Clackamas County or the Sheriff’s designee.
- O. TEMPORARY STRUCTURE includes tents, trailers, portable chemical toilet facilities, stages, concession booths and other similar structures customarily erected or sited for temporary use and removed after a Gathering.

6.12.030 Permit requirements

- A. A permit is required to hold, conduct, advertise or otherwise promote any Gathering.
- B. Each Gathering shall require a separate permit.

6.12.040 Prohibitions

- A. A permit issued under this title shall not allow the construction of any permanent structures or allow for any other permanent physical alterations to or on the real property where the Gathering will be held.

- B. Structures or parking associated with the Gathering shall not be located off-site.

6.12.050 Exemptions

This chapter shall not apply to:

- A. Any normal and customary activity or program that takes place on property lawfully developed with a school, church or other institutional use.
- B. Any Gathering under the auspices of any local, state or federal agency conducted in response to an emergency or to conduct training to meet such emergencies.
- C. Any Gathering in a local, county, or regional park authorized by the regulating authority.
- D. Any Gatherings conducted on federal or state lands that are authorized by the state or federal regulating authority.
- E. Any Gathering approved under the Clackamas County Zoning Development Ordinance except as required for an Extended Outdoor Mass Gathering (i.e. farmers markets, agritourism events, hosting event venues).
- F. Any Gathering that is allowed as a permitted or accessory use in the underlying zoning district (i.e. family weddings and reunions, temporary commercial uses on commercially zoned property).
- G. Any Gathering where the Planning Director, in his or her discretion and in consultation with the Sheriff, County Health Department and other affected agencies, determines that there are no significant health, safety and welfare issues based on the number of participants and duration of the event.

6.12.060 Permit fees

- A. The permit fee for a Gathering shall be set by the Board of County Commissioners.
- B. The permit fee shall be paid by the organizer upon filing the application with the Planning and Zoning Division.
- C. An additional deposit fee may be required for Gatherings to cover the costs of services by the Sheriff, Fire District, Health Department and Oregon Department of Forestry in response to alleged violations of the permit or other violations of the law. If violations do not occur as a result of the event then the deposit is reimbursed to the applicant.
- D. The Planning Director or Board of County Commissioners may reduce or waive fees upon a showing of just cause to do so.

6.12.070 General application requirements

- A. The following information shall be submitted for all Gatherings on forms provided by the County:
 - 1. Name, address, phone numbers and email of all owners and organizers.
 - 2. The name and contact information for the designated contact person who has decision making authority and will be present at the Gathering site at all times.
 - 3. Map number and address of all the properties proposed for use as part of the Gathering, including any property used for parking, staging of equipment and supplies.
 - 4. Beginning and end dates of the Gathering, including set-up and clean-up days.

5. Hours of operation for the Gathering.
 6. The reasonably anticipated total event count, daily attendance, and peak attendance.
 7. Description of planned Gathering activities.
 8. A detailed site plan map showing the existing and temporary structures, activity areas, stages, driveway access, parking and circulation areas.
 9. Information necessary to demonstrate compliance with the applicable approval criteria for the type of proposed Gathering.
 10. Other appropriate information as the county may require to ensure compliance with this chapter.
 11. Application fee.
- B. The application shall be signed by the Applicants and all Owners.

6.12.080 Application submittal deadlines

- A. An application for an Extended Outdoor Mass Gathering or Outdoor Mass Gathering shall be submitted no less than 180 days prior to the date of the Gathering.
- B. An application for a Limited Gathering shall be submitted no less than ninety days prior to the Gathering unless a reduced time period is approved by the Planning Director based on the size and characteristics of the Gathering and anticipated time to process the permit.

6.12.090 Notice requirements

- A. Written notice of the Gathering shall be sent by mail at least thirty days prior to the public hearing or Planning Director decision to the following parties:
 1. All property owners of record within 500 feet of the subject property and any contiguous properties under the same ownership if the property is located within an urban growth boundary or within 2,000 feet of the subject property and any contiguous properties if the property is located outside an urban growth boundary.
 2. Recognized and active CPO, Hamlet or Village.
 3. Sheriff.
 4. County and State Health Departments.
 5. Local Fire District.
 6. County Department of Transportation and Development, Transportation Division.
 7. Oregon Department of Forestry.
 8. Oregon Liquor Control Commission if alcohol will be served or permitted onsite.
 9. Other affected service districts and agencies which may have jurisdiction over the Gathering, including the water district, sewer district, and the Oregon Department of Transportation.
- B. Notice of Extended Outdoor Mass Gatherings and Outdoor Mass Gathering shall be published in a newspaper of general circulation at least ten days prior to the public hearing.
- C. Notices of the hearings shall contain the following information:
 1. The date, time and place of the hearing, the application file number, and the staff representative and telephone number where additional information may be obtained.

2. Identification of the organizers and owners, a description of the subject property by tax map designation of the County Assessor, the address of the property if available and approximate location on county roads.
3. An explanation of the nature of the proposed Gathering which could be authorized by the decision.
4. A list of the criteria from this code.
5. A statement that interested parties may appear and be heard and that failure to raise an issue by the close of the record at or following the final evidentiary hearing, in person or by letter, or failure to provide sufficient specificity to afford the Planning Commission or Board of County Commissioners an opportunity to respond to an issue may preclude appeal to the circuit court based on that issue.
6. A general explanation of the requirements for submission of testimony and the procedure for conduct of hearings.
7. A statement that the application, all documents and evidence relied upon by the applicant, and the applicable criteria are available for inspection at the Planning and Zoning Division at no cost and copies will be provided at a cost established by the Board of County Commissioners.
8. A statement that at least seven days prior to the hearing a copy of the staff report for the hearing will be available for inspection at the Planning and Zoning Division and copies will be provided at a cost established by the Board of County Commissioners.

6.12.100 Review and appeal procedures

- A. A Limited Gathering Permit shall be reviewed by the Planning Director. The Planning Director's decision to grant or deny the permit may be appealed to the Board of County Commissioners by any person. An appeal must be filed within seven days of the Planning Director's final decision. It is the Board of County Commissioner's discretion to hear or not hear the appeal. If the Board of County Commissioners does not hear the appeal, then the Planning Director's decision shall stand.
- B. An Outdoor Mass Gathering Permit shall be reviewed at a public hearing by the Board of County Commissioners.
- C. An Extended Outdoor Mass Gathering Permit shall be reviewed at a public hearing by the Planning Commission. The Planning Commission's decision to grant or deny the permit may be appealed to the Board of County Commissioners by the applicant or any person who attended or testified at the Planning Commission Hearing. The appeal must be filed within seven days of the Planning Commission's final decision. If no appeal is filed, the Board of County Commissioners may review the decision of the Planning Commission at its discretion. The Board of County Commissioners shall have twenty-one days to decide whether to review the decision of the Planning Commission.

6.12.110 Approval criteria

- A. Limited Gatherings: At a minimum, the applicant must provide evidence that for the duration of the Limited Gathering, the following agency and departmental standards will be met:

1. Local and State Fire Districts
 - a. Provision of adequate fire protection, emergency vehicle access, fire fighting water supply, emergency medical personnel and facilities.
 - b. Provision of adequate wildfire protection, smoking areas, firefighting equipment, and supplies.
 2. Sheriff's Department
 - a. Provision of adequate and approved security personnel.
 - b. Provision of adequate staff to direct and monitor traffic control.
 - c. Compliance with Chapter 6.05 - Noise Control.
 3. County Engineering Division
 - a. Provision of adequate traffic safety monitoring staff, driveway access, traffic control plan and setup, drainage and erosion control.
 - b. Provision of adequate off-street parking and circulation.
 4. County and State Public Health
 - a. Provision of adequate facilities to accommodate sewage disposal such as portable chemical toilet facilities or other approved sources.
 - b. Provision of adequate water supply, food and sanitary food services.
 5. County Sustainability Division
 - a. Provision of adequate refuse storage and disposal facilities.
 6. Oregon Liquor Control Commission (OLCC)
 - a. Compliance with the OLCC regulations if alcohol service is proposed.
 7. The Planning Director may, in his or her discretion, waive any of the requirements listed in Subtitle 6.12.110(A) if the requirement is not applicable to the nature of or activities associated with the approved Gathering.
- B. Outdoor Mass Gatherings: At a minimum, the applicant must provide evidence that for the duration of the Outdoor Mass Gathering, the standards provided for in OAR, Ch. 333, Div. 39 and the following agency and departmental standards will be met:
1. Local and State Fire Districts
 - a. Provision of adequate fire protection, emergency vehicle access, fire fighting water supply, emergency medical personnel and facilities.
 - b. Provision of adequate wildfire protection, smoking areas, firefighting equipment, and supplies.
 2. Sheriff's Department
 - a. Provision of adequate and approved security personnel.
 - b. Provision of adequate staff to direct and monitor traffic control.
 - c. Compliance with Chapter 6.05 - Noise Control.
 3. County Engineering Division
 - a. Provision of adequate traffic safety monitoring staff, driveway access, traffic control plan and setup, drainage and erosion control.
 - b. Provision of adequate off-street parking and circulation.
 4. County and State Public Health
 - a. Provision of adequate facilities to accommodate sewage disposal such as portable chemical toilet facilities or other approved sources.
 - b. Provision of adequate water supply, food and sanitary food services.
 5. County Sustainability Division

- a. Provision of adequate refuse storage and disposal facilities.
- 6. Oregon Liquor Control Commission (OLCC)
 - a. Compliance with the OLCC regulations if alcohol service is proposed.
- 7. The Planning Director may, in his or her discretion, waive any of the requirements listed in subsection 6.12.110(B) if the requirement is not applicable to the nature of or activities associated with the approved Gathering.
- C. Extended Outdoor Mass Gatherings: At a minimum, the applicant must provide evidence that for the duration of the Extended Outdoor Mass Gathering, the standards provided for in OAR Ch. 333, Div. 39 and the following agency and departmental standards will be met:
 - 1. Local and State Fire Districts
 - a. Provision of adequate fire protection, emergency vehicle access, fire fighting water supply, emergency medical personnel and facilities.
 - b. Provision of adequate wildfire protection, smoking areas, firefighting equipment, and supplies.
 - 2. Sheriff's Department
 - a. Provision of adequate and approved security personnel.
 - b. Provision of adequate staff to direct and monitor traffic control.
 - c. Compliance with Chapter 6.05 - Noise Control.
 - 3. County Engineering Division
 - a. Provision of adequate traffic safety monitoring staff, driveway access, traffic control plan and setup, drainage and erosion control.
 - b. Provision of adequate off-street parking and circulation.
 - 4. County and State Public Health
 - a. Provision of adequate facilities to accommodate sewage disposal such as portable chemical toilet facilities or other approved sources.
 - b. Provision of adequate water supply, food and sanitary food services.
 - 5. County Sustainability Division
 - a. Provision of adequate refuse storage and disposal facilities.
 - 6. Oregon Liquor Control Commission (OLCC)
 - a. Compliance with the OLCC regulations (if alcohol service is proposed).
 - 7. The Planning Director may, in his or her discretion, waive any of the requirements listed in Subtitle 6.12.110(C)(1) through (6) if the requirement is not applicable to the nature of or activities associated with the approved Gathering.
 - 8. Obtain any land use approvals and permits that are required by the Clackamas County Zoning and Development Ordinance.
 - 9. The proposed use is compatible with existing land uses and does not materially alter the stability of the overall land use pattern of the area.

6.12.120 Contact, insurance, set-up and clean-up requirements

- A. Any permit issued pursuant to this chapter shall be kept by the organizer, and a copy shall be posted in a conspicuous place upon the premises of the Gathering site. The posting shall also include a description of the Gathering, date, duration, on-site twenty-four hour contact information for the organizer with the authority to make decisions, and sheriff, fire control, public health, and other appropriate agencies.

- B. At least one onsite organizer shall have twenty-four hour radio frequency access to the Sheriff and all onsite security staff.
- C. Insurance in accordance to the regulations outlined in ORS 433.755(1) may be required for any Gathering. The Planning Director shall consult with the county's Risk Manager to determine the amount and scope of the insurance coverage.
- D. All activities required to prepare the site for the Gathering shall not occur more than 72 hours prior to the advertised time the Gathering is scheduled to begin. The Planning Director may, upon a showing of necessity, allow preparation to begin more than 72 hours before the advertised time of the Gathering.
- E. All lingering residue, debris, temporary structures or damage to property resulting from the Gathering shall be removed and repaired within seventy-two hours after termination of the Gathering. Prior to the Gathering, the Planning Director may, upon a showing of necessity, allow more than 72 hours to remove any temporary structures.

6.12.130 Inspection requirements

All approved Gatherings are subject to inspections prior to, during and after the Gathering by a county official and other reviewing public officials and agencies to insure the Gathering is in and maintains compliance with the requirements of section 6.12.110. The organizer and owner shall provide written consent allowing law enforcement, public health, fire control, and other appropriate public officers or officials to come onto the premises of the approved Gathering.

6.12.140 Enforcement

- A. It is the intention of this chapter to put the burden of preserving order upon the organizer of the Gathering. If a Gathering is not being operated in accordance with the rules and regulations prescribed in this chapter, as set forth in state law, and as provided for in the permit, the organizers and owners shall be subject to revocation of the permit and other sanctions as the law and this title provides.
- B. The organizers shall keep a count of persons and vehicles entering and leaving the Gathering. If at any time during a Gathering held under a valid permit the number of persons or vehicles attending the Gathering exceeds the number of persons or vehicles estimated in the permit application, the Sheriff, or any of his or her deputies, may require the organizer to limit further admissions until a sufficient number of individuals or vehicles have left the site to bring the actual attendance down to the number estimated by the organizer.
- C. The county may bring an action in any court of general or equitable jurisdiction to prevent, restrain or enjoin any violation of this title or ORS 433.745.
- D. For any Gathering held under a valid permit, the Sheriff shall have the authority to order the crowd to disperse and leave the Gathering site if the organizer cannot maintain order and compliance with all applicable state or local laws, or refuses or is unable for any reason to adhere to the terms and conditions of their permit, and the Sheriff determines that there is an immediate threat to public health or safety.
- E. The county may file suit to either compel compliance with, or seek compensation for its own actions related to, the clean-up requirements in subsection 6.12.130(D).
- F. If any organizer violates any provisions of this title or any permit issued hereunder, the Board of

County Commissioners or Planning Director may immediately revoke any permit for a Gathering and may seek any legal remedy available.

- G. The county may impose a fine of up to \$10,000 on each organizer and owner for each violation of this title, the terms of their permit, or ORS 433.735.

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF CLACKAMAS COUNTY, STATE OF OREGON**

A RESOLUTION OF THE CLACKAMAS
COUNTY BOARD OF COUNTY
COMMISSIONERS ADOPTING
FEES FOR OUTDOOR MASS
GATHERINGS AND LIMITED
GATHERINGS



RESOLUTION NO. _____

WHEREAS, the Board of County Commissioners has adopted Chapter 6.12 of the Clackamas County Code requiring organizers of subject gatherings to obtain a permit from the County prior to holding such gathering, and that said permit will require the organizer pay a fee;

NOW, THEREFORE; BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS THAT:

Section 1: Pursuant to Section 1.01.090 of the Clackamas County Code, the Board adopts the fees shown on the attachment which are incorporated by this reference.

Section 2: The Board hereby directs that the fees shown on the attachment shall be included in Appendix A of the Clackamas County Code.

Section 3: Pursuant to ORS 310.145, the Board classifies the fees adopted by this resolution as fees not subject to the limits of section 11b, Article XI of the Oregon Constitution.

Section 4: Effective Date. The fees authorized by Section 1 of this resolution and shown on the attachment shall become effective immediately upon adoption.

DATED this 11th day of July, 2013.

CLACKAMAS COUNTY BOARD OF COMMISSIONERS

Chair

Recording Secretary

Gonzales, Lorraine

From: Boyle, Pat [pat.boyle@kxl.com]
Sent: Monday, June 17, 2013 3:49 PM
To: Gonzales, Lorraine
Subject: Large gatherings

I was curious which churches held large, outdoor Masses?

Pat Boyle at KXL

Sent from my iPhone

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BEGIN-ANTISPAM-VOTING-LINKS

Gonzales, Lorraine

From: margie j Bradley [mjbrad1@juno.com]
Sent: Wednesday, June 19, 2013 1:24 AM
To: Gonzales, Lorraine
Subject: Re guarding the planning of mass gatherings

I would rather see them where the law can be involved than in the woods where children are abused and no one is watching what is happening. Have talked with some people who described there childhood in the un supervised locations for gatherings in secret and there stories have left them impaired. Some as few as 50 in attendance.

Virgin Mobile®
Official Site: Great Phones, Free Shipping & Plans Starting at \$35/mo
<http://thirdpartyoffers.juno.com/TGL3141/51c16b1c4e4d6b1b11e2st01duc>

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BEGIN-ANTISPAM-VOTING-LINKS

Teach CanIt if this mail (ID 01J08qBnW) is spam:
Spam: <https://mhub.clackamas.us/canit/b.php?i=01J08qBnW&m=8f1d87178bdf&c=s>
Not spam: <https://mhub.clackamas.us/canit/b.php?i=01J08qBnW&m=8f1d87178bdf&c=n>
Forget vote: <https://mhub.clackamas.us/canit/b.php?i=01J08qBnW&m=8f1d87178bdf&c=f>

END-ANTISPAM-VOTING-LINKS

Gonzales, Lorraine

From: Pat Ross [ross@molalla.net]
Sent: Thursday, June 20, 2013 12:01 PM
To: Gonzales, Lorraine
Subject: W: Public invited to comment on proposed code on large outdoor gatherings at June 20 Clackamas County Board hearing

Dear BCC,

I am in support of the proposed codes to regulate mass gatherings in Clackamas County. The Planning Department was very effective in outreach to our rural areas via the Hamlet of Molalla Prairie Community meetings several months ago so the issues were well explained and now I am aware of how a mass gathering would impact neighbors if an event should happen. The new codes will give citizens and regulators definable guidelines in controlling these potentially disruptive events. I have only encountered a single person state that they were against the new codes (against any codes) to control mass gathering events and the rest approve of the new codes.

In contrast to the very vigorous outreach on mass gatherings, I am very disappointed on the outreach concerning the proposed industrial use zone changes in Clackamas County. Even though I get and read all notices from the BCC, this one was not defined enough in the initial wording to determine that it was a significant change to the code to warrant further reading. Heavy industry should never be located near a residential areas without proper buffers. I and my son have personally gotten sick from living close to a lumber mill who was polluting the air and once the pollution was stopped, our sicknesses went away. There are just too many negative aspects to heavy industry for it to be co-located with residential and rural neighborhoods.. Perhaps the industrial code changes should be disseminated in a similar way as the mass gathering issue.

Thank you for letting me comment.

Patricia H. Ross
rural South Clackamas County

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BEGIN-ANTISPAM-VOTING-LINKS

Teach CanIt if this mail (ID 01J0H0Hg7) is spam:

Spam: <https://mhub.clackamas.us/canit/b.php?i=01J0H0Hg7&m=970cae30d17d&c=s>

Not spam: <https://mhub.clackamas.us/canit/b.php?i=01J0H0Hg7&m=970cae30d17d&c=n>

Forget vote: <https://mhub.clackamas.us/canit/b.php?i=01J0H0Hg7&m=970cae30d17d&c=f>

END-ANTISPAM-VOTING-LINKS

Gonzales, Lorraine

From: McCallister, Mike
Sent: Thursday, June 20, 2013 10:44 AM
To: Gonzales, Lorraine
Subject: FW: Mass Gathering Codes: IN SUPPORT

FYI. Copy of the record and distribution tonite.

Mike McCallister
Planning Director
Planning & Zoning Division
Clackamas County
503-742-4522
MikeM@co.clackamas.or.us

From: Susan Hansen [<mailto:foxglovefarm@inbox.com>]
Sent: Thursday, June 20, 2013 10:40 AM
To: BCCMail; BCC - All County Administration Staff
Cc: Schmidt, Gary; McCallister, Mike; Media - Oregonian - Mayes, Steve; Molly Harbarger
Subject: Mass Gathering Codes: IN SUPPORT

Dear BCC,

I am in support of the proposed codes to regulate mass gatherings in Clackamas County.

In our Hamlet of Molalla Prairie area, we have witnessed significant unpermitted mass gatherings, including loud wedding events that go on into the late night hours and a horrible commercial motocross "park" that caused years of misery to neighbors subjected to noise, dust and threats. Stronger regulation as in the proposed mass gathering codes will give citizens and regulators clear guidelines and will help us control conflicts.

The Planning Department did an excellent job on public outreach on these proposed mass gathering codes. The majority of attendees at the Hamlet of Molalla Prairie meeting endorsed the codes when Mike McCallister presented them several months ago.

That excellent outreach on mass gatherings codes is in sharp contrast to the lack of vigorous outreach on other changes like the proposed industrial use zone changes (which I oppose) and the shocking new mandate that confidential code complaints will not be investigated unless complaints come from two different addresses (which I also oppose). Those of us who are used to transparent outreach on important changes are questioning why the BCC is failing to work closely in advance of changes with interested citizens like those in CPOs, Hamlets and Villages?

It was my belief that Clackamas County was supposed to be highly dedicated to collecting citizen input. The BCC has failed to provide detailed outreach about the industrial zone changes or the change on the confidential complaint issue. That is extremely concerning to citizens who wish to participate when important policy and code changes are considered. **Why is that lack of vigorous public outreach suddenly the norm? Does the BCC wish to be viewed as a top down group that doesn't value vigorous citizen involvement? Where is the transparency?**

Please pass strong codes for mass gatherings. The safety and quality of life of County residents are at stake. Please consider putting the confidential code enforcement changes on hold and reach out to CPOs, Hamlets and

McCallister, Mike

From: BCCMail
Sent: Thursday, July 11, 2013 7:55 AM
To: Bernard, Jim; Howatt, Drenda; Ludlow, John; Schrader, Martha; Smith, Tootie
Cc: McCallister, Mike
Subject: Susan Hansen: In SUPPORT for Codes for Mass Gatherings

From: Susan Hansen [<mailto:foxglovefarm@inbox.com>]
Sent: Wednesday, July 10, 2013 3:32 PM
To: BCCMail
Subject: In SUPPORT for Codes for Mass Gatherings

Dear BCC,

We support the proposed codes for Mass Gatherings you will consider at the Business Meeting tomorrow.

As rural residents we are concerned about the potential for uncontrolled mass gatherings featuring unregulated drinking, excessive traffic and noise. With codes in place the County will have the ability to permit and control activities and hopefully ensure that public safety and community quality of life will be preserved.

We have a current example in Molalla of a "Barn Party" event proposed for a horse arena, advertised for all ages yet featuring a beer garden. If community leaders had not questioned this event, the promoters may not have been compelled to comply with OLCC rules, food handling rules, fire marshal rules, building occupancy rules and noise ordinance rules. By working in advance with the applicant, it was determined by the fire marshal that the building had inadequate electricity to handle the demands of the sound system so a haul in generator is required. OLCC is requiring training in liquor control rules and food handling training is also required. The sheriff is working on the noise issues. Details like that, if not addressed in advance, could endanger attendees in the building in case of fire, under age drinking and unsafe food. Lack of oversight and permits could also could endanger surrounding residents with noise, traffic and fire dangers.

Please ensure that our rural communities continue to enjoy safe environments and great quality of life by passing the mass gathering codes.

Sincerely,
Susan Hansen and Randy Hironimus
rural Clackamas County

[Spam](#)
[Not spam](#)
[Forget previous vote](#)

McCallister, Mike

From: Joan Zuber [zuberj@molalla.net]
Sent: Wednesday, July 10, 2013 4:36 PM
To: McCallister, Mike
Cc: Pat Nesbitt; Susan Hansen
Subject: Outdoor Mass Gatherings

Hi, Mike--

I understand the second hearing on #03-2013 regarding mass gatherings will take place tomorrow before the BCC. I am not able to attend but, I just sent an email urging passage. I attended your presentation on this a few months back.

I have a concern about the ordinance. As you probably know, there is a proposed 5 band, beer garden BAR 88 BARN PARTY concert scheduled in 9 days. Since the ordinance addresses 'outdoor' mass gatherings, would this type of event **inside** a horse arena fall under the ordinance? They do hold horse related events and I understand there might have been a music event many years ago. The organizer is having to bring in a generator to meet the energy demands. Or, is there an ordinance in place now that addresses mass gatherings in a farm/forest zoned arena?

Thanks,
Joan Zuber, South Clackamas CPO vice chair

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McCallister, Mike

From: BCCMail
Sent: Thursday, July 11, 2013 9:27 AM
To: Bernard, Jim; Howatt, Drenda; Ludlow, John; Schrader, Martha; Smith, Tootie
Cc: McCallister, Mike
Subject: Edmund Pierzchala: Mass Gatherings ordinance---please vote NO

From: EDMUND PIERZCHALA [mailto:edmund_pierzchaia@msn.com]

Sent: Thursday, July 11, 2013 9:19 AM

To: BCCMail

Subject: Mass Gatherings ordinance---please vote NO

Dear Clackamas County Commissioners,

I am writing to you regarding the addition of Chapter 6.12 to the Clackamas County Code to regulate Outdoor Mass Gatherings and Limited Gatherings.

My concern in particular is that small political and other rallies will suffer undue hardship in the form of bureaucratic permit process and fees. The US Constitution and the Bill of Rights guarantee us all freedom of assembly; to impinge on this freedom is to impinge on our constitutional rights, and the proposed regulations seem to do so, for no good reason. To require a gathering of 500 people of *any* duration (up to 120 hours), to have a permit and pay a fee seems like an undue limitation of our constitutional freedom.

The official reasons stated in support of the proposed regulation are vague and unclear in explaining why the existing State regulations, which seem reasonable to me, are insufficient. Have there been blatant cases of abuse of the right to peaceably assemble in our County that really require this new regulation? I am not aware of any. Yet the official documents state that there is an emergency which justifies the new regulations.

When a river rises, or a wildfire rages, and they threaten property and lives, when a severe wave of heat stresses the power grid to the limits, when a train carrying crude oil blows up and wipes out a town---these are emergencies.

Where is the emergency that requires the new regulations to be enacted?

The new regulations seem like an encroachment of over-reaching state on citizen's rights.

I urge you to vote NO on the proposed regulations.

Sincerely,

Edmund Pierzchala
2515 SE Harrison St.
Milwaukie, OR 97222

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Spam

McCallister, Mike

From: BCCMail
Sent: Tuesday, July 09, 2013 7:33 AM
To: McCallister, Mike
Subject: FW: Phyllis Packard: First Amendment right to free speech and freedom of assembly

Forgot to copy you on this one...

From: BCCMail
Sent: Tuesday, July 09, 2013 7:32 AM
To: Bernard, Jim; Howatt, Drenda; Ludlow, John; Schrader, Martha; Smith, Tootie
Subject: Phyllis Packard: First Amendment right to free speech and freedom of assembly

From: pwhockey@comcast.net [<mailto:pwhockey@comcast.net>]
Sent: Monday, July 08, 2013 5:08 PM
To: BCCMail
Subject: First Amendment right to free speech and freedom of assembly

To the commissioners, I am against the mass gathering ordinance you wish to pass.

What about large weddings at parks? What about birthday celebrations at private homes?

What about large picnics at private properties? What about Cruise Inns with custom cars

held at a place of business? Think about what you are doing. It is not right.

Sincerely, Phyllis Packard, Gladstone

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McCallister, Mike

From: BCCMail
Sent: Tuesday, July 09, 2013 7:34 AM
To: Bernard, Jim; Howatt, Drenda; Ludlow, John; Schrader, Martha; Smith, Tootie
Cc: McCallister, Mike
Subject: Wally Helm: vote no to save our right to gather

From: WALLY HELM [<mailto:wehelm@msn.com>]
Sent: Monday, July 08, 2013 6:13 PM
To: BCCMail
Subject: vote no to save our right to gather

We are hard pressed to understand why the commission would consider restricting to such a punitive extent our right to gather and express our views. If some gatherings in the past have involved lawless behavior, then the sheriff should act accordingly but if citizens gather peacefully, there should be no effort by government to curtail that constitutional right of free speech.

Please do not vote to rob us of this precious right.

Thank you and we dearly hope for your support,
Wally and Marilyn Helm
Lake Oswego, OR

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McCallister, Mike

From: Raethke, Mary
Sent: Monday, July 08, 2013 3:38 PM
To: McCallister, Mike; Gonzales, Lorraine
Subject: FW: Outdoor Gathering Ordinance

fyi

Mary Raethke | Clackamas County Administration Office | Public Services Building
2051 Kaen Road, Suite 450 | Oregon City, OR 97045 | ☎: 503-742-5912 | 📠: 503-742-5919 | ✉: maryr@clackamas.us

From: les poole [<mailto:elpee5440@gmail.com>]
Sent: Monday, July 08, 2013 2:46 PM
To: Madkour, Stephen; Chandler, Daniel
Cc: Bernard, Jim; Ludlow, John; Smith, Tootie; Schrader, Martha; Savas, Paul; Barth, Gary; Raethke, Mary
Subject: Outdoor Gathering Ordinance

Dear Staff & Commissioners,

I understand the goal of the proposed ordinance for regulating large gatherings that typically occur in the Summer. Jim Meyers and others expressed a concern that I have: **The final language should be very clear about the time constraints placed on the public.**

The draft language covers gatherings up to 120 hours in length. As written, the ordinance would apply to large gatherings that are only 4 or 5 hours in length. Some receptions, reunions, and benefit concerts are commercially sponsored, and none are in the scope of your intent; regulating the outrageous and unsafe behavior that occurs at uncontrolled overnight events..

Some citizens are confused, thinking the ordinance applies to non-commercial events. I've explained to others that it applies exclusively to private property, and the ordinance will compliment existing noise laws.

We could reduce some of the confusion if the explanation in the staff report included more detail. Please let me know if any of my observations are not accurate. I will send out an email endorsing your effort if the language is modified in the final version.

Best regards,
Les Poole

Spam

McCallister, Mike

From: BCCMail
Sent: Monday, July 08, 2013 10:16 AM
To: Bernard, Jim; Howatt, Drenda; Ludlow, John; Schrader, Martha; Smith, Tootie
Cc: McCallister, Mike
Subject: Jan Esler-Rowe: Public Gathering Ordinance

From: JanCascade@aol.com [<mailto:JanCascade@aol.com>]

Sent: Saturday, July 06, 2013 12:58 PM

To: BCCMail

Subject: RE: Public Gathering Ordinance

http://www.nw-connection.com/archives/NWConn_Julywebversion.pdf

Dear Mr. Chairman & Commissioners:

I rarely read the Northwest Connections newspaper, but I am certainly glad I did this week to learn about this proposed ordinance. This appears to be a solution in search of a problem. Clackamas County does not draw the same type of unruly protest groups that are attracted to Portland. We had an "Occupy" nothing in Clackamas County. No problem, no solution required.

The ordinance does not outlaw rallies or large gatherings, but the act of making the permit cost prohibitive & the permit process difficult is equal to outlawing free speech and the right of citizens to gather peacefully.

I respectfully request the BOC not pass a new ordinance before it is necessary, especially one that has the appearance of limiting the citizens freedom.

Best regards,

Jan Esler-Rowe
Milwaukie

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McCallister, Mike

From: BCCMail
Sent: Tuesday, July 16, 2013 7:34 AM
To: Bernard, Jim; Howatt, Drenda; Ludlow, John; Schrader, Martha; Smith, Tootie
Cc: McCallister, Mike
Subject: Linda Andresen: Freedom of Speech

From: linoak@comcast.net [<mailto:linoak@comcast.net>]

Sent: Monday, July 15, 2013 9:58 PM

To: BCCMail

Subject: Freedom of Speech

Dear Commissioner,

Please do not approve the proposed code that will limit our FREE SPEECH and Right to Assemble.

90 day advance notice and \$5k fee I feel is unreasonable.

Thank you,
Linda Andresen

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McCallister, Mike

From: BCCMail
Sent: Tuesday, July 16, 2013 7:41 AM
To: Bernard, Jim; Howatt, Drenda; Ludlow, John; Schrader, Martha; Smith, Tootie
Cc: McCallister, Mike
Subject: Susan Heublein: In SUPPORT for Codes for Mass Gatherings

-----Original Message-----

From: Susan Heublein [<mailto:sueheublein@gmail.com>]
Sent: Monday, July 15, 2013 9:22 AM
To: BCCMail
Subject: In SUPPORT for Codes for Mass Gatherings

Dear BCC,

I support the proposed codes for Mass Gatherings currently under your review and consideration.

As a rural resident I am concerned about the potential for uncontrolled mass gatherings resulting in heavy traffic and illegal or unsafe activities in our rural areas. Alcoholic drinking, excessive noise, trash dumping, and disrespect for property of others are all concerns whenever mass gatherings occur that are not a natural fit for a rural environment. With codes in place County will be able to issue permits and control activities and have the best chance to ensure that public safety and community quality of life will be preserved.

Resources such as sheriff deputies, fire and rescue crews, and others are not normally staffed to adequately respond to densely and highly populated events in rural areas. While I would like to see such events directed to established venues inside city limits, the mass gatherings codes will at least allow County to work with event organizers in advance of events to make sure important issues are adequately addressed.

Please ensure that our rural communities continue to experience safe environments and desired rural quality of life by passing the mass gathering codes.

Sincerely,
Sue Heublein
30371 S. Cramer Road
Molalla, OR 97038

--
BEGIN-ANTISPAM-VOTING-LINKS

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Teach CanIt if this mail (ID 01K0EmpLF) is spam:

Spam: <https://mhub.clackamas.us/canit/b.php?i=01K0EmpLF&m=fce32a35147d&c=s>
Not spam: <https://mhub.clackamas.us/canit/b.php?i=01K0EmpLF&m=fce32a35147d&c=n>
Forget vote: <https://mhub.clackamas.us/canit/b.php?i=01K0EmpLF&m=fce32a35147d&c=f>



QUICK FACTS

Proposed Code Amendments on

Extended Outdoor Mass Gatherings, Outdoor Mass Gatherings and Limited Gatherings in Unincorporated Clackamas County

Revised -- July 17, 2013

(NOTE: **Yellow highlighted text** reflects changes made by the Board at a study session on July 16.)

The Clackamas County Board of Commissioners is considering adopting code amendments to help ensure that minimum health, safety and welfare issues are addressed during large outdoor gatherings in unincorporated Clackamas County. These amendments would not apply to any gatherings of less than **500** people for any length of time or to exempt activities (see list on page 2).

The proposed review process is designed to promote the safety of event participants and organizers, and to address potential impacts to nearby property owners such as noise, traffic, parking and wildfire risk.

The proposed code amendments are available from the Clackamas County Planning & Zoning Division located in the Development Services Building, 150 Beaver Creek Rd., Oregon City, by calling 503-742-4500, or [online](http://www.clackamas.us/planning/documents/zdoproposed/OMG%20Board%20Packet%2006132013.pdf) at <http://www.clackamas.us/planning/documents/zdoproposed/OMG%20Board%20Packet%2006132013.pdf>.

Q Where would these code amendments apply?

A The amendments would apply in unincorporated Clackamas County to gatherings with the characteristics described below that are NOT on the list of exempt activities, which follows.

Q What is an *Extended Outdoor Mass Gathering*?

A An *Extended Outdoor Mass Gathering* has the following characteristics:

- It involves 3,000 or more people at any one time AND
- It lasts **more** than five days (120 hours) within a three-month period AND
- It is primarily held outdoors

Q What is an *Outdoor Mass Gathering*?

A An *Outdoor Mass Gathering* has the following characteristics:

- It involves 3,000 or more people at any one time AND
- It lasts more than one day (24 hours) but **less** than five days (120 hours) within a three-month period AND
- It is primarily held outdoors and not in any permanent structure

Q What is a *Limited Gathering*?

A A *Limited Gathering* has the following characteristics:

- Involves **500-750 people at any one time** for more than **12** hours but less than five days (120 hours) within a three-month period OR
- Involves **more than 750 people** at any one time **for up to** five days (120 hours) within a three-month period and does not qualify as an *Extended Outdoor Mass Gathering* or an *Outdoor Mass Gathering*

Q What criteria would be evaluated to determine if a gathering is permitted?

A The criteria would be based only on the health and safety needs of participants and the community. Those criteria include such items as provisions for fire protection, security, traffic control and parking, public waste facilities, safe water and food supplies, refuse storage and disposal, insurance, noise limitations and (if applicable) compliance with state liquor regulations.

****EXEMPT CATEGORIES:**

These amendments would not apply to any gatherings of less than **500** people. In addition, the proposed code amendments would **NOT** apply to events and gatherings in the categories described in the following table.

Q Would all gatherings have to go through the permit process?

A No. The categories of events listed below, with examples, would all be exempt. The amendments would only apply to events and gatherings in unincorporated areas of Clackamas County that have the characteristics described above and that are NOT in any of the following exempt categories.

An EVENT or GATHERING is EXEMPT IF one of more of the following is true:	EXAMPLES
It is a normal and customary activity or program that takes place on property developed with a school, church or other institution (e.g., fire department, grange hall, etc.).	<ul style="list-style-type: none">• Homecoming and sports events• Weddings• Community meetings
It is authorized by a local, state or federal agency in response to an emergency or training for an emergency.	<ul style="list-style-type: none">• Emergency response and training activities related to natural disasters, flooding and public safety
It is in a local, county or regional park that is authorized by the park district authority.	<ul style="list-style-type: none">• Picnics, weddings, reunions, birthday parties and all other gatherings permitted or authorized by a park district
It is already approved under the Clackamas County Zoning and Development Ordinance (ZDO).	<ul style="list-style-type: none">• Agri-tourism events, wineries, commercial uses to host events, farm stands, farmers markets
It is a permitted or accessory use in that zoning district.	<ul style="list-style-type: none">• Family weddings and reunions on residential property• Commercial uses on commercially-zoned property (e.g, temporary carnivals, skateboard parks, car shows)
It is located on a County or State Road	<ul style="list-style-type: none">• Parades, organized walks, running events
The Planning Director, in consultation with the Sheriff's Office, County Health Department and other affected agencies, has determined that there are no significant health, safety and welfare issues.	<ul style="list-style-type: none">• Any other gathering that will not generate significant health, safety or welfare issues based on the type of event, activities, duration and number of participants.

PERMITS

Q What would I have to do to get a permit?

A You would have to complete an application form and go through a review process in order to receive approval for a permit.

Q Will there be a charge for a permit?

A Yes, there will be permit fees to help cover costs. The proposed fees range from \$250 for limited gatherings up to \$5,000 for outdoor mass gatherings depending on the type and size of gathering, and its possible impact on health and safety.

Q Can permits or fees ever be reduced or waived?

A Yes, the Planning Director or Board of County Commissioners may reduce or waive fees upon showing of a just cause to do so.

NOTIFICATION

Q Will people on properties adjacent to the event site have advance notice about the proposed event?

A Yes, the permit review process includes notification of nearby property owners.

OTHER JURISDICTIONS

Q Do other jurisdictions regulate large, extended gatherings?

A Yes, they do. For example, in Oregon there are at least five other counties that regulate these types of events to help ensure health and safety: [Crook](#), [Deschutes](#), [Linn](#), [Marion](#) and [Washington](#). The following table reviews and compares the basic features of the regulations in each County, as well as the proposed code amendments in Clackamas County.

	Crook County (current)	Deschutes County (current)	Linn County (current)	Marion County (current)	Washington County (current)	Clackamas County (proposed)
Responsibility	Planning	County Commission or Planning Commission	Environmental Health	Planning	Health & Human Services	Planning
No. of participants at any one time	More than 3,000	500-3,000 or more than 3,000	500-3,000 or more than 3,000	Small: 751 - 3,000 Large: 3,001+ or 750+ at any one time	More than 3000	500-750; 751-3,000; More than 3,000
Duration	12 hrs or more	4 - 240 hours	24-120 hrs or 120+ hours	Small: 6-120 hrs Large: 120+ hrs	24-120 hrs	1 to 120 hours or more than 120 hours
Permit Fee	\$250 - 2,500	\$35 - 2,650	\$1,000 - 4,000	\$2,500 or \$5,000	Up to \$5,000	\$250 - 5,000

July 18, 2013

Board of County Commissioner
Clackamas County

Members of the Board:

Approval of a new Revenue Intergovernmental Grant Agreement with State of Oregon,
Department of Human Services, Vocational Rehabilitation, for establishing Cognitive
Remediation Classes.

Purpose/Outcomes	The goal of this project is to establish Cognitive Remediation (CR) training at Clackamas County Behavioral Health Center (CCBHC) that would be available to Supported Employment client with a cognitive disability who is interested in working. Once the implementation is complete, the CR classes will be sustained by the CCBHC through allocating staff Full time Employee (FTE) and programming support.
Dollar Amount and Fiscal Impact	Contract maximum value is \$14,000. This revenue agreement is funded through the Cognitive Remediation Program Grant.
Funding Source	249-3610-8604-333180 – Community Support Team – Vocational Rehab Division. No County General Funds are involved.
Safety Impact	None
Duration	Effective June 01, 2013 and terminates on September 30, 2013
Previous Board Action	This is a new agreement, no previous Board action has occurred.
Contact Person	Tracy Garell, Behavioral Health Clinic Manager – 503-723-4803
Contract No.	6323

BACKGROUND:

Clackamas County Behavioral Health Center has been working with the Office of Vocational Rehabilitation Services (OVRs) Supported Employment program since 2010 to support persons with severe mental illness in returning to work. During that time it has become clear that while many clients jointly enrolled in mental health services and OVRs benefit from Supported Employment, a subset of mutual clients continue to have cognitive difficulties that interfere with vocational success. These difficulties include: attention and concentration problems, learning and remembering difficulties, response time issues, and being able to anticipate and solve problems. Unlike other symptoms of mental illness, these cognitive impairments do not respond to current treatment available at the local outpatient mental health centers in Clackamas County.

Clackamas County Behavioral Health Center supports this important development in the field of vocational support and would like to implement the program at our site. Currently we serve 60 clients simultaneously through our Supported Employment program, and we train all of our staff in regards to supporting all clients in their employment goals.

The grant will fund the purchase of computers, software to implement the computer training component of the Cognitive Remediation, and 2 days of onsite training.

This contract is effective June 1, 2013 and continues through September 30, 2013. This contract is retro-active due to the delay of receiving the award notification from the state. This contract has been reviewed and approved by County Counsel on July 02, 2013.

RECOMMENDATION:

Staff recommends the Board approval of this agreement and authorizes Cindy Becker, H3S Director to sign on behalf of Clackamas County.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Cindy Becker", with a long horizontal flourish extending to the right.

Cindy Becker, Director



Grant Agreement Number 142892

**State of Oregon
Grant Agreement**

In compliance with the Americans with Disabilities Act, this document is available in alternate formats such as Braille, large print, audio recordings, Web-based communications and other electronic formats. To request an alternate format, please send an e-mail to dhs-oha.publicationrequest@state.or.us or call 503-378-3486 (voice) or 503-378-3523 (TTY) to arrange for the alternative format.

This Agreement is between the State of Oregon, acting by and through its Department of Human Services, hereinafter referred to as "DHS," and

**County of Clackamas
Acting by and through its Clackamas County Behavioral Health
at the Steward Community Center
1002 Library Court
Oregon City, OR 97045
Telephone: (503) 655-8264
Facsimile: (503) 655-8428
E-mail address: kduby@co.clackamas.or.us**

hereinafter referred to as "Recipient."

The program to be supported under this Agreement relates principally to DHS'

**Vocational Rehabilitation Division
500 Summer Street NE, E87
Salem, OR 97301
Agreement Administrator: Callie Roush or delegate
Telephone: (503) 947-2595
Facsimile: (503) 947-5025
E-mail address: callie.roush@state.or.us**

1. Effective Date and Duration

This Agreement shall become effective on **June 1, 2013** when signed by all parties. Unless extended or terminated earlier in accordance with its terms, this Agreement shall terminate on **September 30, 2013**. Agreement termination or expiration shall not extinguish or prejudice DHS' right to enforce this Agreement with respect to any default by Recipient that has not been cured.

2. Agreement Documents

a. This Agreement consists of this document and includes the following listed exhibits which are incorporated into this Agreement:

- (1) Exhibit A, Part 1: Reserved
- (2) Exhibit A, Part 2: Program Description
- (3) Exhibit A, Part 3: Payment and Financial Reporting
- (4) Exhibit B: Standard Terms and Conditions
- (5) Exhibit C: Subcontractor Insurance Requirements
- (6) Exhibit D: Required Federal Terms and Conditions

There are no other Agreement documents unless specifically referenced and incorporated in this Agreement.

b. This Agreement and the documents listed in Section 2., Agreement Documents, Subsection a. above, shall be in the following descending order of precedence: this Agreement less all exhibits, Exhibits D, A, B, and C.

3. Consideration

The maximum, not-to-exceed compensation payable to Recipient under this Agreement, which includes any allowable expenses, is **\$14,000.00**. DHS will not pay Recipient any amount in excess of the not-to-exceed compensation of this Agreement for completing the Work, and will not pay for Work performed before the date this Agreement becomes effective or after the termination or expiration of this Agreement.

3. Grant Disbursement Generally

DHS will disburse the grant to Recipient as described in Exhibit A.

4. Vendor or Sub-Recipient Determination

In accordance with the State Controller's Oregon Accounting Manual, policy 30.40.00.102, DHS' determination is that:

Recipient is a sub-recipient; OR Recipient is a vendor.

Catalog of Federal Domestic Assistance (CFDA) #(s) of federal funds to be paid through this Agreement: 84.126

5. Recipient Data and Certification

- a. **Recipient Information.** Recipient shall provide the information set forth below. This information is requested pursuant to ORS 305.385.

Please print or type the following information

Recipient Name (exactly as filed with the IRS) Clackamas County

Street Address: 2051 Kaen Rd.

City, State, Zip code: Oregon City, OR 97045

E-mail address: Dwayne K @ Co. clackamas. OR. US

Telephone: (503) 655 - 8776 Facsimile: (503) 742-5418

Is Recipient a nonresident alien, as defined in 26 USC § 7701(b)(1)?

(Check one box): YES NO

Proof of Insurance:

Workers' Compensation: Does Recipient have any subject workers, as defined in ORS 656.027? (Check one box): YES NO If YES, provide the following information:

Workers Compensation Insurance Company Self Insured

Policy # _____ Expiration Date: _____

- b. **Certification.** The Recipient acknowledges that the Oregon False Claims Act, ORS 180.750 to 180.785, applies to any "claim" (as defined by ORS 180.750) that is made by (or caused by) the Recipient and that pertains to this Agreement or to the project for which the Agreement work is being performed. The Recipient certifies that no claim described in the previous sentence is or will be a "false claim" (as defined by ORS 180.750) or an act prohibited by ORS 180.755. Recipient further acknowledges that in addition to the remedies under this Agreement, if it makes (or causes to be made) a false claim or performs (or causes to be performed) an act prohibited under the Oregon False Claims Act, the Oregon Attorney General may enforce the liabilities and penalties provided by the Oregon False Claims Act against the Recipient. Without limiting the generality of the foregoing, by signature on this Agreement, the Recipient hereby certifies that:

- (1) Under penalty of perjury the undersigned is authorized to act on behalf of Recipient and that Recipient is, to the best of the undersigned's knowledge, not in violation of any Oregon Tax Laws. For purposes of this

certification, "Oregon Tax Laws" means a state tax imposed by ORS 320.005 to 320.150 and 403.200 to 403.250 and ORS chapters 118, 314, 316, 317, 318, 321 and 323 and the elderly rental assistance program under ORS 310.630 to 310.706 and local taxes administered by the Department of Revenue under ORS 305.620;

- (2) The information shown in this Section 5., Recipient Data and Certification, is Recipient's true, accurate and correct information;
 - (3) To the best of the undersigned's knowledge, Recipient has not discriminated against and will not discriminate against minority, women or emerging small business enterprises certified under ORS 200.055 in obtaining any required subcontracts;
 - (4) Recipient and Recipient's employees and agents are not included on the list titled "Specially Designated Nationals and Blocked Persons" maintained by the Office of Foreign Assets Control of the United States Department of the Treasury and currently found at:
<http://www.treas.gov/offices/enforcement/ofac/sdn/t11sdn.pdf>;
 - (5) Recipient is not listed on the non-procurement portion of the General Service Administration's "List of Parties Excluded from Federal procurement or Non-procurement Programs" found at:
<https://www.sam.gov/portal/public/SAM/>;
 - (6) Recipient is not subject to backup withholding because:
 - (a) Recipient is exempt from backup withholding;
 - (b) Recipient has not been notified by the IRS that Recipient is subject to backup withholding as a result of a failure to report all interest or dividends; or
 - (c) The IRS has notified Recipient that Recipient is no longer subject to backup withholding.
- c. Recipient is required to provide their Federal Employer Identification Number (FEIN) to DHS. By Recipient's signature on this Agreement, Recipient hereby certifies that the FEIN provided to DHS is true and accurate. If this information changes, Recipient is also required to provide DHS with the new FEIN within 10 days.

RECIPIENT, BY EXECUTION OF THIS AGREEMENT, HEREBY ACKNOWLEDGES THAT RECIPIENT HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

Signatures

**Clackamas County, acting by and through its Clackamas County Behavioral Health
By:**

Authorized Signature Title Date

**State of Oregon acting by and through its Department of Human Services
By:**

Authorized Signature Title Date

Approved for Legal Sufficiency:

Exempt per OAR 137-045-0030 (1) (a)
Assistant Attorney General Date

DHS Office of Contracts and Procurement:

Contract Specialist Date

EXHIBIT A

Part 2 Program Description

1. Background

Clackamas County Behavioral Health Center (CCBHC) has been working with Vocational Rehabilitation (VR) via the IPS Supported Employment program since 2010 to support persons with severe mental illness in returning to work. During that time it has become clear that while many clients jointly enrolled in mental health services and VR benefit from Supported Employment, a subset of mutual clients continue to have cognitive difficulties that interfere with vocational success. Unlike other symptoms of mental illness, these cognitive impairments do not respond to current treatment available at the local outpatient mental health centers in Clackamas County. Efforts to improve cognitive functioning, called Cognitive Remediation (CR), have evolved to be a promising treatment for persons with severe mental illness.

DHS' Vocational Rehabilitation will grant \$14,000 to Clackamas County Behavioral Health Center to establish Cognitive Remediation classes that would be available for any VR clients and all persons enrolled in mental health services at the CCBHC who are interested in working.

2. Activities and Restrictions

- a. CCBHC will purchase Cog-Pak software and up to four computers with the capability to run the software to implement the computer training component of CR.
- b. CCBHC will arrange training by Dr. Susan McGurk from Boston University, a top researcher in the subject of CR, for up to 20 staff. This will be primarily for CCBHC staff but extra spaces will be offered to other Supported Employment programs in Oregon free of charge so that multiple sites can benefit from this valuable resource.
- c. Once the implementation is complete, the CR classes will be sustained by the CCBHC through allocating staff FTE and programming support.
- d. CCBHC will provide evaluation forms to the staff trained by Dr. Susan McGurk and provide those to the Clackamas VR Branch Manager and agreement administrator.

3. Outcomes

- a. Employment rates of mutual VR and Supported Employment clients will increase over time. Currently the rate is 17.5%. This rate has decreased over the last year due to an increase of mutual clients experiencing difficulties with obtaining or maintaining jobs as a result of the cognitive difficulties. Research indicates that

of those clients who received CR in addition to Supported Employment, 35% were still employed two years later, as opposed to those clients who received only Supported Employment (10%).

- b.** A minimum of 60 VR clients will be served per year through Supported Employment who will be offered the CR program. In addition, other clients who are mutually enrolled in mental health services and VR will also be given the opportunity to participate in the CR classes.

EXHIBIT A

Part 3 Payment and Financial Reporting

DHS will pay \$8,000 upon receipt of an invoice and projected budget plan for startup costs to include the software, computers and scheduling of Dr. Susan McGurk. DHS will pay the remaining \$6,000 after the training by Dr. McGurk and upon receipt of invoice, final budget report, evaluation forms, and narrative report describing the results of the implementation project including successes and challenges received no later than September 15, 2013.

EXHIBIT B

Standard Terms and Conditions

1. **Governing Law, Consent to Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between the parties that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within a circuit court for the State of Oregon of proper jurisdiction. THE PARTIES, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENT TO THE IN PERSONAM JURISDICTION OF SAID COURTS. Except as provided in this section, neither party waives any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. The parties acknowledge that this is a binding and enforceable agreement and, to the extent permitted by law, expressly waive any defense alleging that either party does not have the right to seek judicial enforcement of this Agreement.
2. **Compliance with Law.** Both parties shall comply with laws, regulations, and executive orders to which they are subject and which are applicable to the Agreement or to the Work. Without limiting the generality of the foregoing, both parties expressly agree to comply with the following laws, regulations and executive orders to the extent they are applicable to the Agreement: (a) all applicable requirements of state civil rights and rehabilitation statutes, rules and regulations; (b) all state laws requiring reporting of Client abuse; (c) ORS 659A.400 to 659A.409, ORS 659A.145 and all regulations and administrative rules established pursuant to those laws in the construction, remodeling, maintenance and operation of any structures and facilities, and in the conduct of all programs, services and training associated with the Work. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Agreement and required by law to be so incorporated. All employers, including Recipient and DHS, that employ subject workers who provide services in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126.
3. **Independent Contractors.** The parties agree and acknowledge that their relationship is that of independent contracting parties and that Recipient is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265 or otherwise.
4. **Representations and Warranties.**
 - a. Recipient represents and warrants as follows:
 - (1) **Organization and Authority.** Recipient is a political subdivision of the State of Oregon duly organized and validly existing under the laws of the State of Oregon. Recipient has full power, authority and legal right to make this Agreement and to incur and perform its obligations hereunder.
 - (2) **Due Authorization.** The making and performance by Recipient of this Agreement (a) have been duly authorized by all necessary action by Recipient and (b) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency or any provision of

Recipient's charter or other organizational document and (c) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which Recipient is a party or by which Recipient may be bound or affected. No authorization, consent, license, approval of, filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by Recipient of this Agreement.

- (3) **Binding Obligation.** This Agreement has been duly executed and delivered by Recipient and constitutes a legal, valid and binding obligation of Recipient, enforceable in accordance with its terms subject to the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally.
- (4) Recipient has the skill and knowledge possessed by well-informed members of its industry, trade or profession and Recipient will apply that skill and knowledge with care and diligence to perform the Work in a professional manner and in accordance with standards prevalent in Recipient's industry, trade or profession;
- (5) Recipient shall, at all times during the term of this Agreement, be qualified, professionally competent, and duly licensed to perform the Work; and
- (6) Recipient prepared its proposal related to this Agreement, if any, independently from all other proposers, and without collusion, fraud, or other dishonesty.

b. DHS represents and warrants as follows:

- (1) **Organization and Authority.** DHS has full power, authority, and legal right to make this Agreement and to incur and perform its obligations hereunder.
- (2) **Due Authorization.** The making and performance by DHS of this Agreement (a) have been duly authorized by all necessary action by DHS and (b) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency and (c) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which DHS is a party or by which DHS may be bound or affected. No authorization, consent, license, approval of, filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by DHS of this Agreement, other than approval by the Department of Justice if required by law.
- (3) **Binding Obligation.** This Agreement has been duly executed and delivered by DHS and constitutes a legal, valid and binding obligation of DHS, enforceable in accordance with its terms subject to the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally.

- c. Warranties Cumulative. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

5. Funds Available and Authorized Clause.

- a. The State of Oregon's payment obligations under this Agreement are conditioned upon DHS receiving funding, appropriations, limitations, allotment, or other expenditure authority sufficient to allow DHS, in the exercise of its reasonable administrative discretion, to meet its payment obligations under this Agreement. Recipient is not entitled to receive payment under this Agreement from any part of Oregon state government other than DHS. Nothing in this Agreement is to be construed as permitting any violation of Article XI, section 7 of the Oregon Constitution or any other law regulating liabilities or monetary obligations of the State of Oregon. DHS represents that as of the date it executes this Agreement, it has sufficient appropriations and limitation for the current biennium to make payments under this Agreement.
- b. Payment Method. Payments under this Agreement will be made by Electronic Funds Transfer (EFT), unless otherwise mutually agreed, and shall be processed in accordance with the provisions of OAR 407-120-0100 through 407-120-0380 or OAR 410-120-1260 through OAR 410-120-1460, as applicable, and any other Oregon Administrative Rules that are program-specific to the billings and payments. Upon request, Recipient shall provide its taxpayer identification number (TIN) and other necessary banking information to receive EFT payment. Recipient shall maintain at its own expense a single financial institution or authorized payment agent capable of receiving and processing EFT using the Automated Clearing House (ACH) transfer method. The most current designation and EFT information will be used for all payments under this Agreement. Recipient shall provide this designation and information on a form provided by DHS. In the event that EFT information changes or the Recipient elects to designate a different financial institution for the receipt of any payment made using EFT procedures, the Recipient shall provide the changed information or designation to DHS on a DHS-approved form. DHS is not required to make any payment under this Agreement until receipt of the correct EFT designation and payment information from the Recipient.

- 6. Recovery of Overpayments.** If billings under this Agreement, or under any other Agreement between Recipient and DHS, result in payments to Recipient to which Recipient is not entitled, DHS, after giving to Recipient written notification and an opportunity to object, may withhold from payments due to Recipient such amounts, over such periods of time, as are necessary to recover the amount of the overpayment, subject to Section 7 below. Prior to withholding, if Recipient objects to the withholding or the amount proposed to be withheld, Recipient shall notify DHS that it wishes to engage in dispute resolution in accordance with Section 19 of this Agreement.

- 7. Compliance with Law.** Nothing in this Agreement shall require Recipient or DHS to act in violation of state or federal law or the Constitution of the State of Oregon.

8. Ownership of Intellectual Property.

- a. Definitions. As used in this Section 8 and elsewhere in this Agreement, the following terms have the meanings set forth below:

- (1) "Recipient Intellectual Property" means any intellectual property owned by Recipient and developed independently from the Work.
 - (2) "Third Party Intellectual Property" means any intellectual property owned by parties other than DHS or Recipient.
 - b. Except as otherwise expressly provided herein, or as otherwise required by state or federal law, DHS will not own the right, title and interest in any intellectual property created or delivered by Recipient or a subcontractor in connection with the Work. With respect to that portion of the intellectual property that the Recipient owns, Recipient grants to DHS a perpetual, worldwide, non-exclusive, royalty-free and irrevocable license, subject to any provisions in the Agreement that restrict or prohibit dissemination or disclosure of information, to (1) use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the intellectual property, (2) authorize third parties to exercise the rights set forth in Section 8.a.(2) on DHS' behalf, and (3) sublicense to third parties the rights set forth in Section 8.a.(2).
 - c. If state or federal law requires that DHS or Recipient grant to the United States a license to any intellectual property, or if state or federal law requires that the DHS or the United States own the intellectual property, then Recipient shall execute such further documents and instruments as DHS may reasonably request in order to make any such grant or to assign ownership in the intellectual property to the United States or DHS. To the extent that DHS becomes the owner of any intellectual property created or delivered by Recipient in connection with the Work, DHS will grant a perpetual, worldwide, non-exclusive, royalty-free and irrevocable license, subject to any provisions in the Agreement that restrict or prohibit dissemination or disclosure of information, to Recipient to use, copy, distribute, display, build upon and improve the intellectual property.
 - d. Recipient shall include in its subcontracts terms and conditions necessary to require that subcontractors execute such further documents and instruments as DHS may reasonably request in order to make any grant of license or assignment of ownership that may be required by federal or state law.
9. **Recipient Default.** Recipient shall be in default under this Agreement upon the occurrence of any of the following events:
- a. Recipient fails to perform, observe or discharge any of its covenants, agreements or obligations set forth herein;
 - b. Any representation, warranty or statement made by Recipient herein or in any documents or reports relied upon by DHS to measure the delivery of Work, the expenditure of payments or the performance by Recipient is untrue in any material respect when made;
 - c. Recipient (1) applies for or consents to the appointment of, or taking of possession by, a receiver, custodian, trustee, or liquidator of itself or all of its property, (2) admits in writing its inability, or is generally unable, to pay its debts as they become due, (3) makes a general assignment for the benefit of its creditors, (4) is adjudicated a bankrupt or insolvent, (5) commences a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (6) files a petition seeking to take advantage of any other law relating to bankruptcy,

insolvency, reorganization, winding-up, or composition or adjustment of debts, (7) fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against it in an involuntary case under the Bankruptcy Code, or (8) takes any action for the purpose of effecting any of the foregoing; or

- d. A proceeding or case is commenced, without the application or consent of Recipient, in any court of competent jurisdiction, seeking (1) the liquidation, dissolution or winding-up, or the composition or readjustment of debts, of Recipient, (2) the appointment of a trustee, receiver, custodian, liquidator, or the like of Recipient or of all or any substantial part of its assets, or (3) similar relief in respect to Recipient under any law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, and such proceeding or case continues undismissed, or an order, judgment, or decree approving or ordering any of the foregoing is entered and continues unstayed and in effect for a period of sixty consecutive days, or an order for relief against Recipient is entered in an involuntary case under the Federal Bankruptcy Code (as now or hereafter in effect).

10. DHS Default. DHS shall be in default under this Agreement upon the occurrence of any of the following events:

- a. DHS fails to perform, observe or discharge any of its covenants, agreements, or obligations set forth herein; or
- b. Any representation, warranty or statement made by DHS herein or in any documents or reports relied upon by Recipient to measure performance by DHS is untrue in any material respect when made.

11. Termination.

- a. Recipient Termination. Recipient may terminate this Agreement:
 - (1) For its convenience, upon at least 30 days advance written notice to DHS;
 - (2) Upon 45 days advance written notice to DHS, if Recipient does not obtain funding, appropriations and other expenditure authorizations from Recipient's governing body, federal, state or other sources sufficient to permit Recipient to satisfy its performance obligations under this Agreement, as determined by Recipient in the reasonable exercise of its administrative discretion;
 - (3) Upon 30 days advance written notice to DHS, if DHS is in default under this Agreement and such default remains uncured at the end of said 30 day period or such longer period, if any, as Recipient may specify in the notice; or
 - (4) Immediately upon written notice to DHS, if Oregon statutes or federal laws, regulations or guidelines are modified, changed or interpreted by the Oregon Legislative Assembly, the federal government or a court in such a way that Recipient no longer has the authority to meet its obligations under this Agreement.

b. DHS Termination. DHS may terminate this Agreement:

- (1) For its convenience, upon at least 30 days advance written notice to Recipient;
- (2) Upon 45 days advance written notice to Recipient, if DHS does not obtain funding, appropriations and other expenditure authorizations from federal, state or other sources sufficient to meet the payment obligations of DHS under this Agreement, as determined by DHS in the reasonable exercise of its administrative discretion. Notwithstanding the preceding sentence, DHS may terminate this Agreement, immediately upon written notice to Recipient or at such other time as it may determine if action by the Oregon Legislative Assembly or Emergency Board reduces DHS' legislative authorization for expenditure of funds to such a degree that DHS will no longer have sufficient expenditure authority to meet its payment obligations under this Agreement, as determined by DHS in the reasonable exercise of its administrative discretion, and the effective date for such reduction in expenditure authorization is less than 45 days from the date the action is taken;
- (3) Immediately upon written notice to Recipient if Oregon statutes or federal laws, regulations or guidelines are modified, changed or interpreted by the Oregon Legislative Assembly, the federal government or a court in such a way that DHS no longer has the authority to meet its obligations under this Agreement or no longer has the authority to provide payment from the funding source it had planned to use;
- (4) Upon 30 days advance written notice to Recipient, if Recipient is in default under this Agreement and such default remains uncured at the end of said 30 day period or such longer period, if any, as DHS may specify in the notice;
- (5) Immediately upon written notice to Recipient, if any license or certificate required by law or regulation to be held by Recipient or a subcontractor to perform the Work is for any reason denied, revoked, suspended, not renewed or changed in such a way that Recipient or a subcontractor no longer meets requirements to perform the Work. This termination right may only be exercised with respect to the particular part of the Work impacted by loss of necessary licensure or certification;
- (6) Immediately upon written notice to Recipient, if DHS determines that Recipient or any of its subcontractors have endangered or are endangering the health or safety of a client or others in performing work covered by this Agreement.

c. Mutual Termination. The Agreement may be terminated immediately upon mutual written consent of the parties or at such time as the parties may agree in the written consent.

12. Effect of Termination

a. Entire Agreement.

- (1) Upon termination of this Agreement, DHS shall have no further obligation to pay Recipient under this Agreement.
- (2) Upon termination of this Agreement, Recipient shall have no further obligation to perform Work under this Agreement.

b. Obligations and Liabilities. Notwithstanding Section 12.a., any termination of this Agreement shall not prejudice any obligations or liabilities of either party accrued prior to such termination.

13. Limitation of Liabilities. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT. NEITHER PARTY SHALL BE LIABLE FOR ANY DAMAGES OF ANY SORT ARISING SOLELY FROM THE TERMINATION OF THIS AGREEMENT OR ANY PART HEREOF IN ACCORDANCE WITH ITS TERMS.

14. Insurance. Recipient shall require subcontractors to maintain insurance as set forth in Exhibit C, which is attached hereto.

15. Records Maintenance; Access. Recipient shall maintain all financial records relating to this Agreement in accordance with generally accepted accounting principles. In addition, Recipient shall maintain any other records, books, documents, papers, plans, records of shipments and payments and writings of Recipient, whether in paper, electronic or other form, that are pertinent to this Agreement in such a manner as to clearly document Recipient's performance. All financial records, other records, books, documents, papers, plans, records of shipments and payments and writings of Recipient whether in paper, electronic or other form, that are pertinent to this Agreement, are collectively referred to as "Records." Recipient acknowledges and agrees that DHS and the Oregon Secretary of State's Office and the federal government and their duly authorized representatives shall have access to all Records to perform examinations and audits and make excerpts and transcripts. Recipient shall retain and keep accessible all Records for a minimum of six years, or such longer period as may be required by applicable law, following final payment and termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later. Recipient shall maintain Records in accordance with the records retention schedules set forth in OAR Chapter 166.

16. Information Privacy/Security/Access. If the Work performed under this Agreement requires Recipient or its subcontractor(s) to have access to or use of any DHS computer system or other DHS Information Asset for which DHS imposes security requirements, and DHS grants Recipient or its subcontractor(s) access to such DHS Information Assets or Network and Information Systems, Recipient shall comply and require all subcontractor(s) to which such access has been granted to comply with OAR 407-014-0300 through OAR 407-014-0320, as such rules may be revised from time to time. For purposes of this section, "Information Asset" and "Network and Information System" have the meaning set forth in OAR 407-014-0305, as such rule may be revised from time to time.

17. **Force Majeure.** Neither DHS nor Recipient shall be held responsible for delay or default caused by fire, civil unrest, labor unrest, natural causes, or war which is beyond the reasonable control of DHS or Recipient, respectively. Each party shall, however, make all reasonable efforts to remove or eliminate such cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement. DHS may terminate this Agreement upon written notice to the other party after reasonably determining that the delay or breach will likely prevent successful performance of this Agreement.
18. **Assignment of Agreement, Successors in Interest.**
- a. Recipient shall not assign or transfer its interest in this Agreement without prior written approval of DHS. Any such assignment or transfer, if approved, is subject to such conditions and provisions as DHS may deem necessary. No approval by DHS of any assignment or transfer of interest shall be deemed to create any obligation of DHS in addition to those set forth in the Agreement.
 - b. The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and permitted assigns.
19. **Alternative Dispute Resolution.** The parties should attempt in good faith to resolve any dispute arising out of this agreement. This may be done at any management level, including at a level higher than persons directly responsible for administration of the agreement. In addition, the parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
20. **Subcontracts.** Recipient shall not enter into any subcontracts for any of the Work required by this Agreement without DHS' prior written consent. In addition to any other provisions DHS may require, Recipient shall include in any permitted subcontract under this Agreement provisions to require that DHS will receive the benefit of subcontractor performance as if the subcontractor were the Recipient with respect to Sections 1, 2, 3, 4, 8, 15, 16, 18, 21, and 23 of this Exhibit B. DHS' consent to any subcontract shall not relieve Recipient of any of its duties or obligations under this Agreement.
21. **No Third Party Beneficiaries.** DHS and Recipient are the only parties to this Agreement and are the only parties entitled to enforce its terms. The parties agree that Recipient's performance under this Agreement is solely for the benefit of DHS to assist and enable DHS to accomplish its statutory mission. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons any greater than the rights and benefits enjoyed by the general public unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.
22. **Amendments.** No amendment, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties and when required the Department of Justice. Such amendment, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given.
23. **Severability.** The parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

24. **Survival.** Sections 1, 4, 5, 6, 7, 8, 12, 13, 14, 15, 16, 19, 21, 22, 23, 24, 25, 26, 28, 29, 30 and 31 of this Exhibit B shall survive Agreement expiration or termination as well as those the provisions of this Agreement that by their context are meant to survive. Agreement expiration or termination shall not extinguish or prejudice either party's right to enforce this Agreement with respect to any default by the other party that has not been cured.
25. **Notice.** Except as otherwise expressly provided in this Agreement, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid to Recipient or DHS at the address or number set forth below, or to such other addresses or numbers as either party may indicate pursuant to this section. Any communication or notice so addressed and mailed shall be effective five days after mailing. Any communication or notice delivered by facsimile shall be effective on the day the transmitting machine generates a receipt of the successful transmission, if transmission was during normal business hours of the recipient, or on the next business day, if transmission was outside normal business hours of the recipient. To be effective against the other party, any notice transmitted by facsimile must be confirmed by telephone notice to the other party at number listed below. Any communication or notice given by personal delivery shall be effective when actually delivered to the addressee.

DHS: Office of Contracts & Procurement
 250 Winter St NE, Room 306
 Salem, OR 97301
 Telephone: 503-945-5818
 Facsimile: 503-378-4324

RECIPIENT: Clackamas County
 Stewart Community Center
 1002 Library Court
 Oregon City, OR 97045
 Telephone: 503-655-8264
 Facsimile Number: 503-655-8428

26. **Headings.** The headings and captions to sections of this Agreement have been inserted for identification and reference purposes only and shall not be used to construe the meaning or to interpret this Agreement.
27. **Counterparts.** This Agreement and any subsequent amendments may be executed in several counterparts, all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this Agreement and any amendments so executed shall constitute an original.
28. **Waiver.** The failure of either party to enforce any provision of this Agreement shall not constitute a waiver by that party of that or any other provision. No waiver or consent shall be effective unless in writing and signed by the party against whom it is asserted.
29. **Construction.** *[Reserved]*
30. **Contribution.** If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against a party (the "Notified Party") with respect to which the other party ("Other Party") may

have liability, the Notified Party must promptly notify the Other Party in writing of the Third Party Claim and deliver to the Other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Either party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by the Other Party of the notice and copies required in this paragraph and meaningful opportunity for the Other Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to the Other Party's liability with respect to the Third Party Claim.

With respect to a Third Party Claim for which the State is jointly liable with the Recipient (or would be if joined in the Third Party Claim), the State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by the Recipient in such proportion as is appropriate to reflect the relative fault of the State on the one hand and of the Recipient on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of the State on the one hand and of the Recipient on the other hand shall be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. The State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if the State had sole liability in the proceeding.

With respect to a Third Party Claim for which the Recipient is jointly liable with the State (or would be if joined in the Third Party Claim), the Recipient shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by the State in such proportion as is appropriate to reflect the relative fault of the Recipient on the one hand and of the State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of the Recipient on the one hand and of the State on the other hand shall be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. The Recipient's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if it had sole liability in the proceeding.

31. **Indemnification by Subcontractors.** Recipient shall take all reasonable steps to cause its contractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon and its officers, employees and agents ("Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including attorneys' fees) arising from a tort (as now or hereafter defined in ORS 30.260) caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Recipient's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Claims"). It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by the contractor from and against any and all Claims.

- 32. Stop-Work Order.** DHS may, at any time, by written notice to the Recipient, require the Recipient to stop all, or any part of the work required by this Agreement for a period of up to 90 days after the date of the notice, or for any further period to which the parties may agree through a duly executed amendment. Upon receipt of the notice, Recipient shall immediately comply with the Stop-Work Order terms and take all necessary steps to minimize the incurrence of costs allocable to the work affected by the stop work order notice. Within a period of 90 days after issuance of the written notice, or within any extension of that period to which the parties have agreed, DHS shall either:
- a. Cancel or modify the stop work order by a supplementary written notice; or
 - b. Terminate the work as permitted by either the Default or the Convenience provisions of Section 11. Termination.

If the Stop Work Order is canceled, DHS may, after receiving and evaluating a request by the Recipient, make an adjustment in the time required to complete this Agreement and the Agreement price by a duly executed amendment.

EXHIBIT C

Subcontractor Insurance Requirements

General Requirements. Recipient shall require its first tier contractor(s) that are not units of local government as defined in ORS 190.003, if any, to: i) obtain insurance specified under TYPES AND AMOUNTS and meeting the requirements under ADDITIONAL INSURED, "TAIL" COVERAGE, NOTICE OF CANCELLATION OR CHANGE, and CERTIFICATES OF INSURANCE before the contractors perform under contracts between Recipient and the contractors (the "Subcontracts"), and ii) maintain the insurance in full force throughout the duration of the Subcontracts. The insurance must be provided by insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to DHS. Recipient shall not authorize contractors to begin work under the Subcontracts until the insurance is in full force. Thereafter, Recipient shall monitor continued compliance with the insurance requirements on an annual or more frequent basis. Recipient shall incorporate appropriate provisions in the Subcontracts permitting it to enforce contractor compliance with the insurance requirements and shall take all reasonable steps to enforce such compliance. Examples of "reasonable steps" include issuing stop work orders (or the equivalent) until the insurance is in full force or terminating the Subcontracts as permitted by the Subcontracts, or pursuing legal action to enforce the insurance requirements. In no event shall Recipient permit a contractor to work under a Subcontract when the Recipient is aware that the contractor is not in compliance with the insurance requirements. As used in this section, a "first tier" contractor is a contractor with whom the Recipient directly enters into a contract. It does not include a subcontractor with whom the contractor enters into a contract.

1. **Workers' Compensation.** Insurance must be in compliance with ORS 656.017, which requires all employers that employ subject workers, as defined in ORS 656.027, to provide workers' compensation coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). If contractor is a subject employer, as defined in ORS 656.023, contractor shall obtain employers' liability insurance coverage limits of not less than \$1,000,000.

2. **Professional Liability.**

Required by DHS Not required by DHS.

Professional Liability Insurance covering any damages caused by an error, omission or negligent act related to the services to be provided under the Subcontract, with limits not less than the following, as determined by DHS:

\$4,000,000 per occurrence (for all claimants for claims arising out of a single accident or occurrence).

3. **Commercial General Liability.**

Required by DHS Not required by DHS.

Commercial General Liability Insurance covering bodily injury, death, and property damage in a form and with coverage that are satisfactory to DHS. This insurance shall include personal injury liability, products and completed operations. Coverage shall be written on an occurrence form basis, with not less than the following amounts as determined by DHS:

Bodily Injury, Death and Property Damage:

\$4,000,000 per occurrence (for all claimants for claims arising out of a single accident or occurrence).

4. Automobile Liability.

Required by DHS Not required by DHS.

3. Additional Insured. The Commercial General Liability insurance and Automobile Liability insurance must include the State of Oregon, its officers, employees and agents as Additional Insured but only with respect to the contractor's activities to be performed under the Subcontract. Coverage must be primary and non-contributory with any other insurance and self-insurance.

4. "Tail" Coverage. If any of the required insurance policies is on a "claims made" basis, such as professional liability insurance, the contractor shall maintain either "tail" coverage or continuous "claims made" liability coverage, provided the effective date of the continuous "claims made" coverage is on or before the effective date of the Subcontract, for a minimum of 24 months following the later of: (i) the contractor's completion and Recipient's acceptance of all services required under the Subcontract or, (ii) the expiration of all warranty periods provided under the Subcontract. Notwithstanding the foregoing 24-month requirement, if the contractor elects to maintain "tail" coverage and if the maximum time period "tail" coverage reasonably available in the marketplace is less than the 24-month period described above, then the contractor may request and DHS may grant approval of the maximum "tail" coverage period reasonably available in the marketplace. If DHS approval is granted, the contractor shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace.

5. Notice of Cancellation or Change. The contractor or its insurer must provide 30 days' written notice to Recipient before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

6. Certificate(s) of Insurance. Recipient shall obtain from the contractor a certificate(s) of insurance for all required insurance before the contractor performs under the Subcontract. The certificate(s) or an attached endorsement must specify: (i) all entities and individuals who are endorsed on the policy as Additional Insured and (ii) for insurance on a "claims made" basis, the extended reporting period applicable to "tail" or continuous "claims made" coverage.

EXHIBIT D

Required Federal Terms and Conditions

Unless exempt under 45CFR Part 87 for Faith-Based Organizations (Federal Register, July 16, 2004, Volume 69, #136), or other federal provisions, Recipient shall comply and, as indicated, cause all subcontractors to comply with the following federal requirements to the extent that they are applicable to this Agreement, to Recipient, or to the grant activities, or to any combination of the foregoing. For purposes of this Agreement, all references to federal and state laws are references to federal and state laws as they may be amended from time to time.

1. Miscellaneous Federal Provisions

Recipient shall comply and require all subcontractors to comply with all federal laws, regulations, and executive orders applicable to the Agreement or to the delivery of grant activities. Without limiting the generality of the foregoing, Recipient expressly agrees to comply and require all subcontractors to comply with the following laws, regulations and executive orders to the extent they are applicable to the Agreement: (a) Title VI and VII of the Civil Rights Act of 1964, as amended, (b) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, (c) the Americans with Disabilities Act of 1990, as amended, (d) Executive Order 11246, as amended, (e) the Health Insurance Portability and Accountability Act of 1996, as amended, (f) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended, (g) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, (h) all regulations and administrative rules established pursuant to the foregoing laws, (i) all other applicable requirements of federal civil rights and rehabilitation statutes, rules and regulations, and (j) all federal law governing operation of Community Mental Health Programs, including without limitation, all federal laws requiring reporting of Client abuse. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Agreement and required by law to be so incorporated. No federal funds may be used to provide grant activities in violation of 42 U.S.C. 14402.

2. Equal Employment Opportunity

If this Agreement, including amendments, is for more than \$10,000, then Recipient shall comply and require all subcontractors to comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).

3. Clean Air, Clean Water, EPA Regulations

If this Agreement, including amendments, exceeds \$100,000 then Recipient shall comply and require all subcontractors to comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 7606), the Federal Water Pollution Control Act as amended (commonly known as the Clean Water Act) (33 U.S.C. 1251 to 1387), specifically including, but not limited to Section 508 (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (2 CFR Part 1532), which prohibit the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. Violations shall be reported to DHS, United States Department of Health and Human Services and the appropriate Regional Office of the Environmental Protection Agency. Recipient shall include and

require all subcontractors to include in all contracts with subcontractors receiving more than \$100,000, language requiring the subcontractor to comply with the federal laws identified in this section.

4. Energy Efficiency

Recipient shall comply and require all subcontractors to comply with applicable mandatory standards and policies relating to energy efficiency that are contained in the Oregon energy conservation plan issued in compliance with the Energy Policy and Conservation Act 42 U.S.C. 6201 et. seq. (Pub. L. 94-163).

5. Truth in Lobbying

The Recipient certifies, to the best of the Recipient's knowledge and belief that:

- a. No federal appropriated funds have been paid or will be paid, by or on behalf of Recipient, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement.
- b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan or cooperative agreement, the Recipient shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.
- c. The Recipient shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients and subcontractors shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this Agreement was made or entered into. Submission of this certification is a prerequisite for making or entering into this Agreement imposed by section 1352, Title 31 of the U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

6. HIPAA Compliance

As a Business Associate of a Covered Entity, DHS must comply with the Health Insurance Portability and Accountability Act and the federal regulations implementing the Act (collectively referred to as HIPAA), and DHS must also comply with OAR 125-055-0100 through OAR 125-055-0130 to the extent that any grant activities or obligations of DHS related to this Agreement are covered by HIPAA. Recipient shall determine if Recipient will have access to, or create any protected health information in the performance of any grant activities or other obligations under this Agreement. To the extent that Recipient will have access to, or create any protected health information to

perform functions, activities, or services for, or on behalf of, DHS as specified in the Agreement, Recipient shall comply and cause all subcontractors to comply with the following:

- a. **Privacy and Security of Individually Identifiable Health Information.** Individually Identifiable Health Information about specific individuals is confidential. Individually Identifiable Health Information relating to specific individuals may be exchanged between Recipient and DHS for purposes directly related to the provision of services to Clients which are funded in whole or in part under this Agreement. To the extent that Recipient is performing functions, activities, or services for, or on behalf of DHS, in the performance of any grant activities required by this Agreement, Recipient shall not use or disclose any Individually Identifiable Health Information about specific individuals in a manner that would violate DHS Privacy Rules, OAR 407-014-0000 *et. seq.*, or DHS Notice of Privacy Practices. A copy of the most recent DHS Notice of Privacy Practices is posted on the DHS web site at: <https://apps.state.or.us/cfl/FORMS/enter form number 2090> or may be obtained from DHS.
- b. **Data Transactions Systems.** If Recipient intends to exchange electronic data transactions with DHS or the Oregon Health Authority (DHS) in connection with claims or encounter data, eligibility or enrollment information, authorizations or other electronic transaction, Recipient shall execute an EDI Trading Partner Agreement and shall comply with EDI Rules.
- c. **Consultation and Testing.** If Recipient reasonably believes that the Recipient's or DHS' data transactions system or other application of HIPAA privacy or security compliance policy may result in a violation of HIPAA requirements, Recipient shall promptly consult the DHS Information Security Office. Recipient or DHS may initiate a request for testing of HIPAA transaction requirements, subject to available resources and the DHS testing schedule.
- d. Recipient and all subcontractors shall comply with the same requirements for Business Associates set forth in OAR 125-055-0100 through OAR 125-055-0130 as a contractor of a Business Associate.

7. Resource Conservation and Recovery

Recipient shall comply and require all subcontractors to comply with all mandatory standards and policies that relate to resource conservation and recovery pursuant to the Resource Conservation and Recovery Act (codified at 42 U.S.C. 6901 *et. seq.*). Section 6002 of that Act (codified at 42 U.S.C. 6962) requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency. Current guidelines are set forth in 40 CFR Part 247.

8. Audits

- a. Recipient shall comply and, if applicable, require a subcontractor to comply, with the applicable audit requirements and responsibilities set forth in the Office of Management and Budget Circular A-133 entitled "Audits of States, Local Governments and Non-Profit Organizations."
- b. Sub-recipients shall also comply with applicable Code of Federal Regulations (CFR) sections and OMB Circulars governing expenditure of federal funds.

State, local and Indian Tribal Governments and governmental hospitals must follow OMB A-102. Non-profits, hospitals, colleges and universities must follow 2 CFR Part 215. Sub-recipients shall monitor any organization to which funds are passed for compliance with CFR and OMB requirements.

9. Debarment and Suspension

Recipient shall not permit any person or entity to be a subcontractor if the person or entity is listed on the non-procurement portion of the General Service Administration's "List of Parties Excluded from Federal Procurement or Nonprocurement Programs" in accordance with Executive Orders No. 12549 and No. 12689, "Debarment and Suspension". (See 2 CFR Part 180.) This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory authority other than Executive Order No. 12549. Subcontractors with awards that exceed the simplified acquisition threshold shall provide the required certification regarding their exclusion status and that of their principals prior to award.

10. Drug-Free Workplace

Recipient shall comply and cause all subcontractors to comply with the following provisions to maintain a drug-free workplace: (i) Recipient certifies that it will provide a drug-free workplace by publishing a statement notifying its employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance, except as may be present in lawfully prescribed or over-the-counter medications, is prohibited in Recipient's workplace or while providing services to DHS clients. Recipient's notice shall specify the actions that will be taken by Recipient against its employees for violation of such prohibitions; (ii) Establish a drug-free awareness program to inform its employees about: The dangers of drug abuse in the workplace, Recipient's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations; (iii) Provide each employee to be engaged in the performance of services under this Agreement a copy of the statement mentioned in paragraph (i) above; (iv) Notify each employee in the statement required by paragraph (i) above that, as a condition of employment to provide services under this Agreement, the employee will: abide by the terms of the statement, and notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction; (v) Notify DHS within ten (10) days after receiving notice under subparagraph (iv) above from an employee or otherwise receiving actual notice of such conviction; (vi) Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program by any employee who is so convicted as required by Section 5154 of the Drug-Free Workplace Act of 1988; (vii) Make a good-faith effort to continue a drug-free workplace through implementation of subparagraphs (i) through (vi) above; (viii) Require any subcontractor to comply with subparagraphs (i) through (vii) above; (ix) Neither Recipient, or any of Recipient's employees, officers, agents or subcontractors may provide any service required under this Agreement while under the influence of drugs. For purposes of this provision, "under the influence" means: observed abnormal behavior or impairments in mental or physical performance leading a reasonable person to believe the Recipient or Recipient's employee, officer, agent or subcontractor has used a controlled substance, prescription or non-prescription medication that impairs the Recipient or Recipient's employee, officer, agent or subcontractor's performance of essential job function or creates a direct threat to

DHS clients or others. Examples of abnormal behavior include, but are not limited to: hallucinations, paranoia or violent outbursts. Examples of impairments in physical or mental performance include, but are not limited to: slurred speech, difficulty walking or performing job activities; and (x) Violation of any provision of this subsection may result in termination of the Agreement.

11. Pro-Children Act

Recipient shall comply and require all subcontractors to comply with the Pro-Children Act of 1994 (codified at 20 U.S.C. section 6081 et. seq.).

12. Medicaid Services

Recipient shall comply with all applicable federal and state laws and regulation pertaining to the provision of Medicaid Services under the Medicaid Act, Title XIX, 42 U.S.C. Section 1396 et. seq., including without limitation:

- a. Keep such records as are necessary to fully disclose the extent of the services provided to individuals receiving Medicaid assistance and shall furnish such information to any state or federal agency responsible for administering the Medicaid program regarding any payments claimed by such person or institution for providing Medicaid Services as the state or federal agency may from time to time request. 42 U.S.C. Section 1396a (a)(27); 42 CFR 431.107(b)(1) & (2).
- b. Comply with all disclosure requirements of 42 CFR 1002.3(a) and 42 CFR 455 Subpart (B).
- c. Maintain written notices and procedures respecting advance directives in compliance with 42 U.S.C. Section 1396(a)(57) and (w), 42 CFR 431.107(b)(4), and 42 CFR 489 subpart I.
- d. Certify when submitting any claim for the provision of Medicaid Services that the information submitted is true, accurate and complete. Recipient shall acknowledge Recipient's understanding that payment of the claim will be from federal and state funds and that any falsification or concealment of a material fact may be prosecuted under federal and state laws.
- e. Entities receiving \$5 million or more annually (under this Agreement and any other Medicaid contract) for furnishing Medicaid health care items or services shall, as a condition of receiving such payments, adopt written fraud, waste and abuse policies and procedures and inform employees, contractors and agents about the policies and procedures in compliance with Section 6032 of the Deficit Reduction Act of 2005, 42 U.S.C. § 1396a(a)(68).

13. Agency-based Voter Registration

If applicable, Recipient shall comply with the Agency-based Voter Registration sections of the National Voter Registration Act of 1993 that require voter registration opportunities be offered where an individual may apply for or receive an application for public assistance.

14. Disclosure.

- a. 42 CFR 455.104 requires the State Medicaid agency to obtain the following information from any provider of Medicaid or CHIP services, including fiscal agents of providers and managed care entities: (1) the name and address

(including the primary business address, every business location and P.O. Box address) of any person (individual or corporation) with an ownership or control interest in the provider, fiscal agent or managed care entity; (2) in the case of an individual, the date of birth and Social Security Number, or, in the case of a corporation, the tax identification number of the entity, with an ownership interest in the provider, fiscal agent or managed care entity or of any subcontractor in which the provider, fiscal agent or managed care entity has a 5% or more interest; (3) whether the person (individual or corporation) with an ownership or control interest in the provider, fiscal agent or managed care entity is related to another person with ownership or control interest in the provider, fiscal agent or managed care entity as a spouse, parent, child or sibling, or whether the person (individual or corporation) with an ownership or control interest in any subcontractor in which the provider, fiscal agent or managed care entity has a 5% or more interest is related to another person with ownership or control interest in the provider, fiscal agent or managed care entity as a spouse, parent, child or sibling; (4) the name of any other provider, fiscal agent or managed care entity in which an owner of the provider, fiscal agent or managed care entity has an ownership or control interest; and, (5) the name, address, date of birth and Social Security Number of any managing employee of the provider, fiscal agent or managed care entity.

- b. 42 CFR 455.434 requires as a condition of enrollment as a Medicaid or CHIP provider, to consent to criminal background checks, including fingerprinting when required to do so under state law, or by the category of the provider based on risk of fraud, waste and abuse under federal law.
- c. As such, a provider must disclose any person with a 5% or greater direct or indirect ownership interest in the provider whom has been convicted of a criminal offense related to that person's involvement with the Medicare, Medicaid, or title XXI program in the last 10 years.
- d. Contractor shall make the disclosures required by this Section 14. to DHS. DHS reserves the right to take such action required by law, or where DHS has discretion, it deems appropriate, based on the information received (or the failure to receive information) from the provider, fiscal agent or managed care entity.

15. Federal Intellectual Property Rights Notice. The federal funding agency, as the awarding agency of the funds used, at least in part, for the Work under this Contract, may have certain rights as set forth in the federal requirements pertinent to these funds. For purposes of this subsection, the terms "grant" and "award" refer to funding issued by the federal funding agency to the State of Oregon. The Contractor agrees that it has been provided the following notice:

- a. The federal funding agency reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the Work, and to authorize others to do so, for Federal Government purposes with respect to:
 - (1) The copyright in any Work developed under a grant, subgrant or contract under a grant or subgrant; and
 - (2) Any rights of copyright to which a grantee, subgrantee or a contractor purchases ownership with grant support.

- b. The parties are subject to applicable federal regulations governing patents and inventions, including government-wide regulations issued by the Department of Commerce at 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements."
- c. The parties are subject to applicable requirements and regulations of the federal funding agency regarding rights in data first produced under a grant, subgrant or contract under a grant or subgrant.

July 18, 2013

Board of Commissioners
 Clackamas County

Members of the Board:

Approval of a Renewal Grant Agreement from the U.S. Department of Housing and Urban Development, Supportive Housing Program, for the HOPE Leasing Program for the Purpose of Providing Permanent Housing

Propose/Outcomes	Approval of a grant agreement with the U.S. Department of Housing and Urban Development (HUD), Supportive Housing Program for the HOPE Leasing Program for the purpose of providing permanent housing and services for the homeless.
Dollar Amount and Fiscal Impact	Total amount of the grant award is \$213,302 for a one-year period. The grant requires a 25% match or in-kind contribution which is met through Emergency Housing Account (EHA) state funds and in-kind services from area providers. No County General Funds are involved.
Funding Source	HUD
Safety Impact	None
Duration	June 27, 2013 to June 30, 2014, with an option for renewal
Previous Board Action	Approval to Apply for this grant was approved on December 6, 2012
Contact Person	Brenda Durbin, Director, Social Services Division - 503-655-8641
Contract No.	6292

Background

The Social Services Division of the Health, Housing & Human Services Department requests the approval of a grant award agreement from the U.S. Department of Housing and Urban Development, Supportive Housing Program, for the HOPE Leasing Program, for the purpose of providing permanent housing. Chronically homeless individuals receive support services, case management and housing with the use of these grant funds. This program provides permanent housing by paying for housing deposits and rental assistance. Up to 16 households receive assistance each year.

Issues

The grant agreement is late due to HUD not being able to release the agreement until issues or conditions identified for this project in the HUD review process were addressed. In addition, this was the first year that grant renewals were being processed through the electronic grants management system managed by HUD's Office of Special Needs Assistance Programs (E-SNAPS). A copy of the grant agreement was released and transmitted through E-SNAPS on June 27, 2013. The grant agreement was approved by County Counsel on July 2, 2013.

Recommendation

We recommend the approval of this grant agreement and that Cindy Becker, Director of Health, Housing & Human Services is authorized to sign all documents necessary to accomplish this action on behalf of the Board of County Commissioners.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Cindy Becker", with a horizontal line extending to the right.

Cindy Becker,
Director



U.S. Department of Housing and Urban Development
Office of Community Planning and Development
400 SW 6th Avenue
Suite 700
Portland, OR 97204

Tax ID No.: 93-6002286
Project Location: 419005 (Clackmas County, OR)
Grant Number: OR0100L0E071205
Effective Date: 6/27/2013
DUNS No.: 096992656

2012 CONTINUUM OF CARE PROGRAM GRANT AGREEMENT

This Grant Agreement ("this Agreement") is made by and between the United States Department of Housing and Urban Development ("HUD") and Clackamas Dept. Health, Housing & Human Svcs (the "Recipient").

This Agreement is governed by title IV of the McKinney-Vento Homeless Assistance Act 42 U.S.C. 11301 et seq. (the "Act") and the Continuum of Care Program regulation (the "Regulation").

The terms "Grant" or "Grant Funds" mean the funds that are provided under this Agreement. The term "Application" means the application submissions on the basis of which the Grant was approved by HUD, including the certifications, assurances, and any information or documentation required to meet any grant award condition. All other terms shall have the meanings given in the Regulation.

The Application is incorporated herein as part of this Agreement, except that only the project listed, and only in the amount listed on the Scope of Work, is funded by this Agreement. In the event of any conflict between any application provision and any provision contained in this Agreement, this Agreement shall control.

Exhibit 1, the FY2012 Scope of Work, is attached hereto and made a part hereof. If appropriations are available for Continuum of Care grants; and if Recipient applies under a Notice of Funds Availability published by HUD; and, if pursuant to the selection criteria in the Notice of Funds Availability, HUD selects Recipient and the project for renewal, then additional exhibits may be attached to this Agreement. Those additional exhibits, when attached, will also become a part hereof.

The effective date of the Agreement shall be the date of execution by HUD and it is the date use of funds under this Agreement may begin. If the project funded by this Agreement is a new project, Recipient and HUD will set an operating start date in LOCCS for the project, which will be used to track expenditures and to determine when the project is eligible for renewal. If this Agreement renews funding for a project, the term of this Agreement shall begin at the end of the Recipient's final operating year for the grant being renewed, and eligible costs incurred for the project between the end of Recipient's final operating year under the grant being renewed and the execution of this Agreement may be paid with funds from the first operating year of this Agreement.

This Agreement shall remain in effect until termination either 1) by agreement of the parties; 2) by HUD alone, acting under the authority of 24 CFR 578.107; or 3) upon expiration of the final operating year of the project funded under this Agreement.

Recipient agrees:

1. To ensure the operation of the project listed on the Scope of Work in accordance with the provisions of the Act and all requirements of the Regulation;
2. To monitor and report the progress of the project to the Continuum of Care and HUD;
3. To ensure, to the maximum extent practicable, that individuals and families experiencing homelessness are involved, through employment, provision of volunteer services, or otherwise, in constructing, rehabilitating, maintaining, and operating facilities for the project and in providing supportive services for the project;
4. To require certification from any subrecipient that:
 - a. Subrecipient will maintain the confidentiality of records pertaining to any individual or family that was provided family violence prevention or treatment services through the project;
 - b. The address or location of any family violence project assisted with grant funds will not be made public, except with written authorization of the person responsible for the operation of such project;
 - c. Subrecipient will establish policies and practices that are consistent with, and do not restrict, the exercise of rights provided by subtitle B of title VII of the Act and other laws relating to the provision of educational and related services to individuals and families experiencing homelessness;
 - d. In the case of a project that provides housing or services to families, that subrecipient will designate a staff person to be responsible for ensuring that children being served in the program are enrolled in school and connected to appropriate services in the community, including early childhood programs such as Head Start, part C of the Individuals with Disabilities Education Act, and programs authorized under subtitle B of title VII of the Act;
 - e. The subrecipient, its officers, and employees are not debarred or suspended from doing business with the Federal Government; and
 - f. Subrecipient will provide information, such as data and reports, as required by HUD; and
5. To establish such fiscal control and accounting procedures as may be necessary to assure the proper disbursement of, and accounting for grant funds in order to ensure that all financial transactions are conducted, and records maintained in accordance with generally accepted accounting principles, if the Recipient is a Unified Funding Agency;
6. To monitor subrecipient match and report on match to HUD;
7. To take the educational needs of children into account when families are placed in housing and will, to the maximum extent practicable, place families with children as close as possible to their school of origin so as not to disrupt such children's education;
8. To monitor subrecipient at least annually;
9. To use the centralized or coordinated assessment system established by the Continuum of Care as required by §578.7(a)(8). A victim service provider may choose not to use the Continuum of Care's centralized or coordinated assessment system, provided that victim service providers in the area use a centralized or coordinated assessment system that meets HUD's minimum requirements and the victim service provider uses that system instead;
10. To follow the written standards for providing Continuum of Care assistance developed by the Continuum of Care, including the minimum requirements set forth in §578.7(a)(9);

11. Enter into a subrecipient agreement requiring subrecipient to operate the project in accordance with the provisions of this Act and all requirements under 24 CFR 578; and
12. To comply with such other terms and conditions as HUD may have established in the applicable Notice of Funds Availability.

HUD notifications to the Recipient shall be to the address of the Recipient as stated in the Application, unless HUD is otherwise advised in writing. Recipient notifications to HUD shall be to the HUD Field Office executing the Agreement. No right, benefit, or advantage of the Recipient hereunder may be assigned without prior written approval of HUD.

The Agreement constitutes the entire agreement between the parties hereto, and may be amended only in writing executed by HUD and the Recipient.

By signing below, Recipients that are states and units of local government certify that they are following a current HUD approved CHAS (Consolidated Plan).

This agreement is hereby executed on behalf of the parties as follows:

**UNITED STATES OF AMERICA,
Secretary of Housing and Urban Development**

By:



(Signature)

Douglas Carlson, Director

(Typed Name and Title)

June 27, 2013

(Date)

RECIPIENT

Clackamas Dept. Health, Housing & Human Svcs

(Name of Organization)

By:

(Signature of Authorized Official)

Cindy Becker, Director

(Typed Name and Title of Authorized Official)

(Date)

Tax ID Number: 93-6002286
Project Location: 419005 (Clackmas County, OR)
Grant Number: OR0100L0E071205
Effective Date: 6/27/2013
DUNS Number: 096992656

EXHIBIT 1
SCOPE OF WORK for FY2012 COMPETITION

1. This Agreement is governed by the Continuum of Care program Interim Rule attached hereto and made a part hereof as Exhibit 1a. Upon publication for effect of a Final Rule for the Continuum of Care program, the Final Rule will govern this Agreement instead of the Interim Rule. The project listed on this Exhibit at 3., below, is also subject to the terms of the FY2012 Notice of Funds Availability.
2. The Continuum that designated Recipient to apply for grant funds is not a high-performing community.
3. Recipient is not a Unified Funding Agency and was not the only Applicant the Continuum of Care designated to apply for and receive grant funds and is not the only Recipient for the Continuum of Care that designated it. HUD's total funding obligation for this grant is \$213,302 for project number OR0100L0E071205. In accordance with 24 CFR 578.105(b), Recipient is prohibited from moving more than 10% from one budget line item in a project's approved budget to another without a written amendment to this Agreement. The obligation for this project shall be allocated as follows:

a. CoC Planning cost	\$ 0
b. Acquisition	\$ 0
c. New construction	\$ 0
d. Rehabilitation	\$ 0
e. Leasing	\$ 0
f. Rental assistance	\$ 137,880
g. Supportive services	\$ 63,342
h. Operating costs	\$ 0
i. HMIS	\$ 0
j. Administration	\$ 12,080

4. No funds for new projects may be drawn down by Recipient until HUD has approved site control pursuant to §578.21 and §578.25 and no funds for renewal projects may be drawn down by Recipient before the end date of the project's final operating year under the grant that has been renewed.

Exhibit 1a

Continuum of Care Program Interim Rule



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Part II

Department of Housing and Urban Development

24 CFR Part 578

Homeless Emergency Assistance and Rapid Transition to Housing:
Continuum of Care Program; Interim Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**24 CFR Part 578**

[Docket No. FR-5476-I-01]

RIN 2506-AC29

Homeless Emergency Assistance and Rapid Transition to Housing: Continuum of Care Program**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.**ACTION:** Interim rule.

SUMMARY: The Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009 (HEARTH Act), enacted into law on May 20, 2009, consolidates three of the separate homeless assistance programs administered by HUD under the McKinney-Vento Homeless Assistance Act into a single grant program, and revises the Emergency Shelter Grants program and renames it the Emergency Solutions Grants program. The HEARTH Act also codifies in law the Continuum of Care planning process, a longstanding part of HUD's application process to assist homeless persons by providing greater coordination in responding to their needs. The HEARTH Act also directs HUD to promulgate regulations for these new programs and processes.

This interim rule focuses on regulatory implementation of the Continuum of Care program, including the Continuum of Care planning process. The existing homeless assistance programs that comprise the Continuum of Care program are the following: the Supportive Housing program, the Shelter Plus Care program, and the Moderate Rehabilitation/Single Room Occupancy (SRO) program. This rule establishes the regulations for the Continuum of Care program, and, through the establishment of such regulations, the funding made available for the Continuum of Care program in the statute appropriating Fiscal Year (FY) 2012 funding for HUD can more quickly be disbursed, consistent with the HEARTH Act requirements, and avoid any disruption in current Continuum of Care activities.

DATES: *Effective Date:* August 30, 2012.
Comment Due Date: October 1, 2012.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, 451 7th Street SW., Room 10276, Department of Housing and Urban Development, Washington, DC 20410-0500. Communications must refer to the above

docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410-0500.

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at www.regulations.gov. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the www.regulations.gov Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the Federal Relay Service at 800-877-8339. Copies of all comments submitted are available for inspection and downloading at www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Ann Marie Oliva, Director, Office of Special Needs Assistance Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410-7000; telephone number 202-708-4300 (this is not a toll-free number). Hearing- and speech-impaired persons may access this number through TTY by calling the

Federal Relay Service at 800-877-8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION:**Executive Summary***Purpose of and Legal Authority for This Interim Rule*

This interim rule implements the Continuum of Care program authorized by the Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009 (HEARTH Act). Section 1504 of the HEARTH Act directs HUD to establish regulations for this program. (See 42 U.S.C. 11301.) The purpose of the Continuum of Care program is to promote communitywide commitment to the goal of ending homelessness; provide funding for efforts by nonprofit providers, and State and local governments to quickly rehouse homeless individuals and families while minimizing the trauma and dislocation caused to homeless individuals, families, and communities by homelessness; promote access to and effective utilization of mainstream programs by homeless individuals and families; and optimize self-sufficiency among individuals and families experiencing homelessness.

The HEARTH Act streamlines HUD's homeless grant programs by consolidating the Supportive Housing, Shelter Plus Care, and Single Room Occupancy grant programs into one grant program: The Continuum of Care program. Local continuums of care, which are community-based homeless assistance program planning networks, will apply for Continuum of Care grants. By consolidating homeless assistance grant programs and creating the Continuum of Care planning process, the HEARTH Act intended to increase the efficiency and effectiveness of coordinated, community-based systems that provide housing and services to the homeless. Through this interim final rule, HUD will implement the Continuum of Care program by establishing the framework for establishing a local continuum of care and the process for applying for Continuum of Care grants.

Summary of Major Provisions

The major provisions of this rulemaking relate to how to establish and operate a Continuum of Care, how to apply for funds under the program, and how to use the funds for projects approved by HUD. These provisions are summarized below.

1. *General Provisions (Subpart A):* The Continuum of Care program includes transitional housing, permanent supportive housing for

disabled persons, permanent housing, supportive services, and Homeless Management Information Systems (HMIS). To implement the program, HUD had to define several key terms. In particular, HUD distinguishes between "Continuum of Care," "applicant," and "collaborative applicant." A "Continuum of Care" is a geographically based group of representatives that carries out the planning responsibilities of the Continuum of Care program, as set out in this regulation. These representatives come from organizations that provide services to the homeless, or represent the interests of the homeless or formerly homeless. A Continuum of Care then designates certain "applicants" as the entities responsible for carrying out the projects that the Continuum has identified through its planning responsibilities. A "Continuum of Care" also designates one particular applicant to be a "collaborative applicant." The collaborative applicant is the only entity that can apply for a grant from HUD on behalf of the Continuum that the collaborative applicant represents.

2. Establishing and Operating a Continuum of Care (Subpart B): In order to be eligible for funds under the Continuum of Care program, representatives from relevant organizations within a geographic area must establish a Continuum of Care. The three major duties of a Continuum of Care are to: (1) Operate the Continuum of Care, (2) designate an HMIS for the Continuum of Care, and (3) plan for the Continuum of Care. HUD has delineated certain operational requirements of each Continuum to help measure a Continuum's overall performance at reducing homelessness, in addition to tracking of performance on a project-by-project basis. In addition, each Continuum is responsible for establishing and operating a centralized or coordinated assessment system that will provide a comprehensive assessment of the needs of individuals and families for housing and services. HUD has also defined the minimum planning requirements for a Continuum so that it coordinates and implements a system that meets the needs of the homeless population within its geographic area. Continuums are also responsible for preparing and overseeing an application for funds. Continuums will have to establish the funding priorities for its geographic area when submitting an application.

3. Application and Grant Award Process (Subpart C): The Continuum of Care grant award process begins with a determination of a Continuum's maximum award amount. As directed

by statute, HUD has developed a formula for determining award amounts that includes the following factors: A Continuum's Preliminary Pro Rata Need (PPRN) amount; renewal demand; any additional increases in amounts for leasing, rental assistance, and operating costs based on Fair Market Rents, planning and Unified Funding Agency cost funds, and amounts available for bonus dollars. HUD has established selection criteria for determining which applications will receive funding under the Continuum of Care program. Recipients awarded Continuum of Care funds must satisfy several conditions prior to executing their grant agreements. All grants submitted for renewal must also submit an annual performance report. For those applicants not awarded funding, the process also provides an appeals process.

4. Program Components and Eligible Costs (Subpart D): Continuum of Care funds may be used for projects under five program components: Permanent housing, transitional housing, supportive services only, HMIS, and, in some limited cases, homelessness prevention. The rule further clarifies how the following activities are considered eligible costs under the Continuum of Care program: Continuum of Care planning activities, Unified Funding Agency costs, acquisition, rehabilitation, new construction, leasing, rental assistance, supportive services, operating costs, HMIS, project administrative costs, relocation costs, and indirect costs.

5. High-Performing Communities (Subpart E): HUD will annually, subject to the availability of appropriate data, select those Continuums of Care that best meet application requirements to be designated a high-performing community (HPC). An HPC may use grant funds to provide housing relocation and stabilization services, and short- and/or medium-term rental assistance to individuals and families at risk of homelessness. This is the only time that Continuum of Care funds may be used to serve individuals and families at risk of homelessness.

6. Program Requirements (Subpart F): All recipients of Continuum of Care funding must comply with the program regulations and the requirements of the Notice of Funding Availability that HUD will issue each year. Notably, the HEARTH Act requires that all eligible funding costs, except leasing, must be matched with no less than 25 percent cash or in-kind match by the Continuum. Other program requirements of recipients include: Abiding by housing quality standards

and suitable dwelling size, assessing supportive services on an ongoing basis, initiating and completing approved activities and projects within certain timelines, and providing a formal process for termination of assistance to participants who violate program requirements or conditions of occupancy.

7. Grant Administration (Subpart G): To effectively administer the grants, HUD will provide technical assistance to those who apply for Continuum of Care funds, as well as those who are selected for Continuum of Care funds. After having been selected for funding, grant recipients must satisfy certain recordkeeping requirements so that HUD can assess compliance with the program requirements. For any amendments to grants after the funds have been awarded, HUD has established a separate amendment procedure. As appropriate, HUD has also established sanctions to strengthen its enforcement procedures.

Benefits and Costs

This interim rule is intended to help respond to and work toward the goal of eliminating homelessness. This interim rule provides greater clarity and guidance about planning and performance review to the more than 430 existing Continuums of Care that span all 50 states and 6 United States territories. As reported in HUD's Annual Homelessness Assessment Report to Congress, there were approximately 1.59 million homeless persons who entered emergency shelters or transitional housing in FY 2010. HUD serves roughly half that many persons, nearly 800,000 annually, through its three programs that will be consolidated into the Continuum of Care program under the McKinney-Vento Act as amended by the HEARTH Act (i.e., Shelter Plus Care, Supportive Housing Program, Single Room Occupancy). The changes initiated by this interim rule will encourage Continuums of Care to establish formal policies and review procedures, including evaluation of the effectiveness of their projects, by emphasizing performance measurement and developing performance targets for homeless populations. HUD is confident that this systematic review by Continuums of Care will lead to better use of limited resources and more efficient service models, with the end result of preventing and ending homelessness.

The Consolidated and Further Continuing Appropriations Act, 2012 (Pub. L. 112-55) appropriated \$1,593,000,000 for the Continuum of Care and Rural Housing Stability

Assistance programs. Upon publication of this rule, those FY 2012 funds will be available for distribution, as governed by these Continuum of Care regulations.

I. Background—HEARTH Act

On May 20, 2009, the President signed into law “An Act to Prevent Mortgage Foreclosures and Enhance Mortgage Credit Availability,” which became Public Law 111–22. This law implements a variety of measures directed toward keeping individuals and families from losing their homes. Division B of this law is the HEARTH Act, which consolidates and amends three separate homeless assistance programs carried out under title IV of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11371 *et seq.*) (McKinney-Vento Act) into a single grant program that is designed to improve administrative efficiency and enhance response coordination and effectiveness in addressing the needs of homeless persons. The HEARTH Act codifies in law and enhances the Continuum of Care planning process, the coordinated response to addressing the needs of the homeless, which was established administratively by HUD in 1995. The single Continuum of Care program established by the HEARTH Act consolidates the following programs: The Supportive Housing program, the Shelter Plus Care program, and the Moderate Rehabilitation/Single Room Occupancy program. The Emergency Shelter Grants program is renamed the Emergency Solutions Grants program and is revised to broaden existing emergency shelter and homelessness prevention activities and to add short- and medium-term rental assistance and services to rapidly rehouse homeless people. The HEARTH Act also creates the Rural Housing Stability program to replace the Rural Homelessness Grant program.

HUD commenced the process to implement the HEARTH Act with rulemaking that focused on the definition of “homeless.” HUD published a proposed rule, entitled “Defining Homeless” on April 20, 2010 (75 FR 20541), which was followed by a final rule that was published on December 5, 2011 (76 FR 75994). The Defining Homeless rule clarified and elaborated upon the new McKinney-Vento Act definitions for “homeless” and “homeless individual with a disability.” In addition, the Defining Homeless rule included recordkeeping requirements related to the “homeless” definition. On December 5, 2011, HUD also published an interim rule for the Emergency Solutions Grants program (76 FR 75954). This interim rule

established the program requirements for the Emergency Solutions Grants program and contained corresponding amendments to the Consolidated Plan regulations. On December 9, 2011, HUD continued the process to implement the HEARTH Act, with the publication of the proposed rule titled “Homeless Management Information Systems Requirements” (76 FR 76917), which provides for uniform technical requirements for Homeless Management Information Systems (HMIS), for proper data collection and maintenance of the database, and ensures the confidentiality of the information in the database. Today’s publication of the interim rule for the Continuum of Care program continues HUD’s implementation of the HEARTH Act.

This rule establishes the regulatory framework for the Continuum of Care program and the Continuum of Care planning process, including requirements applicable to the establishment of a Continuum of Care. Prior to the amendment of the McKinney-Vento Act by the HEARTH Act, HUD’s competitively awarded homeless assistance grant funds were awarded to organizations that participate in local homeless assistance program planning networks referred to as a Continuum of Care, a system administratively established by HUD in 1995. A Continuum of Care is designed to address the critical problem of homelessness through a coordinated community-based process of identifying needs and building a system of housing and services to address those needs. The approach is predicated on the understanding that homelessness is not caused merely by a lack of shelter, but involves a variety of underlying, unmet needs—physical, economic, and social.

The HEARTH Act not only codified in law the planning system known as Continuum of Care, but consolidated the three existing competitive homeless assistance grant programs (Supportive Housing, Shelter Plus Care, and Single Room Occupancy) into the single grant program known as the Continuum of Care program. The consolidation of the three existing homeless assistance programs into the Continuum of Care grant program and the codification in law of the Continuum of Care planning process are intended to increase the efficiency and effectiveness of the coordination of the provision of housing and services to address the needs of the homeless. The regulations established by this rule are directed to carrying out this congressional intent.

II. Overview of Interim Rule

As amended by the HEARTH Act, Subpart C of the McKinney-Vento Homeless Assistance Act establishes the Continuum of Care program. The purpose of the program is to promote communitywide commitment to the goal of ending homelessness; provide funding for efforts by nonprofit providers, and State and local governments to quickly rehouse homeless individuals and families while minimizing the trauma and dislocation caused to homeless individuals, families, and communities by homelessness; promote access to and effective utilization of mainstream programs by homeless individuals and families; and optimize self-sufficiency among individuals and families experiencing homelessness.

This interim rule establishes the Continuum of Care as the planning body responsible for meeting the goals of the Continuum of Care program. Additionally, in order to meet the purpose of the HEARTH Act, established in section 1002(b), and the goals of “Opening Doors: Federal Strategic Plan to Prevent and End Homelessness,” the Continuum of Care must be involved in the coordination of other funding streams and resources—federal, local, or private—of targeted homeless programs and other mainstream resources. In many communities, the Continuum of Care is the coordinating body, while in other communities it is a local Interagency Council on Homelessness (both would be acceptable forms of coordination under this interim rule). As noted earlier, HUD published on December 9, 2011, a proposed rule to establish HMIS regulations in accordance with the HEARTH Act. However, while the HEARTH Act directed that regulations be established for HMIS, HMIS is not new to many HUD grantees. Until regulations for HMIS are promulgated in final, grantees should continue to follow HUD’s existing HMIS instructions and guidance.

The following provides an overview of the proposed rule.

General Provisions (Subpart A)

Purpose and scope. The Continuum of Care program is designed to promote community-wide goals to end homelessness; provide funding to quickly rehouse homeless individuals (including unaccompanied youth) and families while minimizing trauma and dislocation to those persons; promote access to, and effective utilization of, mainstream programs; and optimize self-sufficiency among individuals and

families experiencing homelessness. The program is composed of transitional housing, permanent supportive housing for disabled persons, permanent housing, supportive services, and HMS.

Definitions. The interim rule adopts the definitions of "developmental disability," "homeless," "homeless individual," and "homeless person" established by the December 5, 2011 Defining Homeless final rule. Public comments have already been solicited and additional public comment is not solicited through this rule. The December 5, 2011, final rule was preceded by an April 20, 2010, proposed rule, which sought public comment on these definitions. The final definitions of these terms took into consideration the public comments received on the proposed definitions as set out in the April 20, 2010, proposed rule. This interim rule adopts the definition of "at risk of homelessness" established by the December 5, 2011, the Emergency Solutions Grants program interim rule. The interim rule sought public comment on this definition, and additional public comment is not being sought through this rule.

HUD received valuable public comment on the definition of "chronically homeless," through the public comment process on the Emergency Solutions Grants program interim rule. Based on public comment, this rule for the Continuum of Care program is not adopting the full definition of "chronically homeless" that was included in the conforming amendments to the Consolidated Plan that were published as a part of the Emergency Solutions Grants program rule. Commenters raised concerns with the meaning of the phrase "where each homeless occasion was at least 15 days." The concerns raised about this phrase, used for the first time in a definition of "chronically homeless," has caused HUD to reconsider proceeding to apply a definition that includes this phrase, without further consideration and opportunity for comment. In this rule, HUD therefore amends the definition of "chronically homeless" in the Consolidated Plan regulations to strike this phrase. The removal of this phrase returns the definition to one with which service providers are familiar. The following highlights key definitions used in the Continuum of Care program regulations, and HUD solicits comment on these definitions.

Applicant is defined to mean an entity that has been designated by the Continuum of Care as eligible to apply for assistance on behalf of that

Continuum. HUD highlights that the Act does not contain different definitions for "applicant" and "collaborative applicant." HUD distinguishes between the applicant(s) designated to apply for and carry out projects (the "applicant") and the collaborative applicant designated to apply for a grant on behalf of the Continuum of Care (the "collaborative applicant"). Please see below for more information on the definition of a collaborative applicant, which is the only entity that may apply for and receive Continuum of Care planning funds.

Centralized or coordinated assessment system is defined to mean a centralized or coordinated process designed to coordinate program participant intake, assessment, and provision of referrals. A centralized or coordinated assessment system covers the geographic area, is easily accessed by individuals and families seeking housing or services, is well advertised, and includes a comprehensive and standardized assessment tool. This definition establishes basic minimum requirements for the Continuum's centralized or coordinated assessment system.

Collaborative applicant is defined to mean an eligible applicant that has been designated by the Continuum of Care to apply for a grant for Continuum of Care planning funds on behalf of the Continuum. As discussed above, the "applicant" is the entity(ies) designated to apply for and carry out projects on behalf of the Continuum. In contrast to the definition of "applicant" above, the collaborative applicant applies for a grant to carry out the planning activities on behalf of the Continuum of Care. The interim rule simplifies the statutory language in order to make the Continuum of Care planning process clear.

HUD highlights that its definition of collaborative applicant does not track the statutory definition, which is found in section 401 of the McKinney-Vento Act. As will be discussed in further detail later in this preamble, the concept of collaborative applicant, its duties and functions, as provided in the statute, is provided for in this rule. However, HUD uses the term Continuum of Care to refer to the organizations that carry out the duties and responsibilities assigned to the collaborative applicant, with the exception of applying to HUD for grant funds. The clarification is necessary in this rule because Continuums of Care are not required to be legal entities, but HUD can enter into contractual agreements with legal entities only.

Continuum of Care and **Continuum** are defined to mean the group that is

organized to carry out the responsibilities required under this part and that is composed of representatives of organizations including nonprofit homeless providers, victim service providers, faith-based organizations, governments, businesses, advocates, public housing agencies, school districts, social service providers, mental health agencies, hospitals, universities, affordable housing developers, law enforcement, organizations that serve homeless and formerly homeless veterans, and homeless and formerly homeless persons. These organizations consist of the relevant parties in the geographic area. Continuums are expected to include representation to the extent that the type of organization exists within the geographic area that the Continuum represents and is available to participate in the Continuum. For example, if a Continuum of Care did not have a university within its geographic boundaries, then HUD would not expect the Continuum to have representation from a university within the Continuum.

These organizations carry out the responsibilities and duties established under Subpart B of this interim rule. The Continuum of Care, as noted above, carries out the statutory duties and responsibilities of a collaborative applicant. HUD established the Continuum of Care in 1995. Local grantees and stakeholders are familiar with the Continuum of Care as the coordinating body for homeless services and homelessness prevention activities across the geographic area. Consequently, HUD is maintaining the Continuum of Care terminology, and the rule provides for the duties and responsibilities of a collaborative applicant to be carried out under the name Continuum of Care.

High-performing community is defined to mean the geographic area under the jurisdiction of a Continuum of Care that has been designated as a high-performing community by HUD. Section 424 of the McKinney-Vento Act provides that HUD shall designate, on an annual basis, which collaborative applicants represent high-performing communities. Consistent with HUD's substitution of the term "Continuum of Care" for "collaborative applicant," the definition of "high-performing community" in this interim rule provides for designation of Continuums of Care that represent geographic areas designated as high-performing communities. The standards for becoming a high-performing community can be found in § 578.65 of this interim

rule and will be discussed later in this preamble.

Private nonprofit organization is based on the statutory definition for "private nonprofit organization." The term "private nonprofit organization" is defined in section 424 of the McKinney-Vento Act as follows: "The term 'private nonprofit organization' means an organization: (A) No part of the net earnings of which inures to the benefit of any member, founder, contributor, or individual; (B) that has a voluntary board; (C) that has an accounting system, or has designated a fiscal agent in accordance with requirements established by the Secretary; and (D) that practices nondiscrimination in the provision of assistance." In HUD's regulatory definition of "private nonprofit organization," HUD clarifies that the organization's accounting system must be functioning and operated in accordance with generally accepted accounting principles. HUD has included this language to make certain that accounting systems are workable and abide by definite, accurate standards. As reflected in the statutory definition of "private nonprofit organization," HUD may establish requirements for the designation of a fiscal agent. HUD has determined that the fiscal agent, such as a Unified Funding Agency, a term that is also defined in section 424 of the McKinney-Vento Act, must maintain a functioning accounting system for the organization in accordance with generally accepted accounting principles.

Permanent housing is consistent with the statutory definition of "permanent housing" in section 401 of the McKinney-Vento Act, but does not track the statutory language. HUD's regulatory definition of "permanent housing" states: "The term 'permanent housing' means community-based housing without a designated length of stay, and includes both permanent supportive housing and rapid re-housing." Additionally, in the regulatory definition of "permanent housing," HUD clarifies that to be permanent housing, "the program participant must be the tenant on a lease for a term of at least one year that is renewable and is terminable only for cause. The lease must be renewable for terms that are a minimum of one month long. HUD has determined that requiring a lease for a term of at least one year that is renewable and terminable only for cause, assists program participants in obtaining stability in housing, even when the rental assistance is temporary. These requirements are consistent with Section 8 requirements.

Specific request for comment. HUD specifically requests comment on requiring a lease for a term of at least one year to be considered permanent housing.

Project is consistent with the statutory definition of "project" in section 401 of the McKinney-Vento Act, but does not track the statutory language. Section 401 defines "project" as, with respect to activities carried out under subtitle C, eligible activities described in section 423(a), undertaken pursuant to a specific endeavor, such as serving a particular population or providing a particular resource. In HUD's definition of "project" in this interim rule, the eligible activities described in section 423(a) of the McKinney-Vento Act have been identified. In the regulatory text, HUD has clarified that it is a group of one or more of these eligible costs that are identified as a project in an application to HUD for Continuum of Care funds.

Recipient is defined to mean an applicant that signs a grant agreement with HUD. HUD's definition of "recipient" is consistent with the statutory definition of "recipient," but does not track the statutory language. Section 424 of the McKinney-Vento Act defines "recipient" as "an eligible entity who—(A) submits an application for a grant under section 422 that is approved by the Secretary; (B) receives the grant directly from the Secretary to support approved projects described in the application; and (C)(i) serves as a project sponsor for the projects; or (ii) awards the funds to project sponsors to carry out the projects." All of the activities specified by the statutory definition are in the rule: (A) and (B) are contained in the definition and (C) is covered in the sections of the rule dealing with what a recipient can do with grant funds.

Safe haven is based on the definition of safe haven in the McKinney-Vento Act prior to amendment by the HEARTH Act. Although no longer used in statute, HUD's position is that the term remains relevant for implementation of the Continuum of Care program and, therefore, HUD proposes to include the term in the Continuum of Care program regulations. The term "safe haven" is used for purposes of determining whether a person is chronically homeless. The housing must serve hard-to-reach homeless persons with severe mental illness who came from the streets and have been unwilling or unable to participate in supportive services. In addition, the housing must provide 24-hour residence for eligible persons for an unspecified period, have an overnight capacity limited to 25 or

fewer persons, and provide low-demand services and referrals for the residents.

Subrecipient is defined to mean a private nonprofit organization, State or local government, or instrumentality of a State or local government that receives a subgrant from the recipient to operate a project. The definition of "subrecipient" is consistent with the definition of "project sponsor" found in section 401 of the McKinney-Vento Act, but does not track the statutory language. To be consistent with the Emergency Solutions Grants program regulation, and also to ensure that the relationship between the recipient and subrecipient is clear, HUD is using the term subrecipient, instead of project sponsor, throughout this regulation.

Transitional housing is based on the definition of "transitional housing" in section 401 of the McKinney-Vento Act, as follows: "The term 'transitional housing' means housing, the purpose of which is to facilitate the movement of individuals and families experiencing homelessness to permanent housing within 24 months or such longer period as the Secretary determines necessary." The definition has been expanded to distinguish this type of housing from emergency shelter. This distinction is necessitated by the McKinney-Vento Act's explicit distinction between what activities can or cannot be funded under the Continuum of Care program. The regulatory definition clarifies that, to be transitional housing, program participants must have signed a lease or occupancy agreement that is for a term of at least one month and that ends in 24 months and cannot be extended.

Unified Funding Agency (UFA) means an eligible applicant selected by the Continuum of Care to apply for a grant for the entire Continuum, which has the capacity to carry out the duties delegated to a UFA in this rule, which is approved by HUD and to which HUD awards a grant. HUD's regulatory definition of UFA departs slightly from the statutory definition. The statutory definition refers to the collaborative applicant. The differences between the statutory definition and HUD's regulatory definition reflect HUD's substitution of Continuum of Care for collaborative applicant.

Establishing and Operating the Continuum of Care (Subpart B)

In general. The statutory authority for the Continuum of Care program is section 422 of the McKinney-Vento Act. As stated under section 1002 of the HEARTH Act, one of the main purposes of the HEARTH Act is to codify the Continuum of Care planning process. Consequently, under this interim rule,

HUD focuses on the rules and responsibilities of those involved in the Continuum of Care planning process and describes how applications and grant funds will be processed.

As discussed earlier in the preamble, HUD's interim rule provides for the duties and functions of the collaborative applicant found in section 401 of the McKinney-Vento Act to be designated to the Continuum of Care, with the exception of applying to HUD for grant funds. HUD chose this approach because the Continuum might not be a legal entity, and therefore cannot enter into enforceable contractual agreements, but is the appropriate body for establishing and implementing decisions that affect the entire geographic area covered by the Continuum, including decisions related to funding. This approach allows the Continuum to retain its duties related to planning and prioritizing need (otherwise designated by statute to the collaborative applicant), while the authority to sign a grant agreement with HUD is designated to an eligible applicant that can enter into a contractual agreement. All of the duties assigned to the Continuum are based on the comparable duties of section 402(f) of the McKinney-Vento Act.

Subpart B of the interim rule identifies how Continuums of Care are established, as well as the required duties and functions of the Continuum of Care.

Establishing the Continuum of Care. In order to be eligible for funds under the Continuum of Care program, representatives from relevant organizations within a geographic area must establish a Continuum of Care. As discussed earlier in this preamble, this body is responsible for carrying out the duties identified in this interim regulation. Representatives from relevant organizations include nonprofit homeless assistance providers, victim service providers, faith-based organizations, governments, businesses, advocates, public housing agencies, school districts, social service providers, mental health agencies, hospitals, universities, affordable housing developers, law enforcement, and organizations that serve veterans and homeless and formerly homeless individuals. Where these organizations are located within the geographic area served by the Continuum of Care, HUD expects a representative of the organization to be a part of the Continuum of Care.

Specific request for comment. HUD specifically requests comments on requiring Continuums of Care to have a board that makes the decisions for the

Continuum. HUD requires two characteristics for all board compositions. These characteristics are that the Board must be representative of the subpopulations of homeless persons that exist within the geographic area, and include a homeless or formerly homeless person. Continuums will have 2 years from the effective date of the interim rule to establish a board that meets the criteria established in this section. No board member may participate or influence discussions or decisions concerning the award of a grant or other financial benefits for an organization that the member represents.

HUD is considering four additional characteristics for all board compositions for incorporation in the final rule. HUD did not implement them at this stage in order to seek public comment prior to implementing them as requirements. HUD proposes that all boards must have a chair or co-chairs; be composed of an uneven number, serving staggered terms; include members from the public and private sectors; and include a member from at least one Emergency Solutions Grants program (ESG) recipient's agency located within the Continuum's geographic area. HUD is requesting comment on all of these proposed requirements; however, HUD specifically requests comments from Continuums of Care and ESG recipients on the requirement that the Board include an ESG recipient as part of its membership. HUD invites ESG recipients and Continuums to share challenges that will be encountered when implementing this requirement. Ensuring that ESG recipients are represented on the Board is important to HUD; therefore, in communities where ESG recipients and/or Continuums do not feel this requirement is feasible, HUD asks commenters to provide suggestions for how ESG recipients can be involved in the Continuum at one of the core decision-making levels.

Responsibilities of the Continuum of Care. The interim rule establishes three major duties for which the Continuum of Care is responsible: To operate the Continuum of Care, to designate an HMIS for the Continuum of Care, and to plan for the Continuum of Care.

This section of the interim rule establishes requirements within these three major duties.

Operating the Continuum of Care. The interim rule provides that the Continuum of Care must abide by certain operational requirements. These requirements will ensure the effective management of the Continuum of Care process and ensure that the process is

inclusive and fair. HUD has established eight duties required of the Continuum necessary to effectively operate the Continuum of Care. HUD has established the specific minimum standards for operating and managing a Continuum of Care for two main reasons. First, the selection criteria established under section 427 of the McKinney-Vento Act require HUD to measure the Continuum of Care's performance in reducing homelessness by looking at the overall performance of the Continuum, as opposed to measuring performance project-by-project as was done prior to the enactment of the HEARTH Act. This Continuum of Care performance approach results in cooperation and coordination among providers. Second, because Continuums of Care will have grants of up to 3 percent of Final Pro Rata Need (FPRN) to be used for eligible Continuum of Care planning costs, HUD is requiring more formal decision-making and operating standards for the Continuum of Care. This requirement ensures that the Continuums have appropriate funding to support planning costs.

One of the duties established in this interim rule is the requirement that the Continuum establish and operate a centralized or coordinated assessment system that provides an initial, comprehensive assessment of the needs of individuals and families for housing and services. As detailed in the Emergency Solutions Grants program interim rule published on December 5, 2011, through the administration of the Rapid Re-Housing for Families Demonstration program and the Homelessness Prevention and Rapid Re-Housing program, as well as best practices identified in communities, HUD has learned that centralized or coordinated assessment systems are important in ensuring the success of homeless assistance and homeless prevention programs in communities. In particular, such assessment systems help communities systematically assess the needs of program participants and effectively match each individual or family with the most appropriate resources available to address that individual or family's particular needs.

Therefore, HUD has required, through this interim rule, each Continuum of Care to develop and implement a centralized or coordinated assessment system for its geographic area. Such a system must be designed locally in response to local needs and conditions. For example, rural areas will have significantly different systems than urban ones. While the common thread between typical models is the use of a

common assessment tool, the form, detail, and use of that tool will vary from one community to the next. Some examples of centralized or coordinated assessment systems include: A central location or locations within a geographic area where individuals and families must be present to receive homeless services; a 211 or other hotline system that screens and directly connects callers to appropriate homeless housing/service providers in the area; a "no wrong door" approach in which a homeless family or individual can show up at any homeless service provider in the geographic area but is assessed using the same tool and methodology so that referrals are consistently completed across the Continuum of Care; a specialized team of case workers that provides assessment services to providers within the Continuum of Care; or in larger geographic areas, a regional approach in which "hubs" are created within smaller geographic areas. HUD intends to develop technical assistance materials on a range of centralized and coordinated assessment types, including those most appropriate for rural areas.

HUD recognizes that imposing a requirement for a centralized or coordinated assessment system may have certain costs and risks. Among the risks that HUD wishes specifically to address are the risks facing individuals and families fleeing domestic violence, dating violence, sexual assault, and stalking. In developing the baseline requirements for a centralized or coordinated intake system, HUD is considering whether victim service providers should be exempt from participating in a local centralized or coordinated assessment process, or whether victim service providers should have the option to participate or not.

Specific request for comment. HUD specifically seeks comment from Continuum of Care-funded victim service providers on this question. As set forth in this interim rule, each Continuum of Care is to develop a specific policy on how its particular system will address the needs of individuals and families who are fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, or stalking, but who are seeking shelter or services from non-victim service providers. These policies could include reserving private areas at an assessment location for evaluations of individuals or families who are fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, or stalking; a separate "track" within the assessment framework that is specifically designed for domestic

violence victims; or the location of victim service providers with centralized assessment teams.

HUD invites suggestions for ensuring that the requirements it imposes regarding centralized or coordinated assessment systems will best help communities use their resources effectively and best meet the needs of all families and individuals who need assistance. Questions that HUD asks commenters to specifically address are: What barriers to accessing housing/services might a centralized or coordinated intake system pose to victims of domestic violence? How can those barriers be eliminated? What specific measures should be implemented to ensure safety and confidentiality for individuals and families who are fleeing or attempting to flee domestic violence situations? How should those additional standards be implemented to ensure that victims of domestic violence have immediate access to housing and services without increasing the burden on those victims? For communities that already have centralized or coordinated assessment systems in place, are victims of domestic violence and/or domestic violence service providers integrated into that system? Under either scenario (they are integrated into an assessment process or they are not integrated into it), how does your community ensure the safety and confidentiality of this population, as well as access to homeless housing and services? What HUD-sponsored training would be helpful to assist communities in completing the initial assessment of victims of domestic violence in a safe and confidential manner?

In addition to comments addressing the needs of victims of domestic violence, dating violence, sexual assault, and stalking, HUD invites general comments on the use of a centralized or coordinated assessment system, particularly from those in communities that have already implemented one of these systems who can share both what has worked well and how these systems could be improved. HUD specifically seeks comment on any additional risks that a centralized or coordinated assessment system may create for victims of domestic violence, dating violence, sexual assault, or stalking who are seeking emergency shelter services due to immediate danger, regardless of whether they are seeking services through a victim service provider or nonvictim service provider.

Another duty set forth in this part, is the requirement to establish and consistently follow written standards

when administering assistance under this part. These requirements, established in consultation with recipients of Emergency Solutions Grants program funds within the geographic area, are intended to coordinate service delivery across the geographic area and assist Continuums of Care and their recipients in evaluating the eligibility of individuals and families consistently and administering assistance fairly and methodically. The written standards can be found in § 578.7(a)(9) of this interim rule.

Designating and operating an HMIS. The Continuum of Care is responsible for designating an HMIS and an eligible applicant to manage the HMIS, consistent with the requirements, which will be codified in 24 CFR part 580. This duty is listed under section 402(f)(2) of the McKinney-Vento Act. In addition, the Continuum is responsible for reviewing, revising, and approving a privacy plan, security plan, and data quality plan for the HMIS and ensuring consistent participation of recipients and subrecipients in the HMIS.

Continuum of Care planning. The Continuum is responsible for coordinating and implementing a system for its geographic area to meet the needs of the homeless population and subpopulations within the geographic area. The interim rule defines the minimum requirements for this systematic approach under § 578.7(c)(1), such as emergency shelters, rapid rehousing, transitional housing, permanent supportive housing, and prevention strategies. Because there are not sufficient resources available through the Continuum of Care program to prevent and end homelessness, coordination and integration of other funding streams, including the Emergency Solutions Grants program and mainstream resources, is integral to carrying out the Continuum of Care System.

HUD has determined that since the Continuum of Care will be the larger planning organization, the Continuum of Care must develop and follow a Continuum of Care plan that adheres, not only to the requirements being established by this interim rule, but to the requirements and directions of the most recently issued notice of funding availability (NOFA).

While these planning duties are not explicitly provided in section 402(f) of the Act, HUD has included them to facilitate and clarify the Continuum of Care planning process. Consistent with the goals of the HEARTH Act, HUD strives, through this interim rule, to provide a comprehensive, well-

coordinated and clear planning process, which involves the creation of the Continuum of Care and the duties the Continuum of Care will have to fulfill.

Other planning duties for Continuums established in this section of the interim rule are planning for and conducting at least a biennial-point-in-time count of homeless persons within the geographic area, conducting an annual gaps analysis of the homeless needs and services available within the geographic area, providing information necessary to complete the Consolidated Plan(s) within the geographic area, and consulting with State and local government Emergency Solutions Grants program recipients within the Continuum of Care on the plan for allocating Emergency Solutions Grants program funds and reporting on and evaluating the performance of Emergency Solutions Grants program recipients and subrecipients.

Preparing an application for funds. A major function of the Continuum of Care is preparing and overseeing an application for funds under this part. This section of the interim rule establishes the duties of the Continuum of Care related to the preparation of the application. This section of the interim rule establishes that the Continuum is responsible for designing, operating, and following a collaborative process for the development of applications, as well as approving the submission of applications, in response to a NOFA published by HUD.

The Continuum must also establish priorities for funding projects within the geographic area and determine the number of applications being submitted for funding. As previously noted in this preamble, since the Continuum of Care might not be a legal entity, and therefore may not be able to enter into a contractual agreement with HUD, the Continuum must select one or more eligible applicants to submit an application for funding to HUD on its behalf. If the Continuum of Care is an eligible applicant, the Continuum of Care may submit an application. If the Continuum selects more than one application, the Continuum must select one eligible applicant to be the collaborative applicant. That applicant will collect and combine the required application information from all of the other eligible applicants and for all projects within the geographic area that the Continuum has designated. If only one application is submitted by the collaborative applicant, the collaborative applicant will collect and combine the required application information from all projects within the geographic area that the Continuum has

designated for funding. The collaborative applicant will always be the only applicant that can apply for Continuum of Care planning costs. In the case that there is one application for projects, the recipient of the funds is required to have signed agreements with its subrecipients as set forth in § 578.23(c), and is required to monitor and sanction subrecipients in compliance with § 578.107.

Whether the Continuum of Care submits the application or designates an eligible applicant to submit the application for funding, the Continuum of Care retains all of its duties.

Unified Funding Agencies. To be designated as the Unified Funding Agency (UFA) for the Continuum of Care, the Continuum must select the collaborative applicant to apply to HUD to be designated as the UFA for the Continuum. The interim rule establishes the criteria HUD will use when determining whether to designate the collaborative applicant as a UFA. These standards were developed to ensure that collaborative applicants have the capacity to manage the grant and carry out the duties in 578.11(b), and are described below.

The duties of the UFA established in § 578.11 are consistent with the duties set forth in section 402(g) of the Act. Even if the Continuum designates a UFA to submit the application for funding, the Continuum of Care retains all of its duties.

Remedial actions. Section 402(c) of the McKinney-Vento Act gives HUD the authority to ensure the fair distribution of grant amounts for this program, such as designating another body as a collaborative applicant, replacing the Continuum of Care for the geographic area, or permitting other eligible entities to apply directly for grants. Section 578.13 of this interim rule addresses the remedial actions that may be taken.

Overview of the Application and Grant Award Process (Subpart C)

Eligible applicants. Under this interim rule, eligible applicants consist of nonprofit organizations, State and local governments, and instrumentalities of local governments. An eligible applicant must have been designated by the Continuum of Care to submit an application for grant funds under this part. The Continuum's designation must state whether the Continuum is designating more than one applicant to apply for funds, and if it is, which applicant is being designated the collaborative applicant. A Continuum of Care that is designating only one applicant for funds must designate that applicant to be the collaborative

applicant. For-profit entities are not eligible to apply for grants or to be subrecipients of grant funds.

Section 401(10) of the McKinney-Vento Act identifies that collaborative applicants may be legal entities, and a legal entity may include a consortium of instrumentalities of a State or local government that has constituted itself as an entity. HUD has not included a consortium in the list of eligible applicants. As noted earlier in this preamble, a Continuum of Care is defined to mean a group that is composed of representatives of organizations across the entire geographic area claimed by the Continuum of Care. A Continuum is able to combine more than one metropolitan city or county into the geographic area that the Continuum represents. In essence, the Continuum of Care acts as a consortium, and it is therefore HUD's position that the inclusion of consortiums in the interim rule would be redundant.

Determining the Continuum's maximum award amount. The total amount for which a Continuum of Care is eligible to apply and be awarded is determined through a four-step process, including the following factors: A Continuum's PPRN amount; renewal demand; any additional increases in amounts for leasing, rental assistance, and operating costs based on Fair Market Rents (FMRs); planning and UFA cost funds; and the amounts available for bonus dollars.

Using the formula that will be discussed below, HUD will first determine a Continuum of Care's PPRN amount, as authorized under section 427(b)(2)(B) of the McKinney-Vento Act. This amount is the sum of the PPRN amounts for each metropolitan city, urban county, non-urban county, and insular area claimed by the Continuum of Care as part of its geographic area, excluding any counties applying for, or receiving funds under the Rural Housing Stability Assistance program, the regulations for which will be established in 24 CFR part 579. The PPRN for each of these areas is based upon the "need formula" under § 579.17(a)(2) and (3). Under the McKinney-Vento Act, HUD is required to publish, by regulation, the formula used to establish grant amounts. The need formula under § 579.17(a)(2) and (3) satisfies this requirement, and HUD specifically seeks comment on this formula. HUD will announce the PPRN amounts prior to the publication of the NOFA on its Web site.

To establish the amount on which the need formula is run, HUD will deduct an amount, which will be published in

the NOFA, to be set aside to provide a bonus, and the amount necessary to fund Continuum of Care planning activities and UFA costs from the total funds made available for the program each fiscal year. On this amount, HUD will use the following process to establish an area's PPRN. First, 2 percent of the total funds available shall be allocated among the four insular areas (American Samoa, Guam, the Commonwealth of the Northern Marianas, and the Virgin Islands) based upon the percentage each area received in the previous fiscal year under section 106 of the Housing and Community Development Act of 1974. Second, 75 percent of the remaining funds made available shall be allocated to metropolitan cities and urban counties that have been funded under the Emergency Solutions Grants program (formerly known as the Emergency Shelter Grants program) every year since 2004. Third, the remaining funds made available shall be allocated to Community Development Block Grant (CDBG) metropolitan cities and urban counties that have not been funded under the Emergency Solutions Grants program every year since 2004 and all other counties in the United States and Puerto Rico.

Recognizing that in some federal fiscal years, the amount available for the formula may be less than the amount required to renew all existing projects eligible for renewal in that year for at least one year, HUD has included a method for distributing the reduction of funds proportionally across all Continuums of Care in § 578.17(a)(4) of this interim rule. HUD will publish the total dollar amount that each Continuum will be required to deduct from renewal projects Continuum-wide, and Continuums will have the authority to determine how to administer the cuts to projects across the Continuum.

Specific request for comment. HUD specifically requests comment on the method established in § 578.17(a)(4) to reduce the total amount required to renew all projects eligible for renewal in that one year, for at least one year, for each Continuum of Care when funding is not sufficient to renew all projects nationwide for at least one year.

The second step in determining a Continuum's maximum award amount is establishing a Continuum of Care's "renewal demand." The Continuum's renewal demand is the sum of the annual renewal amounts of all projects eligible within the Continuum of Care's geographic area to apply for renewal in that federal fiscal year's competition before any adjustments to rental assistance, leasing, and operating line

items based on changes to the FMRs in the geographic area.

Third, HUD will determine the Continuum of Care's Final Pro Rata Need (FPRN), which is the higher of: (1) PPRN, or (2) renewal demand for the Continuum of Care. The FPRN establishes the base for the maximum award amount for the Continuum of Care.

Fourth, HUD will determine the maximum award amount. The maximum award amount for the Continuum of Care is the FPRN amount plus any additional eligible amounts for Continuum planning; establishing fiscal controls for the Continuum; updates to leasing, operating, and rental assistance line items based on changes to FMR; and the availability of any bonus funding during the competition.

Application process. Each fiscal year, HUD will issue a NOFA. All applications, including applications for grant funds, and requests for designation as a UFA or HPC, must be submitted to HUD in accordance with the requirements of the NOFA and contain such information as the NOFA specifies. Applications may request up to the maximum award amount for Continuums of Care.

An applicant that is a State or a unit of general local government must have a HUD-approved, consolidated plan in accordance with HUD's Consolidated Plan regulations in 24 CFR part 91. The applicant must submit a certification that the application for funding is consistent with the HUD-approved consolidated plan(s) in the project's jurisdiction(s). Applicants that are not States or units of general local government must submit a certification that the application for funding is consistent with the jurisdiction's HUD-approved consolidated plan. The certification must be made by the unit of general local government or the State, in accordance with HUD's regulations in 24 CFR part 91, subpart F. The required certification must be submitted by the funding application submission deadline announced in the NOFA.

An applicant may provide assistance under this program only in accordance with HUD subsidy layering requirements in section 102 of the Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545). In this interim rule, HUD clarifies that the applicant must submit information in its application on other sources of funding the applicant has received, or reasonably expects to receive, for a proposed project or activities.

Awarding funds. HUD will review applications in accordance with the guidelines and procedures specified in

the NOFA and award funds to recipients through a national competition based on selection criteria as defined in section 427 of the McKinney-Vento Act. HUD will announce the awards and notify selected applicants of any conditions imposed on the awards.

Grant agreements. A recipient of a conditionally awarded grant must satisfy all requirements for obligation of funds; otherwise, HUD will withdraw its offer of the award. These conditions include establishing site control, providing proof of match, complying with environmental review under § 578.31, and documenting financial feasibility within the deadlines under § 578.21(a)(3). HUD has included in the interim rule the deadlines for conditions that may be extended and the reasons for which HUD will consider an extension.

The interim rule requires that site control be established by each recipient receiving funds for acquisition, rehabilitation funding, new construction, or operating costs, or for providing supportive services. HUD has determined that the time to establish site control is 12 months for projects not receiving new construction, acquisition, or rehabilitation funding, as stated under section 426(a) of the McKinney-Vento Act, not 9 months as stated under section 422(d) of the McKinney-Vento Act, for projects receiving operating and supportive service funds. HUD's determination on the time needed to establish site control is based on previous program policy, and the longer time frame takes into consideration the reality of the housing market. Projects receiving acquisition, rehabilitation, or new construction funding must provide evidence of site control no later than 24 months after the announcement of grant awards, as provided under section 422(d) of the McKinney-Vento Act.

The interim rule requires that HUD perform an environmental review for each property as required under HUD's environmental regulations in 24 CFR part 50. All recipients of Continuum of Care program funding under this part must supply all available, relevant information necessary to HUD, and carry out mitigating measures required by HUD. The recipient, its project partners, and its project partner's contractors may not perform any eligible activity for a project under this part, or commit or expend HUD or local funds for such activities until HUD has performed an environmental review and the recipient has received HUD approval of the property agreements.

Executing grant agreements. If a Continuum designates more than one applicant for the geographic area, HUD

will enter into a grant agreement with each designated recipient for which an award is announced. If a Continuum designates only one recipient for the geographic area, HUD may enter into one grant agreement with that recipient for new awards, if any; and one grant agreement for renewals and Continuum of Care planning costs and UFA costs, if any. These two grant agreements will cover the entire geographic area, and a default by the recipient under one of these agreements will also constitute a default under the other. If the Continuum is a UFA, HUD will enter into one grant agreement with the UFA for new awards, if any; and one for renewal and Continuum of Care planning costs and UFA costs, if any. Similarly, these two grant agreements will cover the entire geographic area and a default by the recipient under one of those agreements will also constitute a default under the other.

HUD requires the recipient to enter into the agreement described in § 578.23(c). Under this agreement, the grant recipient must agree to ensure that the operation of the project will be in accordance with the McKinney-Veto Act and the requirements under this part. In addition, the recipient must monitor and report the progress of the projects to the Continuum of Care and to HUD. The recipient must ensure that individuals and families experiencing homelessness are involved in the operation of the project, maintain confidentiality of program participants, and monitor and report matching funds to HUD, among other requirements. The recipient must also agree to use the centralized or coordinated assessment system established by the Continuum of Care, unless the recipient or subrecipient is a victim service provider. Victim service providers may choose not to use the centralized or coordinated assessment system provided that all victim service providers in the area use a centralized or coordinated assessment system that meets HUD's minimum requirements. HUD has provided this optional exception because it understands the unique role that victim service providers have within the Continuum of Care.

Renewals. The interim rule provides that HUD may fund, through the Continuum of Care program, all projects that were previously eligible under the McKinney-Vento Act prior to the enactment of the HEARTH Act. These projects may be renewed to continue ongoing leasing, operations, supportive services, rental assistance, HMIS, and administration beyond the initial funding period even if those projects

would not be eligible under the Continuum of Care program. For projects that would no longer be eligible under the Continuum of Care program (e.g., safe havens), but which are serving homeless persons; HUD wants to ensure that housing is maintained and that persons do not become homeless because funding is withdrawn.

HUD may renew projects that were submitted on time and in such manner as required by HUD, but did not have a total score that would allow the project to be competitively funded. HUD may choose to exercise this option to ensure that homeless or formerly homeless persons do not lose their housing. The interim rule provides, based on the language in section 421(e) of the McKinney-Vento Act, that HUD may renew the project, upon a finding that the project meets the purposes of the Continuum of Care program, for up to one year and under such conditions as HUD deems appropriate.

Annual Performance Report. The interim rule also provides that HUD may terminate the renewal of any grant and require the recipient to repay the renewal grant if the recipient fails to submit a HUD Annual Performance Report (APR) within 90 days of the end of the program year or if the recipient submits an APR that HUD deems unacceptable or shows noncompliance with the requirements of the grant and this part. Section 578.103(e) of the Continuum of Care program regulations further clarifies that recipients receiving grant funds for acquisition, rehabilitation, or new construction are expected to submit APRs for 15 years from the date of initial occupancy or the date of initial service provision, unless HUD provides an exception. The recipient's submission of the APR helps HUD review whether the recipient is carrying out the project in the manner proposed in the application. Recipients agree to submit an APR as a condition of their grant agreement. This requirement allows HUD to ensure that recipients submit APRs on grant agreements that have expired as a condition of receiving approval for a new grant agreement for the renewal project.

Appeals. The interim rule provides certain appeal options for applicants that were not awarded funding.

Under section 422(g) of the McKinney-Vento Act, if more than one collaborative applicant submits an application covering the same geographic area, HUD must award funds to the application that scores the highest score based on the selection criteria set forth in section 427 of the Act.

Consistent with HUD's use of the term

Continuum of Care in the interim rule where the statute uses collaborative applicant, as explained earlier in the preamble, the interim rule stipulates that if more than one Continuum of Care claims the same geographic area, then HUD will award funds to the Continuum applicant(s) whose application(s) has the highest total score and that no projects from the lower scoring Continuum of Care will be funded (and that any projects submitted with both applications will not be funded). To appeal HUD's decision to fund the competing Continuum of Care, the applicant(s) from the lower-scoring Continuum of Care must file the written appeal in such form and manner as HUD may require within 45 days of the date of HUD's announcement of award.

If an applicant has had a certification of consistency with a consolidated plan withheld, that applicant may appeal such a decision to HUD. HUD has established a procedure to process the appeals and no later than 45 days after the date of receipt of an appeal, HUD will make a decision.

Section 422(h) of the McKinney-Vento Act provides the authority for a solo applicant to submit an application to HUD and be awarded a grant by HUD if it meets the criteria under section 427 of the McKinney-Vento Act. The interim rule clarifies that a solo applicant must submit its application to HUD by the deadline established in the NOFA to be considered for funding. The statute also requires that HUD establish an appeal process for organizations that attempted to participate in the Continuum of Care's process and believe they were denied the right to reasonable participation, as reviewed in the context of the local Continuum's process. An organization may submit a solo application to HUD and appeal the Continuum's decision not to include it in the Continuum's application. If HUD finds that the solo applicant was not permitted to participate in the Continuum of Care process in a reasonable manner, then HUD may award the grant to that solo applicant and may direct the Continuum to take remedial steps to ensure reasonable participation in the future. HUD may also reduce the award to the Continuum's applicant(s).

Section 422(h)(1) of the McKinney-Vento Act requires that "HUD establish a timely appeal procedure for grant amounts awarded or denied under this subtitle to a collaborative application." The interim rule sets an appeal process for denied or decreased funding under § 578.35(c). Applicants that are denied funds by HUD, or that requested more funds than HUD awarded, may appeal

by filing a written appeal within 45 days of the date of HUD's announcement of the award. HUD will notify applicant of its decision on the appeal within 60 days of the date of HUD's receipt of the written appeal.

Program Components and Eligible Costs (Subpart D)

Program components. The interim rule provides that Continuum of Care funds may be used for projects under five program components: Permanent housing, transitional housing, supportive services only, HMIS, and, in some cases, homelessness prevention. Administrative costs are eligible under all components. Where possible, the components set forth in the Continuum of Care program are consistent with the components set forth under the Emergency Solutions Grants program. This will ease the administrative burden on recipients of both programs and will ensure that reporting requirements and data quality benchmarks are consistently established and applied to like projects. One significant distinction between the Emergency Solutions Grants program and this part can be found in the eligible activities and administration requirements for assistance provided under the rapid rehousing component in this interim rule. The significant differences between this component in the Emergency Solutions Grants program and this part are discussed below.

The interim rule sets forth the costs eligible for each program component in § 578.37(a). The eligible costs for contributing data to the HMIS designated by the Continuum of Care are also eligible under all components.

Consistent with the definition of permanent housing in section 401 of the McKinney-Vento Act and § 578.3 of this interim rule, the permanent housing component is community-based housing without a designated length of stay that permits formerly homeless individuals and families to live as independently as possible. The interim rule clarifies that Continuum of Care funds may be spent on two types of permanent housing: Permanent supportive housing for persons with disabilities (PSH) and rapid rehousing that provides temporary assistance (i.e., rental assistance and/or supportive services) to program participants in a unit that the program participant retains after the assistance ends.

Although the McKinney-Vento Act authorizes permanent housing without supportive services, the interim rule does not. Based on its experience with the Supportive Housing and Shelter Plus Care programs, HUD has

determined that programs should require at least case management for some initial period after exiting homelessness. HUD has imposed the requirement that rapid rehousing include, at a minimum, monthly case management meetings with program participants (except where prohibited by the Violence Against Women Act (VAWA) and the Family Violence Prevention and Services Act (FVPSA)) and allows for a full range of supportive services to be provided for up to 6 months after the rental assistance stops. Many other HUD programs, such as Section 8 and HOME, provide housing without supportive services to low-income individuals and families.

With respect to rapid rehousing, the interim rule provides that funds under this part may be used to provide supportive services and short-term and/or medium-term rental assistance. While the time frames under which a program participant may receive short-term or medium-term rental assistance set forth in this part match the time frames set forth in the Emergency Solutions Grants program, the supportive services available to program participants receiving rapid rehousing assistance under the Continuum of Care program are not limited to housing relocation and stabilization services as they are in the Emergency Solutions Grants program. Program participants receiving rapid rehousing under this part may receive any of the supportive services set forth in § 578.53 during their participation in the program. The Continuum of Care, however, does have the discretion to develop written policies and procedures that limit the services available to program participants that better align the services available to program participants with those set forth in the Emergency Solutions Grants program.

Specific request for comment. While HUD's experience with the Supportive Housing and Shelter Plus Care programs is the basis for HUD's determination to require case management for some initial period after exiting homelessness, HUD specifically welcomes comment on other experiences with monthly case management.

The interim rule provides that the HMIS component is for funds that are used by HMIS Leads only. Eligible costs include leasing a structure in which the HMIS is operated, operating funds to operate a structure in which the HMIS is operated, and HMIS costs related to establishing, operating, and customizing a Continuum of Care's HMIS.

As set forth in Section 424(c) of the McKinney-Vento Act, Continuum of Care funds may be used only for the

homelessness prevention component by recipients in Continuums of Care that have been designated HPCs by HUD. Eligible activities are housing relocation and stabilization services, and short- and/or medium-term rental assistance, as set forth in 24 CFR 576.103, necessary to prevent an individual or family from becoming homeless.

Planning activities. Under this interim rule, HUD lists eligible planning costs for the Continuum of Care under § 578.39(b) and (c). HUD will allow no more than 3 percent of the FPRN, or a maximum amount to be established by the NOFA, to be used for certain costs. These costs must be related to designing a collaborative process for an application to HUD, evaluating the outcomes of funded projects under the Continuum of Care and Emergency Solutions Grants programs, and participating in the consolidated plan(s) for the geographic area(s). Under section 423 of the McKinney-Vento Act, a collaborative applicant may use no more than 3 percent of total funds made available to pay for administrative costs related to Continuum of Care planning.

HUD is defusing "of the total funds made available" to mean FPRN, the higher of PPRN or renewal demand, in the interim rule. HUD has determined that FPRN strikes the correct balance, as it is the higher of PPRN or renewal demand. This will help Continuums of Care (CoC) balance: (1) Having sufficient planning dollars to be successful in its duties and compete for new money (which would be the PPRN), and (2) being able to monitor and evaluate actual projects in operation (and plan for renewal demand). The administrative funds related to CoC planning made available will be added to a CoC's FPRN to establish the CoC's maximum award amount.

Unified Funding Agency Costs. Under this interim rule, HUD lists eligible UFA costs in § 578.41(b) and (c). Similar to the cap on planning costs for CoC, HUD will allow no more than 3 percent of the FPRN, or a maximum amount to be established by the NOFA, whichever is less, to be used for UFA costs. This amount is in addition to the amount made available for CoC planning costs. UFA costs include costs associated with ensuring that all financial transactions carried out under the Continuum of Care program are conducted and records maintained in accordance with generally accepted accounting principles, including arranging for an annual survey, audit, or evaluation of the financial records of each project carried out by a subrecipient funded by a grant received through the Continuum of Care program. The funds made

available to UFAs related to establishing fiscal controls will be added to a CoC's FPRN to establish the CoC maximum award amount.

Leasing. Under this interim rule, grant funds may be used to pay the costs of leasing a structure or structures, or portions of structures, to provide housing or supportive services. The interim rule further clarifies that leasing means that the lease is between the recipient of funds and the landlord. HUD recognizes that some grantees receiving funds through the Supportive Housing Program may have been using their leasing funds in a manner consistent with the rental assistance requirements established in § 578.51; therefore, since the Continuum of Care program authorizes both leasing and rental assistance, the rule provides for an allowance for projects originally approved to carry out leasing to renew and request funds for rental assistance, so long as the rental assistance meets the requirements in § 578.51. The rule provides that a recipient of a grant awarded under the McKinney-Vento Act, prior to enactment of the HEARTH Act, must apply for leasing if the lease is between the recipient and the landlord, notwithstanding that the grant was awarded prior to the HEARTH Act amendments to the McKinney-Vento Act.

The interim rule provides that leasing funds may not be used to lease units or structures owned by the recipient, subrecipient, their parent organization(s), any other related organization(s), or organizations that are members of a partnership where the partnership owns the structure, unless HUD authorizes an exception for good cause. The interim rule establishes minimum requirements that a request for an exception must include. These exceptions are based on HUD's experience in administering the Homelessness Prevention and Rapid Re-Housing Program (HPRP).

The interim rule establishes that projects for leasing may require that program participants pay an occupancy charge (or in the case of a sublease, rent) of no more than 30 percent of their income. Income must be calculated in accordance with HUD's regulations in 24 CFR 5.609 and 24 CFR 5.611(a). However, the interim rule clarifies that projects may not charge program fees.

Rental assistance. Under this interim rule, rental assistance is an eligible cost for permanent and transitional housing, and this rule clarifies that the rental assistance may be short-term, up to 3 months of rent; medium-term, for 3 to 24 months of rent; and long-term, for longer than 24 months of rent. This

section provides that rental assistance may include tenant-based, project-based, or sponsor-based rental assistance. This section also provides that project-based rental assistance may include rental assistance to preserve existing permanent supportive housing for homeless individuals and families. Given that the availability of affordable rental housing has been shown to be a key factor in reducing homelessness, the availability of funding for short-term, medium-term, and long-term rental assistance under both the Emergency Solutions Grants program and the Continuum of Care program is not inefficient use of program funds, but rather effective use of funding for an activity that lowers the number of homeless persons.

As noted in the above discussion of rental housing available for funding under the Continuum of Care program, one eligible form of rental assistance is tenant-based, which allows the program participant to retain rental assistance for another unit. The interim rule limits this retention to within the Continuum of Care boundaries. HUD has determined that Continuum of Care program funds must be used within the Continuum's geographic boundaries. If program participants move outside of the Continuum, the Continuum may pay moving costs, security deposits, and the first month of rent for another unit; however, the Continuum would have to organize assistance with the relevant Continuum of Care for the program participant if rental assistance is to continue. The program participant may be transferred to a rental assistance program in a different Continuum without having to become homeless again. The recipient may also limit the movement of the assistance to a smaller area if this is necessary to coordinate service delivery.

Under this interim rule, the only exception to the limitation for retention of tenant-based rental assistance is for program participants who are victims of domestic violence, dating violence, sexual assault, or stalking. Under the definition of "tenant-based" in the McKinney-Vento Act (section 401(28) of the McKinney-Vento Act), these participants must have complied with all other obligations of the program and reasonably believe that he or she is imminently threatened by harm from further violence if he or she remains in the assisted dwelling unit.

In the interim rule, HUD has clarified that the imminent threat of harm must be from further domestic violence, dating violence, sexual assault, or stalking, which would include threats from a third party, such as a friend or

family member of the perpetrator of the violence. HUD requires that the program participant provide appropriate documentation of the original incident of domestic violence, dating violence, sexual assault, or stalking, and any evidence of the current imminent threat of harm. Examples of appropriate documentation of the original incident of domestic violence, dating violence, sexual assault, or stalking include written observation by the housing or service provider; a letter or other documentation from a victim service provider, social worker, legal assistance provider, pastoral counselor, mental health provider, or other professional from whom the victim has sought assistance; or medical or dental, court, or law enforcement records. Documentation of reasonable belief of further domestic violence, dating violence, sexual assault, or stalking includes written observation by the housing or service provider; a letter or other written documentation from a victim service provider, social worker, legal assistance provider, pastoral counselor, mental health provider, or other professional from whom the victim has requested assistance; a current restraining order, recent court order, or other court records; or law enforcement reports or records. The housing or service provider may also consider other documentation such as emails, voicemails, text messages, social media posts, and other communication. Because of the particular safety concerns surrounding victims of domestic violence, the interim rule provides that acceptable evidence for both the original violence and the reasonable belief include an oral statement. This oral statement does not need to be verified, but it must be documented by a written certification by the individual or head of household.

This provision is specific to victims of domestic violence, dating violence, sexual assault, and stalking who are receiving tenant-based rental assistance in permanent housing. This interim rule contains other policies for moving program participants receiving any type of assistance under this interim rule, including tenant-based rental assistance within the Continuum of Care geographic area, or smaller geographic area required by the provider to coordinate service delivery. Moving program participants outside of the geographic area where providers can coordinate service-delivery is administratively difficult for providers and makes it difficult to monitor that program participants have access to, and are receiving, appropriate supportive

services; therefore, moves outside of the geographic area where the provider can effectively deliver and monitor service coordination are allowed only under exceptional circumstances. HUD has established these provisions to provide an exception and to address the challenges that are associated with such a move.

Based on HUD's experience in administering the Shelter Plus Care program, the interim rule includes provisions to clarify when rental payments may continue to be made to a landlord when the program participant no longer resides in the unit. For vacated units, the interim rule provides that assistance may continue for a maximum of 30 days from the end of the month in which the unit was vacated, unless the unit is occupied by another eligible person. A person staying in an institution for less than 90 days is not considered as having vacated the unit. Finally, the recipient may use grant funds, in an amount not to exceed one month's rent, to pay for any damage to housing due to the action of the program participant, one-time, per program participant, per unit. This assistance can be provided only at the time the program participant exits the housing unit.

Supportive services. Grant funds may be used to pay eligible costs of supportive services for the special needs of program participants. All eligible costs are eligible to the same extent for program participants who are unaccompanied homeless youth; persons living with Human Immunodeficiency Virus (HIV)/Acquired Immune Deficiency Syndrome (AIDS) (HIV/AIDS); and victims of domestic violence, dating violence, sexual assault, or stalking. Any cost that is not described as an eligible cost under this interim rule is not an eligible cost of providing supportive services. Eligible costs consist of assistance with moving costs, case management, child care, education services, employment assistance and job training, housing search and counseling services, legal services, life skills training, mental health services, outpatient health services, outreach services, substance abuse treatment services, transportation, and utility deposits.

The definition of "supportive services" in section 401(27) of the McKinney-Vento Act includes the provision of mental health services, trauma counseling, and victim services. HUD has determined that victim services are eligible as supportive services, and are included as eligible program costs in this interim rule. Providers are allowed to provide

services specifically to victims of domestic violence, dating violence, sexual assault, and stalking. The eligible costs for providing victim services are listed as eligible costs in the supportive services funding category. Rather than create a new eligible line item in the project budget, HUD has determined that these costs can be included in the funding categories already established.

Indirect costs. Indirect costs are allowed as part of eligible program costs. Programs using indirect cost allocations must be consistent with Office of Management and Budget (OMB) Circulars A-87 and A-122, as applicable. OMB Circular A-87 and the regulations at 2 CFR part 225 pertain to "Cost Principles for State, Local, and Indian Tribal Governments." OMB Circular A-122 and the regulations codified at 24 CFR part 230 pertain to "Cost Principles for Non-Profit Organizations."

Other costs. In addition to the eligible costs described in this preamble, the regulation addresses the following other eligible costs: acquisition, rehabilitation, new construction, operating costs, HMIS, project administrative costs, and relocation costs.

High-Performing Communities (Subpart E)

Section 424 of the McKinney-Vento Act establishes the authority for the establishment of and requirements for HPCs. Applications must be submitted by the collaborative applicant at such time and in such manner as HUD may require and contain such information as HUD determines necessary under § 578.17(b). Applications will be posted on the HUD Web site (www.hud.gov) for public comments. In addition to HUD's review of the applications, interested members of the public will be able to provide comment to HUD regarding the applications.

Requirements. The Continuum of Care must use HMIS data (HUD will publish data standards and measurement protocols) to determine that the standards for qualifying as a HPC are met. An applicant must submit a report showing how the Continuum of Care program funds were expended in the prior year, and provide information that the Continuum meets the standards for HPCs.

Standards. In order to qualify as an HPC, a Continuum of Care must demonstrate through reliable data that it meets all of the required standards. The interim rule clarifies which standards will be measured with reliable data from a Continuum's HMIS and which standards will be measured through reliable data from other sources and

presented in a narrative form or other format prescribed by HUD.

Continuums must use the HMIS to demonstrate the following measures: (1) That the mean length of homelessness must be less than 20 days for the Continuum's geographic area, or the Continuum's mean length of episodes for individuals and families in similar circumstances was reduced by at least 10 percent from the preceding year; (2) that less than 5 percent of individuals and families that leave homelessness become homeless again any time within the next 2 years, or the percentage of individuals and families in similar circumstances who became homeless again within 2 years after leaving homelessness was decreased by at least 20 percent from the preceding year; and (3) for Continuums of Care that served homeless families with youth defined as homeless under other federal statutes, that 95 percent of those families did not become homeless again within a 2-year period following termination of assistance and that 85 percent of those families achieved independent living in permanent housing for at least 2 years following the termination of assistance.

The McKinney-Vento Act requires that HUD set forth standards for preventing homelessness among the subset of those at the highest risk of becoming homeless among those homeless families and youth defined as homeless under other federal statutes, the third measure above, one of which includes achieving independent living in permanent housing among this population. HUD has set forth the standards of 95 percent and 85 percent. HUD recognizes that these standards are high, but standards are comparable to the other standards in the Act, which are high. It is HUD's position that HPCs should be addressing the needs of those homeless individuals within their communities prior to receiving designation of a HPC and being allowed to spend funds in accordance with § 578.71.

The final standard that the Continuum must use its HMIS data to demonstrate is provided under section 424(d)(4) of the Act. The statute requires each homeless individual or family who sought homeless assistance to be included in the data system used by that community. HUD has defined this as bed-coverage and service-volume coverage rates of at least 80 percent. The documentation that each homeless individual or family who sought homeless assistance be included in the HMIS is not measurable by HUD. This type of standard would be entirely reliant upon self-reporting. Additionally, individuals and families

have the right to decline having their data entered into the HMIS. HUD uses bed-coverage rates and service-volume coverage rates as a proxy for measuring the rate of inclusion of persons who are present for services or housing in the HMIS. This is a measurable standard, and HUD defines the calculation in the HMIS rule; therefore, the measurement will be consistent between Continuums.

Continuums must use reliable data from other sources and presented in a narrative form or other format prescribed by HUD to measure two standards: Community action and renewing HPC status. Section 424(d)(4) of the McKinney-Vento Act establishes another standard for HPCs, which is "community action." This statutory section provides that communities that compose the geographic area must have actively encouraged homeless individuals and families to participate in housing and services available in the geographic area and included each homeless individual or family who sought homeless assistance services in the data system used by that community for determining compliance. HUD has defined "communities that compose the geographic area" to mean the entire geographic area of the Continuum. This definition will also provide consistency of measurement since most of HUD's measurements are across the entire Continuum of Care geographic area. HUD has further defined "actively encourage" within this standard as a comprehensive outreach plan, including specific steps for identifying homeless persons and referring them to appropriate housing and services in that geographic area. The measurement of the last part of this standard, "each homeless individual or family who sought homeless assistance services in the data system used by that community," will be measured using reliable data from an HMIS and has been discussed earlier in this preamble. HUD has determined this will provide clarity and ensure consistent measurement across Continuums.

The interim rule provides that a Continuum of Care that was an HPC in the prior year and used Continuum funds for activities described under § 578.71 must demonstrate that these activities were effective at reducing the number of persons who became homeless in that community, to be renewed as a HPC.

Selection. HUD will select up to 10 Continuums of Care each year that best meet the application requirements and the standards set forth in § 578.65. Consistent with section 424 of the McKinney-Vento Act, the interim rule provides a HPC designation for the

grants awarded in the same competition in which the designation is applied for and made. The designation will be for a period of one year.

Eligible activities. Recipients and subrecipients in Continuums that have been designated an HPC may use grant funds to provide housing relocation and stabilization services and short- and/or medium-term rental assistance to individuals and families at risk of homelessness as set for in the Emergency Solutions Grants program. All eligible activities discussed in this section must be effective at stabilizing individuals and families in their current housing, or quickly moving such individuals and families to other permanent housing. This is the only time that Continuum of Care funds may be used to serve nonhomeless individuals and families. Recipients and subrecipients using grant funds on these eligible activities must follow the written standards established by the Continuum of Care in § 578.7(a)(9)(v), and the recordkeeping requirements set for the Emergency Solutions Grants program rule.

Program Requirements (Subpart F)

All recipients of Continuum of Care funding must comply with the program regulations and the requirements of the NOFA issued annually by HUD.

Matching. The HEARTH Act allows for a new, simplified match requirement. All eligible funding costs except leasing must be matched with no less than a 25 percent cash or in-kind match. The interim rule clarifies that the match must be provided for the entire grant, except that recipients that are UFAs or are the sole recipient for the Continuum may provide the match on a Continuum-wide basis.

For in-kind match, the governmentwide grant requirements of HUD's regulations in 24 CFR 84.23 (for private nonprofit organizations) and 85.24 (for governments) apply. The regulations in 24 CFR parts 84 and 85 establish uniform administrative requirements for HUD grants. The requirements of 24 CFR part 84 apply to subrecipients that are private nonprofit organizations. The requirements of 24 CFR part 85 apply to the recipient and subrecipients that are units of general purpose local government. The match requirement in 24 CFR 84.23 and in 24 CFR 85.24 applies to administration funds, as well as Continuum of Care planning costs and UFA's financial management costs. All match must be spent on eligible activities as required under subpart D of this interim rule, except that recipients and subrecipients

in HPCs may use match on eligible activities described under § 578.71.

General operations. Recipients of grant funds must provide housing or services that comply with all applicable State and local housing codes, licensing requirements, and any other requirements in the project's jurisdiction. In addition, this interim rule clarifies that recipients must abide by housing quality standards and suitable dwelling size. Recipients must also assess supportive services on an ongoing basis, have residential supervision, and provide for participation of homeless individuals as required under section 426(g) of the McKinney-Vento Act.

Specific request for comment. With respect to housing quality standards, HUD includes in this rule the longstanding requirement from the Shelter Plus Care program that recipients or subrecipients, prior to providing assistance on behalf of a program participant, must physically inspect each unit to assure that the unit meets housing quality standards. This requirement is designed to ensure that program participants are placed in housing that is suitable for living. Additionally, these requirements are consistent with HUD's physical inspection requirements in its other mainstream rental assistance programs. Notwithstanding that this is a longstanding requirement, HUD welcomes comment on alternatives to inspection of each unit that may be less burdensome but ensure that the housing provided to a program participant is decent, safe, and sanitary.

Under Section 578.75, General Operations, subsection (h), entitled "Supportive Service Agreements," states that recipients and subrecipients may require program participants to take part in supportive services so long as they are not *disability-related* services, provided through the project as a condition of continued participation in the program. Examples of disability-related services include, but are not limited to, mental health services, outpatient health services, and provision of medication, which are provided to a person with a disability to address a condition caused by the disability.

This provision further states that if the purpose of the project is to provide substance abuse treatment services, recipients and subrecipients may require program participants to take part in such services as a condition of continued participation in the program. For example, if a Continuum of Care recipient operates a transitional housing program with substance abuse treatment

services, the recipient may require program participants to participate in those services. By contrast, in a program that offers services but whose purpose is not substance abuse treatment, a recipient may not require a person who is an alcoholic, for example, to sign a supportive service agreement at initial occupancy stating that he or she will participate in substance abuse treatment services as a condition of occupancy. All program participants must, however, meet all terms and conditions of tenancy, including lease requirements. If, as a result of a person's behavior stemming from substance use, a person violates the terms of the lease, a recipient may consider requiring participation in services or any other action necessary in order for such a person to successfully meet the requirements of tenancy.

Finally, the interim rule clarifies that in units where the qualifying member of the household has died, or has been incarcerated or institutionalized for more than 90 days, assistance may continue until the expiration of the lease in effect at the time of the qualifying member's death, incarceration, or institutionalization.

Displacement, relocation, and acquisition. All recipients must ensure that they have taken all reasonable steps to minimize the displacement of persons as a result of projects assisted under this part. This section of the interim rule is substantially revised from the previous programs to increase clarity and comprehension of the directions to recipients and subrecipients in the use of grant funds.

Timeliness standards. Recipients must initiate approved activities and projects promptly. Recipients of funds for rehabilitation and new construction must begin construction activities within 9 months of the signing of the grant, and such activities must be completed within 24 months. HUD is providing these requirements to assist communities in meeting the obligation and expenditure deadline historically imposed by the annual HUD appropriations act. HUD may reduce a grant term to a term of one year if implementation delays reduce the amount of funds that can be used during the original grant term.

Limitation on use of funds. Recipients of funds provided under this part must abide by any limitations that apply to the use of such funds, such as use of funds for explicitly religious activities.

The limitation on use of funds also addresses limitation on uses where religious activities may be concerned. It is HUD's position that faith-based organizations are able to compete for

HUD funds and participate in HUD programs on an equal footing with other organizations; that no group of applicants competing for HUD funds should be subject, as a matter of discretion, to greater or fewer requirements than other organizations solely because of their religious character or affiliation, or, alternatively, the absence of religious character or affiliation. HUD's general principles regarding the equal participation of such organizations in its programs are codified at 24 CFR 5.109. Program-specific requirements governing faith-based activities are codified in the regulations for the individual HUD programs. (See, for example, 24 CFR 574.300(c), 24 CFR 582.115(c), and 24 CFR 583.150(b).)

HUD's equal participation regulations were prompted by Executive Order 13279, Equal Protection of the Laws for Faith-Based and Community Organizations, issued by President Bush on December 12, 2002, and published in the *Federal Register* on December 16, 2002 (67 FR 77141). Executive Order 13279 set forth principles and policymaking criteria to guide federal agencies in ensuring the equal protection of the laws for faith-based and community organizations. Executive Order 13279 was amended by Executive Order 13559 (Fundamental Principles and Policymaking Criteria for Partnerships With Faith-Based and Other Neighborhood Organizations), issued by President Obama on November 17, 2010, and published in the *Federal Register* on November 22, 2010 (75 FR 71319).

Executive Order 13559 expands on the equal participation principles provided in Executive Order 13279 to strengthen the capacity of faith-based and other neighborhood organizations to deliver services effectively and ensure the equal treatment of program beneficiaries. Executive Order 13559 reiterates a key principle underlying participation of faith-based organizations in federally funded activities and that is that faith-based organizations be eligible to compete for federal financial assistance used to support social service programs and to participate fully in social service programs supported with federal financial assistance without impairing their independence, autonomy, expression outside the programs in question, or religious character.

With respect to program beneficiaries, the Executive Order states that organizations, in providing services supported in whole or in part with federal financial assistance, and in their outreach activities related to such

services, should not be allowed to discriminate against current or prospective program beneficiaries on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice. The Executive Order directs that organizations that engage in explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization) must perform such activities and offer such services outside of programs that are supported with direct federal financial assistance (including through prime awards or subawards), separately in time or location from any such programs or services supported with direct federal financial assistance, and participation in any such explicitly religious activities must be voluntary for the beneficiaries of the social service program supported with such federal financial assistance. For purposes of greater clarity and comprehensibility, the Executive Order uses the term "explicitly religious" in lieu of "inherently religious." The Executive Order further directs that if a beneficiary or prospective beneficiary of a social service program supported by federal financial assistance objects to the religious character of an organization that provides services under the program, that organization shall, within a reasonable time after the date of the objection, refer the beneficiary to an alternative provider.

Executive Order 13559 provides for the establishment of an Interagency Working Group on Faith-Based and Other Neighborhood Partnerships (Working Group) to review and evaluate existing regulations, guidance documents, and policies, and directs the OMB to issue guidance to agencies on uniform implementation following receipt of the Working Group's report. On April 27, 2012, the Working Group issued its report, recommending a model set of regulations and guidance for agencies to adopt.¹

HUD intends to wait for OMB guidance before initiating any rulemaking directed to broader changes to HUD's existing faith-based regulations, to ensure consistency with faith-based regulations of other federal agencies. However, HUD has revised its regulatory provisions governing faith-based activities to incorporate the principles of Executive Order 13559 pertaining to equal treatment of program beneficiaries and to adopt terminology, such as "explicitly religious" and "overt

¹ The report is available at: <http://www.whitehouse.gov/sites/default/files/uploads/finalfaithbasedworkinggroupreport.pdf>.

religious content," that offers greater clarity to the limitations placed on faith-based organizations when using federal funds for their supportive services. Additionally, HUD is putting in place through this rulemaking the provision of Executive Order 13559 that directs the referral to alternative providers. Executive Order 13559 provides that if a beneficiary or prospective beneficiary of a social service program supported by federal financial assistance objects to the religious character of an organization that provides services under the program, that organization shall, within a reasonable time frame after the date of the objection, refer the beneficiary to an alternative provider. While HUD will benefit from OMB guidance on other provisions of the Executive Order, specifically those which the Working Group is charged to provide recommendations, the "referral" provision of the Executive Order is one that HUD believes it can immediately put in place. HUD may, following receipt of public comment and further consideration of this issue, revise how recipients and subrecipients document the referral to other providers when beneficiaries may assert objections to the original provider. For now, HUD is requiring that any objections and any referrals be documented in accordance with the recordkeeping provisions of § 578.013.

This section of the interim rule also contains limitations on the types of eligible assistance that may not be combined in a single structure or housing unit. As the Continuum of Care substantially increases the types of assistance that may be combined in a project from previous programs, HUD has established standards in this section to provide recipients with clarity about the types of activities that may not be carried out in a single structure or housing unit.

Termination of assistance. The interim rule provides that a recipient may terminate assistance to a participant who violates program requirements or conditions of occupancy. The recipient must provide a formal process that recognizes the due process of law. Recipients may resume assistance to a participant whose assistance has been terminated.

Recipients that are providing permanent supportive housing for hard-to-house populations of homeless persons must exercise judgment and examine all circumstances in determining whether termination is appropriate. Under this interim rule, HUD has determined that a participant's assistance should be terminated only in the most severe cases. HUD is carrying

over this requirement from the Shelter Plus Care program.

Fair Housing and Equal Opportunity requirements. The Continuum of Care, as well as its members and subrecipients, are required to comply with applicable civil rights laws. Section 578.93, addressing nondiscrimination and equal opportunity requirements, is provided to offer greater direction to recipients and subrecipients on the use of grant funds. Section 578.93(a) states that the nondiscrimination and equal opportunity requirements set forth in 24 CFR 5.105(a) apply. This includes, but is not limited to, the Fair Housing Act, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973 (Section 504), and title II of the Americans with Disabilities Act.

Section 578.93(b) explains when recipients and subrecipients may exclusively serve a particular subpopulation in transitional or permanent housing. As part of these requirements, recipients must also administer programs and activities receiving federal financial assistance in the most integrated setting appropriate to the needs of qualified individuals with disabilities. This "integration mandate" requires that HUD-funded programs or activities enable individuals with disabilities to interact with nondisabled persons to the fullest extent possible. In reviewing requests for funding through the Continuum of Care NOFA, HUD will be considering each recipient's proposals to provide integrated housing to individuals with disabilities.

There are certain situations in which a recipient or subrecipient may limit housing to a specific subpopulation, so long as admission does not discriminate against any protected class, as well as instances where recipients or subrecipients may limit admission or provide a preference to certain subpopulations of homeless persons and families who need the specialized services provided in the housing. For example, § 578.93(b)(2) states that the housing may be limited to homeless veterans, so long as admission is not denied based on any membership in a protected class; e.g., homeless veterans with families must be admitted. Similarly, housing may be limited to domestic violence victims and their families or persons who are at risk of institutionalization, so long as admission is not denied based on any membership in a protected class.

Section 578.93(b)(3) states that housing may be limited to families with children.

Section 578.93(b)(1) states that, in consideration of personal privacy, housing may only be limited to a single sex when such housing consists of a single structure with shared bedrooms or bathing facilities such that the considerations of personal privacy and the physical limitations of the configuration of the housing make it appropriate for the housing to be limited to one sex.

Further, §§ 578.93(b)(4) and (5) clearly outline instances when sex offenders or violent offenders may be excluded from housing, and when projects providing sober housing may exclude persons.

HUD's Section 504 regulations permit housing funded under a particular program to be reserved for persons with a specific disability when a federal statute or executive order specifically authorizes such a limitation. Section 578.93(b)(6) states that if the housing is assisted with funds under a federal program that is limited by federal statute or executive order to a specific subpopulation, the housing may be limited to that subpopulation.

Section 578.93(b)(7) provides clarification to recipients of funds under this part as to when a project can limit admission to a specific subpopulation of homeless individuals and families based on the service package offered in the project. To help recipients better understand these requirements, the following paragraphs provide a detailed explanation of the regulatory provision, along with a few examples.

Section 578.93(b)(7) states that recipients may limit admission to or provide a preference for the housing to subpopulations of homeless persons and families who need the specialized supportive services that are provided in the housing. The regulation contains the following examples: Substance abuse addiction treatment, domestic violence services, or a high-intensity package designed to meet the needs of hard-to-reach homeless persons. However, § 578.93(b)(7) further states that while the housing may offer services for a particular type of disability, no otherwise eligible individual with a disability, or family that includes an individual with a disability, who may benefit from the services provided may be excluded on the grounds that they do not have a particular disability. Below are general examples to offer guidance on this subsection. Please note that these examples are nonexhaustive, but emphasize that the proper focus is on the services available as part of the Continuum of Care project as opposed to a person's category or subcategory of disability. While these general principles are offered to help clarify this

section, a change in the factual scenario may change the analysis.

One clarifying example is as follows. A private, nonprofit organization or a local government applies for and receives a new grant under this part to provide project-based rental assistance and services, including case management, intensive therapy provided by a psychiatrist, and medication management. The recipient or subrecipient may establish a preference for individuals who are chronically homeless. When filling an opening in the housing, the recipient or subrecipient may target chronically homeless individuals or families, but if there are no such individuals or families either on a waiting list or applying for entrance to the program, the recipient or subrecipient cannot deny occupancy to individuals or families who apply for entrance into the program and who may benefit from the services provided. When filling a vacancy in the housing, the recipient or subrecipient, if presented with two otherwise eligible persons, one who is chronically homeless and one who is not, may give a preference to the chronically homeless individual.

By comparison, § 578.93(b)(6) addresses situations where Continuum of Care funds are combined with HUD funding for housing that may be restricted to a specific disability. For example, if Continuum of Care funds for a specific project are combined with construction or rehabilitation funding for housing from the Housing Opportunities for People With AIDS program, the program may limit eligibility for the project to persons with HIV/AIDS and their families. An individual or a family that includes an individual with a disability may be denied occupancy if the individual or at least one member of the family does not have HIV/AIDS.

In another example, a private, nonprofit organization applies for and receives Continuum of Care funds from a local governmental entity to rehabilitate a five-unit building, and provides services including assistance with daily living and mental health services. While the nonprofit organization intends to target and advertise the project as offering services for persons with developmental disabilities, an individual with a severe psychiatric disability who does not have a developmental disability but who can benefit from these services cannot be denied.

Section 578.93(e) incorporates the "preventing involuntary family separation" requirement set forth in Section 404 of the McKinney-Veto Act

into this interim rule. This provision clarifies, especially for projects where the current policy is to deny the admittance of a boy under the age of 18, that denying admittance to a project based on age and gender is no longer permissible. HUD encourages Continuums of Care to use their centralized or coordinated assessment systems to find appropriate shelter or housing for families with male children under the age of 18.

Specific request for comment. HUD specifically seeks comments from Continuum of Care-funded recipients on this requirement. HUD invites comments about the difficulty that recipients are going to experience, if any, in implementing this requirement. In addition to comments about the difficulties, HUD invites communities that have already implemented this requirement locally to describe their methods for use in HUD's technical assistance materials and for posting on the HUD Homeless Resource Exchange.

Other standards. In addition to the program requirements described in this preamble, the interim rule sets forth other program requirements by which all recipients of grant funds must abide. These include a limitation on the use of grant funds to serve persons defined as homeless under other federal laws, conflicts of interest standards, and standards for identifying uses of program income.

Additionally, recipients are required to follow other federal requirements contained in this interim rule under § 578.99. These include compliance with such federal requirements as the Coastal Barriers Resources Act, OMB Circulars, HUD's Lead-Based Paint regulations, and audit requirements. The wording of these requirements has been substantially revised from previous programs, with the objective being to increase clarity and comprehension of the directions to recipients and subrecipients in the use of grant funds.

Administration (Subpart G)

Technical assistance. The purpose of technical assistance under the Continuum of Care program is to increase the effectiveness with which Continuums of Care, eligible applicants, recipients, subrecipients, and UFAs implement and administer their Continuum of Care planning process. Technical assistance will also improve the capacity to prepare applications, and prevent the separation of families in projects funded under the Emergency Solutions Grants, Continuum of Care, and Rural Housing Stability Assistance programs. Under this interim rule, technical assistance means the transfer

of skills and knowledge to entities that may need, but do not possess, such skills and knowledge. The assistance may include written information, such as papers, manuals, guides, and brochures; person-to-person exchanges; and training and related costs.

Therefore, as needed, HUD may advertise and competitively select providers to deliver technical assistance. HUD may enter into contracts, grants, or cooperative agreements to implement the technical assistance. HUD may also enter into agreements with other federal agencies when awarding technical assistance funds.

Recordkeeping requirements. Grant recipients under the Supportive Housing Program and the Shelter Plus Care program have always been required to show compliance with regulations through appropriate records. However, the existing regulations are not specific about the records to be maintained. The interim rule for the Continuum of Care program elaborates upon the recordkeeping requirements to provide sufficient notice and clarify the documentation that HUD requires for assessing compliance with the program requirements. The recordkeeping requirements for documenting homeless status were published in the December 5, 2011, Defining Homeless final rule. Because these recordkeeping requirements already went through a 60-day comment period, HUD is not seeking further comment on these requirements. Additionally, recordkeeping requirements with similar levels of specificity apply to documentation of "at risk of homelessness" and these requirements can be found in § 576.500(c) of the Emergency Solutions Grants program interim rule published on December 5, 2011. Because the documentation requirements pertaining to "at risk of homelessness" were already subject to a 60-day public comment period, HUD is not seeking additional comment on these requirements. Further requirements are modeled after the recordkeeping requirements for the HOME Investment Partnerships Program (24 CFR 92.508) and other HUD regulations.

Included along with these changes are new or expanded requirements regarding confidentiality, rights of access to records, record retention periods, and reporting requirements. Most significantly, to protect the safety and privacy of all program participants, the Continuum of Care rule broadens the program's confidentiality requirements. The McKinney-Veto Act requires only procedures to ensure the

confidentiality of records pertaining to any individual provided family violence prevention or treatment services under this program. The interim rule requires written procedures to ensure the security and confidentiality of all records containing personally identifying information of any individual or family who applies for and/or receives Continuum of Care assistance.

Grant and project changes. The interim rule provides that recipients of grants may not make any significant changes to use of grant funds without prior HUD approval, evidenced by a grant amendment signed by HUD and the recipient. The interim rule provides separate standards for determining when a grant amendment is required for Continuums having only one recipient, including UFAs, and Continuums having more than one recipient. Additionally, the interim rule provides contingencies that must be met before HUD will approve the grant amendment. These contingencies are necessary to ensure that recipients meet the capacity requirements established in the NOFA and to ensure that eligible persons within the geographic area are better served and, since the Continuum of Care program is a competitive program, that the priorities established under the NOFA continue to be met. Any changes to an approved grant or project that do not require a grant amendment, as set forth in this section, must be fully documented in the recipient's or subrecipient's records.

Sanctions. The interim rule establishes sanctions based on existing regulations and strengthens the enforcement procedures and array of remedial actions and sanctions for recipients and subrecipients of Continuum of Care funds. These revisions draw from the requirements at 24 CFR 85.43 and other HUD program regulations.

Close-out. The interim rule provides that grants must be closed out at the end of their grant term if recipients are not seeking renewal. Section 578.109 of this interim rule specifies the actions that must be taken after the closeout, including grantee submission of financial, final performance, or other reports required by HUD within 90 days of the end of the grant term. Any unused funds must be deobligated and returned to HUD.

The interim rule stipulates, for grants seeking renewal, that failure to submit final performance reports, or other reports required by HUD within 90 days, may cause renewal funds to be withdrawn and grant funds expended on the renewal grant to be repaid.

III. Regulations for HUD Homeless Assistance Programs Existing Prior to Enactment of HEARTH Act

Because grants are still being administered under the Shelter Plus Care program and the Supportive Housing program, the regulations for these programs in 24 CFR parts 582, and 583, respectively, will remain in the Code of Federal Regulations for the time being. When no more, or very few, grants remain under these programs, HUD will remove the regulations in these parts by a separate rule (if no grants exist) or will replace them with a savings clause, which will continue to govern grant agreements executed prior to the effective date of the HEARTH Act regulations.

IV. Conforming Regulations

In addition to establishing the new regulations for the Continuum of Care program, HUD is amending the following regulations, which reference the Shelter Plus Care Program and the Supportive Housing Program, to include reference to the Continuum of Care program. These regulations are the regulations pertaining to: (1) Family Income and Family Payment; Occupancy Requirements for Section 8 and Public Housing, Other HUD-Assisted Housing Serving Persons with Disabilities, and Section 8 Project-Based Assistance, the regulations for which are in 24 CFR part 5, subpart F, specifically, § 5.601 (Purpose and Applicability), paragraphs (d) and (e) of this section; § 5.603 (Definitions), specifically the definition of "Responsible Entity;" § 5.617 (Self-Sufficiency Incentives for Persons with Disabilities—Disallowance of Increase in Annual Income), paragraph (a) of this section; (2) Environmental Review Responsibilities for Entities Assuming HUD Environmental Responsibilities, the regulations for which are in 24 CFR part 58, specifically § 58.1 (Purpose and Applicability), paragraph (b)(3) of this section; and (3) the Consolidated Submissions for Community Planning and Development Programs, the regulations for which are in 24 CFR part 91, specifically, § 91.2 (Applicability), paragraph (b) of this section.

V. Justification for Interim Rulemaking

In accordance with its regulations on rulemaking at 24 CFR part 10, HUD generally publishes its rules for advance public comment.² Notice and public

² The Administrative Procedure Act (5 U.S.C. Subchapter II) (APA), which governs federal rulemaking, provides in section 553(a) that matters involving a military or foreign affairs function of the United States or a matter relating to federal agency

procedures may be omitted, however, if HUD determines that, in a particular case or class of cases, notice and public comment procedure are "impracticable, unnecessary, or contrary to the public interest." (See 24 CFR 10.1.)

In this case, HUD has determined that it would be contrary to the public interest to delay promulgation of the regulations for the Continuum of Care program.³ Congress has provided funding for this new program in the Consolidated and Further Continuing Appropriations Act, 2012 (Pub. L. 112-55, approved November 18, 2011) (FY 2012 Appropriations Act). The FY 2012 Appropriations Act, under the account for Homeless Assistance Grants, appropriates not less than \$1.593 billion for the Continuum of Care and Rural Housing Stability programs. While many federal programs, including HUD programs, received a reduction in funding in the FY 2012 Appropriations Act, Congress increased funding for HUD's homeless assistance grants, including the Continuum of Care program. Additionally, the Conference Report accompanying the FY 2012 Appropriations Act (House Report 112-284) states in relevant part, as follows: "The conferees express concern that HUD continued to implement pre-HEARTH grant programs in FY 2011, due to a lack of regulations. The conferees direct HUD to publish at least interim guidelines for the Emergency Solutions Grants and Continuum of Care programs this fiscal year and to implement the new grant programs as soon as possible so that the updated policies and practices in HEARTH can begin to govern the delivery of homeless assistance funding." (See Conf. Rpt. at page 319. Emphasis added.) Given this congressional direction, HUD is issuing this rule providing for regulations for the Continuum of Care program as an interim rule. Having interim regulations in place will allow HUD to move forward in making FY 2012 funds available to grantees, and avoid a significant delay that would result from issuance, first, of a proposed rule. As

management or personnel or to public property, loans, grants, benefits, or contracts are exempt from the advance notice and public comment requirement of sections 553(b) and (c) of the APA. In its regulations in 24 CFR 10.1, HUD has waived the exemption for advance notice and public comment for matters that relate to public property, loans, grants, benefits, or contracts, and has committed to undertake notice and comment rulemaking for these matters.

³ Although HUD's regulation in 24 CFR 10.1 provide that HUD will involve public participation in its rulemaking, this regulation also provides that notice and public procedure will be omitted if HUD determines in a particular case or class of cases that notice and public procedure are impracticable, unnecessary, or contrary to the public interest.

has been discussed in this preamble, the foundation for the Continuum of Care regulations is the criteria and requirements provided in NOFAs for the Continuum of Care Homeless Assistance Grants Competition program, which HUD has funded for more than 10 years. Through the Continuum of Care Homeless Assistance Grants Competition program, HUD provided funding for the Supportive Housing program, the Shelter Plus Care program, and the Section 8 Moderate Rehabilitation Single Room Occupancy program. The HEARTH Act consolidated these three competitive programs into the statutorily established Continuum of Care program, which was established as a single grant program. Interim regulations will provide certainty with respect to funding requirements and eligible expenditures for FY 2012, and the public comment solicited through this interim rule will help inform the public procedures that HUD is contemplating in its regulations in 24 CFR part 10, and this public comment, in turn, will inform the final rule that will follow this interim rule and govern the funding years following FY 2012.

For the reasons stated above, HUD is issuing this rule to take immediate effect, but welcomes all comments on this interim rule and all comments will be taken into consideration in the development of the final rule.

VI. Findings and Certifications

Regulatory Review—Executive Orders 12866 and 13563

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and, therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are “outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.” Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. This rule was determined to be a “significant regulatory action,” as defined in section 3(f) of Executive Order 12866 (although not an economically significant

regulatory action, as provided under section 3(f)(1) of the Executive Order).

As has been discussed in this preamble, this interim rule establishes the regulations for the Continuum of Care program, which is the HEARTH Act’s codification of HUD’s long-standing Continuum of Care planning process. The HEARTH Act not only codified in law the planning system known as Continuum of Care, but consolidated the three existing competitive homeless assistance grant programs (Supportive Housing, Shelter Plus Care, and Single Room Occupancy) into the single grant program known as the Continuum of Care program. As discussed in the preceding section of the preamble, HUD funded these three programs for more than 10 years through a NOFA, which was titled the Continuum of Care Homeless Assistance Grants Competition Program. However, the funding of the three competitive grant programs, although done through a single NOFA, delineated the different statutes and regulations that governed each of the three programs (see, for example, HUD’s 2008 Continuum of Care NOFA at 73 FR 398450, specifically page 39845). In consolidating these three competitive programs into a single grant program, the HEARTH Act achieves the administrative efficiency that HUD strived to achieve to the extent possible, through its administrative establishment of the Continuum of Care planning process. To the extent permitted by the HEARTH Act and where feasible, the regulations build-in flexibility for grantees, based on experience in administering the Continuum of Care program to date. Given the transition from administrative operation of the Continuum of Care program to statutory operation of the Continuum of Care program, this interim rule would also have no discernible impact upon the economy.

The docket file is available for public inspection in the Regulations Division, Office of the General Counsel, Room 10276, 451 7th Street SW., Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at 800-877-8339.

Environmental Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in

accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Finding of No Significant Impact is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the FONSI by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at 800-877-8339.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and on the private sector. This interim rule does not impose a federal mandate on any State, local, or tribal government, or on the private sector, within the meaning of UMRA.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule solely addresses the allocation and use of grant funds under the new McKinney-Vento Act homeless assistance programs, as consolidated and amended by the HEARTH Act. As discussed in the preamble, the majority of the regulatory provisions proposed by this rule track the regulatory provisions of the Continuum of Care program, with which prospective recipients of the Supportive Housing program and the Shelter Plus Care program are familiar. Accordingly, the program requirements should raise minimal issues because applicants and grantees are familiar with these requirements, and in response to HUD’s solicitations to them on the burden of the requirements for the Supportive Housing program and the Shelter Plus Care program, grantees have not advised that such requirements are burdensome. Therefore, HUD has determined that this rule would not

have a significant economic impact on a substantial number of small entities.

Notwithstanding HUD's determination that this rule will not have a significant effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes

substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This final rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments nor preempts State law within the meaning of the Executive Order.

Paperwork Reduction Act

The information collection requirements contained in this interim

rule have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number.

The burden of the information collections in this interim rule is estimated as follows:

REPORTING AND RECORDKEEPING BURDEN

Information collection	Number of respondents	Response frequency (average)	Total annual responses	Burden hours per response	Total annual hours
§ 578.5(a) Establishing the CoC	450	1	450	8.0	3,600
§ 578.5(b) Establishing the Board	450	1	450	5.0	2,250
§ 578.7(a)(1) Hold CoC Meetings	450	2	900	4.0	3,600
§ 578.7(a)(2) Invitation for New Members	450	1	450	1.0	450
§ 578.7(a)(4) Appoint committees	450	2	900	0.5	450
§ 578.7(a)(5) Governance charter	450	1	450	7.0	3,150
§ 578.7(a)(6) and (7) Monitor performance and evaluation	450	4	450	9.0	4,050
§ 578.7(a)(8) Centralized or coordinated assessment system	450	1	450	8.0	3,600
§ 578.7(a)(9) Written standards	450	1	450	5.0	2,250
§ 578.7(b) Designate HMIS	450	1	450	10.0	4,500
§ 578.9 Application for funds	450	1	450	180.0	81,000
§ 578.11(c) Develop CoC plan	450	1	450	9.0	4,050
§ 578.21(c) Satisfying conditions	8,000	1	8,000	4.0	32,000
§ 578.23 Executing grant agreements	8,000	1	8,000	1.0	8,000
§ 578.35(b) Appeal—solo	10	1	10	4.0	40
§ 578.35(c) Appeal—denied or decreased funding	15	1	15	1.0	15
§ 578.35(d) Appeal—competing CoC	10	1	10	5.0	50
§ 578.35(e) Appeal—Consolidated Plan certification	5	1	5	2.0	10
§ 578.49(a)—Leasing exceptions	5	1	5	1.5	7.5
§ 578.65 HPC Standards	20	1	20	10.0	200
§ 578.75(a)(1) State and local requirements—appropriate service provision	7,000	1	7,000	0.5	3,500
§ 578.75(a)(1) State and local requirements—housing codes	20	1	20	3.0	60
§ 578.75(b) Housing quality standards	72,800	2	145,600	1.0	145,600
§ 578.75(b) Suitable dwelling size	72,800	2	145,600	0.08	11,648
§ 578.75(c) Meals	70,720	1	70,720	0.5	35,360
§ 578.75(e) Ongoing assessment of supportive services	8,000	1	8,000	1.5	12,000
§ 578.75(f) Residential supervision	6,600	3	19,800	0.75	14,850
§ 578.75(g) Participation of homeless individuals	11,500	1	11,500	1.0	11,500
§ 578.75(h) Supportive service agreements	3,000	100	30,000	0.5	15,000
§ 578.77(a) Signed leases/occupancy agreements	104,000	2	208,000	1.0	208,000
§ 578.77(b) Calculating occupancy charges	1,840	200	368,000	0.75	276,000
§ 578.77(c) Calculating rent	2,000	200	400,000	0.75	300,000
§ 578.81(a) Use restriction	20	1	20	0.5	10
§ 578.91(a) Termination of assistance	400	1	400	4.00	1,600
§ 578.91(b) Due process for termination of assistance	4,500	1	4,500	3.0	13,500
§ 578.95(d)—Conflict-of-Interest exceptions	10	1	10	3.0	30
§ 578.103(a)(3) Documenting homelessness	300,000	1	300,000	0.25	75,000
§ 578.103(a)(4) Documenting at risk of homelessness	10,000	1	10,000	0.25	2,500
§ 578.103(a)(5) Documenting imminent threat of harm	200	1	200	0.5	100
§ 578.103(a)(7) Documenting program participant records	350,000	6	2,100,000	0.25	525,000
§ 578.103(a)(7) Documenting case management	8,000	12	96,000	1.0	96,000
§ 578.103(a)(13) Documenting faith-based activities	8,000	1	8,000	1.0	8,000
§ 578.103(b) Confidentiality procedures	11,500	1	11,500	1.0	11,500
§ 578.105(a) Grant/project changes—UFAs	20	2	40	2.0	80
§ 578.105(b) Grant/project changes—multiple project applicants	800	1	800	2.0	1,600
Total					1,921,710.5

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning this collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions HUD, including whether the information will have practical utility;

(2) Evaluate the accuracy of HUD's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

Interested persons are invited to submit comments regarding the information collection requirements in this rule. Comments must refer to the proposal by name and docket number (FR-5476-I-01) and be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Fax: (202) 395-6947, and Reports Liaison Officer, Office of the Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7233, Washington, DC 20410-7000.

Interested persons may submit comments regarding the information collection requirements electronically through the Federal eRulemaking Portal at <http://www.regulations.gov>. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the <http://www.regulations.gov> Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

List of Subjects in 24 CFR Part 578

Community facilities, Continuum of Care, Emergency solutions grants, Grant programs—housing and community development, Grant program—social programs, Homeless, Rural housing, Reporting and recordkeeping requirements, Supportive housing

programs—housing and community development, Supportive services.

Accordingly, for the reasons described in the preamble, HUD adds part 578 to subchapter C of chapter V of subtitle B of 24 CFR to read as follows:

PART 578—CONTINUUM OF CARE PROGRAM

Subpart A—General Provisions

Sec.

- 578.1 Purpose and scope.
578.3 Definitions.

Subpart B—Establishing and Operating a Continuum of Care

- 578.5 Establishing the Continuum of Care.
578.7 Responsibilities of the Continuum of Care.
578.9 Preparing an application for funds.
578.11 Unified Funding Agency.
578.13 Remedial action.

Subpart C—Application and Grant Award Process

- 578.15 Eligible applicants.
578.17 Overview of application and grant award process.
578.19 Application process.
578.21 Awarding funds.
578.23 Executing grant agreements.
578.25 Site control.
578.27 Consolidated plan.
578.29 Subsidy layering.
578.31 Environmental review.
578.33 Renewals.
578.35 Appeal.

Subpart D—Program Components and Eligible Costs

- 578.37 Program components and uses of assistance.
578.39 Continuum of Care planning activities.
578.41 Unified Funding Agency costs.
578.43 Acquisition.
578.45 Rehabilitation.
578.47 New construction.
578.49 Leasing.
578.51 Rental assistance.
578.53 Supportive services.
578.55 Operating costs.
578.57 Homeless Management Information System.
578.59 Project administrative costs.
578.61 Relocation costs.
578.63 Indirect costs.

Subpart E—High-Performing Communities

- 578.65 Standards.
578.67 Publication of application.
578.69 Cooperation among entities.
578.71 HPC-eligible activities.

Subpart F—Program Requirements

- 578.73 Matching requirements.
578.75 General operations.
578.77 Calculating occupancy charges and rent.
578.79 Limitation on transitional housing.
578.81 Term of commitment, repayment of grants, and prevention of undue benefits.
578.83 Displacement, relocation, and acquisition.
578.85 Timeliness standards.

- 578.87 Limitation on use of funds.
578.89 Limitation on use of grant funds to serve persons defined as homeless under other federal laws.
578.91 Termination of assistance to program participants.
578.93 Fair Housing and Equal Opportunity.
578.95 Conflicts of interest.
578.97 Program income.
578.99 Applicability of other federal requirements.

Subpart G—Grant Administration

- 578.101 Technical assistance.
578.103 Recordkeeping requirements.
578.105 Grant and project changes.
578.107 Sanctions.
578.109 Closeout.

Authority: 42 U.S.C. 11371 *et seq.*, 42 U.S.C. 3535(d).

Subpart A—General Provisions

§ 578.1 Purpose and scope.

(a) The Continuum of Care program is authorized by subtitle C of title IV of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11381–11389).

(b) The program is designed to:

(1) Promote communitywide commitment to the goal of ending homelessness;

(2) Provide funding for efforts by nonprofit providers, States, and local governments to quickly rehouse homeless individuals (including unaccompanied youth) and families, while minimizing the trauma and dislocation caused to homeless individuals, families, and communities by homelessness;

(3) Promote access to and effective utilization of mainstream programs by homeless individuals and families; and

(4) Optimize self-sufficiency among individuals and families experiencing homelessness.

§ 578.3 Definitions.

As used in this part:

Act means the McKinney-Vento Homeless Assistance Act as amended (42 U.S.C. 11371 *et seq.*).

Annual renewal amount means the amount that a grant can be awarded on an annual basis when renewed. It includes funds only for those eligible activities (operating, supportive services, leasing, rental assistance, HMIS, and administration) that were funded in the original grant (or the original grant as amended), less the unrenueable activities (acquisition, new construction, rehabilitation, and any administrative costs related to these activities).

Applicant means an eligible applicant that has been designated by the Continuum of Care to apply for assistance under this part on behalf of that Continuum.

At risk of homelessness. (1) An individual or family who:

(i) Has an annual income below 30 percent of median family income for the area, as determined by HUD;

(ii) Does not have sufficient resources or support networks, e.g., family, friends, faith-based or other social networks, immediately available to prevent them from moving to an emergency shelter or another place described in paragraph (1) of the "Homeless" definition in this section; and

(iii) Meets one of the following conditions:

(A) Has moved because of economic reasons two or more times during the 60 days immediately preceding the application for homelessness prevention assistance;

(B) Is living in the home of another because of economic hardship;

(C) Has been notified in writing that their right to occupy their current housing or living situation will be terminated within 21 days of the date of application for assistance;

(D) Lives in a hotel or motel and the cost of the hotel or motel stay is not paid by charitable organizations or by federal, State, or local government programs for low-income individuals;

(E) Lives in a single-room occupancy or efficiency apartment unit in which there reside more than two persons, or lives in a larger housing unit in which there reside more than 1.5 people per room, as defined by the U.S. Census Bureau;

(F) Is exiting a publicly funded institution, or system of care (such as a health-care facility, a mental health facility, foster care or other youth facility, or correction program or institution); or

(G) Otherwise lives in housing that has characteristics associated with instability and an increased risk of homelessness, as identified in the recipient's approved consolidated plan;

(2) A child or youth who does not qualify as "homeless" under this section, but qualifies as "homeless" under section 387(3) of the Runaway and Homeless Youth Act (42 U.S.C. 5732a(3)), section 637(11) of the Head Start Act (42 U.S.C. 9832(11)), section 41403(6) of the Violence Against Women Act of 1994 (42 U.S.C. 14043e-2(6)), section 330(h)(5)(A) of the Public Health Service Act (42 U.S.C. 254b(h)(5)(A)), section 3(m) of the Food and Nutrition Act of 2008 (7 U.S.C. 2012(m)), or section 17(b)(15) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)(15)); or

(3) A child or youth who does not qualify as "homeless" under this

section, but qualifies as "homeless" under section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), and the parent(s) or guardian(s) of that child or youth if living with her or him.

Centralized or coordinated assessment system means a centralized or coordinated process designed to coordinate program participant intake assessment and provision of referrals. A centralized or coordinated assessment system covers the geographic area, is easily accessed by individuals and families seeking housing or services, is well advertised, and includes a comprehensive and standardized assessment tool.

Chronically homeless. (1) An individual who:

(i) Is homeless and lives in a place not meant for human habitation, a safe haven, or in an emergency shelter; and

(ii) Has been homeless and living or residing in a place not meant for human habitation, a safe haven, or in an emergency shelter continuously for at least one year or on at least four separate occasions in the last 3 years; and

(iii) Can be diagnosed with one or more of the following conditions: substance use disorder, serious mental illness, developmental disability (as defined in section 102 of the Developmental Disabilities Assistance Bill of Rights Act of 2000 (42 U.S.C. 15002)), post-traumatic stress disorder, cognitive impairments resulting from brain injury, or chronic physical illness or disability;

(2) An individual who has been residing in an institutional care facility, including a jail, substance abuse or mental health treatment facility, hospital, or other similar facility, for fewer than 90 days and met all of the criteria in paragraph (1) of this definition, before entering that facility; or

(3) A family with an adult head of household (or if there is no adult in the family, a minor head of household) who meets all of the criteria in paragraph (1) of this definition, including a family whose composition has fluctuated while the head of household has been homeless.

Collaborative applicant means the eligible applicant that has been designated by the Continuum of Care to apply for a grant for Continuum of Care planning funds under this part on behalf of the Continuum.

Consolidated plan means the HUD-approved plan developed in accordance with 24 CFR 91.

Continuum of Care and Continuum means the group organized to carry out the responsibilities required under this

part and that is composed of representatives of organizations, including nonprofit homeless providers, victim service providers, faith-based organizations, governments, businesses, advocates, public housing agencies, school districts, social service providers, mental health agencies, hospitals, universities, affordable housing developers, law enforcement, organizations that serve homeless and formerly homeless veterans, and homeless and formerly homeless persons to the extent these groups are represented within the geographic area and are available to participate.

Developmental disability means, as defined in section 102 of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15002):

(1) A severe, chronic disability of an individual that—

(i) Is attributable to a mental or physical impairment or combination of mental and physical impairments;

(ii) Is manifested before the individual attains age 22;

(iii) Is likely to continue indefinitely;

(iv) Results in substantial functional limitations in three or more of the following areas of major life activity:

(A) Self-care;

(B) Receptive and expressive language;

(C) Learning;

(D) Mobility;

(E) Self-direction;

(F) Capacity for independent living;

(G) Economic self-sufficiency.

(v) Reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic services, individualized supports, or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated.

(2) An individual from birth to age 9, inclusive, who has a substantial developmental delay or specific congenital or acquired condition, may be considered to have a developmental disability without meeting three or more of the criteria described in paragraphs (1)(i) through (v) of the definition of "developmental disability" in this section if the individual, without services and supports, has a high probability of meeting these criteria later in life.

Eligible applicant means a private nonprofit organization, State, local government, or instrumentality of State and local government.

Emergency shelter is defined in 24 CFR part 576.

Emergency Solutions Grants (ESG) means the grants provided under 24 CFR part 576.

Fair Market Rent (FMR) means the Fair Market Rents published in the **Federal Register** annually by HUD.

High-performing community (HPC) means a Continuum of Care that meets the standards in subpart E of this part and has been designated as a high-performing community by HUD.

Homeless means:

(1) An individual or family who lacks a fixed, regular, and adequate nighttime residence, meaning:

(i) An individual or family with a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings, including a car, park, abandoned building, bus or train station, airport, or camping ground;

(ii) An individual or family living in a supervised publicly or privately operated shelter designated to provide temporary living arrangements (including congregate shelters, transitional housing, and hotels and motels paid for by charitable organizations or by federal, State, or local government programs for low-income individuals); or

(iii) An individual who is exiting an institution where he or she resided for 90 days or less and who resided in an emergency shelter or place not meant for human habitation immediately before entering that institution;

(2) An individual or family who will imminently lose their primary nighttime residence, provided that:

(i) The primary nighttime residence will be lost within 14 days of the date of application for homeless assistance;

(ii) No subsequent residence has been identified; and

(iii) The individual or family lacks the resources or support networks, e.g., family, friends, faith-based or other social networks, needed to obtain other permanent housing;

(3) Unaccompanied youth under 25 years of age, or families with children and youth, who do not otherwise qualify as homeless under this definition, but who:

(i) Are defined as homeless under section 387 of the Runaway and Homeless Youth Act (42 U.S.C. 5732a), section 637 of the Head Start Act (42 U.S.C. 9832), section 41403 of the Violence Against Women Act of 1994 (42 U.S.C. 14043e-2), section 330(h) of the Public Health Service Act (42 U.S.C. 254b(h)), section 3 of the Food and Nutrition Act of 2008 (7 U.S.C. 2012), section 17(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)), or section 725 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a);

(ii) Have not had a lease, ownership interest, or occupancy agreement in permanent housing at any time during the 60 days immediately preceding the date of application for homeless assistance;

(iii) Have experienced persistent instability as measured by two moves or more during the 60-day period immediately preceding the date of applying for homeless assistance; and

(iv) Can be expected to continue in such status for an extended period of time because of chronic disabilities; chronic physical health or mental health conditions; substance addiction; histories of domestic violence or childhood abuse (including neglect); the presence of a child or youth with a disability; or two or more barriers to employment, which include the lack of a high school degree or General Education Development (GED), illiteracy, low English proficiency, a history of incarceration or detention for criminal activity, and a history of unstable employment; or

(4) Any individual or family who:

(i) Is fleeing, or is attempting to flee, domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions that relate to violence against the individual or a family member, including a child, that has either taken place within the individual's or family's primary nighttime residence or has made the individual or family afraid to return to their primary nighttime residence;

(ii) Has no other residence; and

(iii) Lacks the resources or support networks, e.g., family, friends, and faith-based or other social networks, to obtain other permanent housing.

Homeless Management Information System (HMIS) means the information system designated by the Continuum of Care to comply with the HMIS requirements prescribed by HUD.

HMIS Lead means the entity designated by the Continuum of Care in accordance with this part to operate the Continuum's HMIS on its behalf.

Permanent housing means community-based housing without a designated length of stay, and includes both permanent supportive housing and rapid rehousing. To be permanent housing, the program participant must be the tenant on a lease for a term of at least one year, which is renewable for terms that are a minimum of one month long, and is terminable only for cause.

Permanent supportive housing means permanent housing in which supportive services are provided to assist homeless persons with a disability to live independently.

Point-in-time count means a count of sheltered and unsheltered homeless persons carried out on one night in the last 10 calendar days of January or at such other time as required by HUD.

Private nonprofit organization means an organization:

(1) No part of the net earnings of which inure to the benefit of any member, founder, contributor, or individual;

(2) That has a voluntary board;

(3) That has a functioning accounting system that is operated in accordance with generally accepted accounting principles, or has designated a fiscal agent that will maintain a functioning accounting system for the organization in accordance with generally accepted accounting principles; and

(4) That practices nondiscrimination in the provision of assistance.

A private nonprofit organization does not include governmental organizations, such as public housing agencies.

Program participant means an individual (including an unaccompanied youth) or family who is assisted with Continuum of Care program funds.

Project means a group of eligible activities, such as HMIS costs, identified as a project in an application to HUD for Continuum of Care funds and includes a structure (or structures) that is (are) acquired, rehabilitated, constructed, or leased with assistance provided under this part or with respect to which HUD provides rental assistance or annual payments for operating costs, or supportive services under this subtitle.

Recipient means an applicant that signs a grant agreement with HUD.

Safe haven means, for the purpose of defining chronically homeless, supportive housing that meets the following:

(1) Serves hard to reach homeless persons with severe mental illness who came from the streets and have been unwilling or unable to participate in supportive services;

(2) Provides 24-hour residence for eligible persons for an unspecified period;

(3) Has an overnight capacity limited to 25 or fewer persons; and

(4) Provides low-demand services and referrals for the residents.

State means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, the Commonwealth of the Northern Marianas, and the Virgin Islands.

Subrecipient means a private nonprofit organization, State, local government, or instrumentality of State or local government that receives a

subgrant from the recipient to carry out a project.

Transitional housing means housing, where all program participants have signed a lease or occupancy agreement, the purpose of which is to facilitate the movement of homeless individuals and families into permanent housing within 24 months or such longer period as HUD determines necessary. The program participant must have a lease or occupancy agreement for a term of at least one month that ends in 24 months and cannot be extended.

Unified Funding Agency (UFA) means an eligible applicant selected by the Continuum of Care to apply for a grant for the entire Continuum, which has the capacity to carry out the duties in § 578.11(b), which is approved by HUD and to which HUD awards a grant.

Victim service provider means a private nonprofit organization whose primary mission is to provide services to victims of domestic violence, dating violence, sexual assault, or stalking. This term includes rape crisis centers, battered women's shelters, domestic violence transitional housing programs, and other programs.

Subpart B—Establishing and Operating a Continuum of Care

§ 578.5 Establishing the Continuum of Care.

(a) *The Continuum of Care.* Representatives from relevant organizations within a geographic area shall establish a Continuum of Care for the geographic area to carry out the duties of this part. Relevant organizations include nonprofit homeless assistance providers, victim service providers, faith-based organizations, governments, businesses, advocates, public housing agencies, school districts, social service providers, mental health agencies, hospitals, universities, affordable housing developers, law enforcement, and organizations that serve veterans and homeless and formerly homeless individuals.

(b) *The board.* The Continuum of Care must establish a board to act on behalf of the Continuum using the process established as a requirement by § 578.7(a)(3) and must comply with the conflict-of-interest requirements at § 578.95(b). The board must:

- (1) Be representative of the relevant organizations and of projects serving homeless subpopulations; and
- (2) Include at least one homeless or formerly homeless individual.

(c) *Transition.* Continuums of Care shall have 2 years after August 30, 2012

to comply with the requirements of paragraph (b) of this section.

§ 578.7 Responsibilities of the Continuum of Care.

(a) *Operate the Continuum of Care.* The Continuum of Care must:

- (1) Hold meetings of the full membership, with published agendas, at least semi-annually;
- (2) Make an invitation for new members to join publicly available within the geographic area at least annually;
- (3) Adopt and follow a written process to select a board to act on behalf of the Continuum of Care. The process must be reviewed, updated, and approved by the Continuum at least once every 5 years;
- (4) Appoint additional committees, subcommittees, or workgroups;
- (5) In consultation with the collaborative applicant and the HMIS Lead, develop, follow, and update annually a governance charter, which will include all procedures and policies needed to comply with subpart B of this part and with HMIS requirements as prescribed by HUD; and a code of conduct and recusal process for the board, its chair(s), and any person acting on behalf of the board;

(6) Consult with recipients and subrecipients to establish performance targets appropriate for population and program type, monitor recipient and subrecipient performance, evaluate outcomes, and take action against poor performers;

(7) Evaluate outcomes of projects funded under the Emergency Solutions Grants program and the Continuum of Care program, and report to HUD;

(8) In consultation with recipients of Emergency Solutions Grants program funds within the geographic area, establish and operate either a centralized or coordinated assessment system that provides an initial, comprehensive assessment of the needs of individuals and families for housing and services. The Continuum must develop a specific policy to guide the operation of the centralized or coordinated assessment system on how its system will address the needs of individuals and families who are fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, or stalking, but who are seeking shelter or services from nonvictim service providers. This system must comply with any requirements established by HUD by Notice.

(9) In consultation with recipients of Emergency Solutions Grants program funds within the geographic area, establish and consistently follow written standards for providing

Continuum of Care assistance. At a minimum, these written standards must include:

- (i) Policies and procedures for evaluating individuals' and families' eligibility for assistance under this part;
- (ii) Policies and procedures for determining and prioritizing which eligible individuals and families will receive transitional housing assistance;
- (iii) Policies and procedures for determining and prioritizing which eligible individuals and families will receive rapid rehousing assistance;
- (iv) Standards for determining what percentage or amount of rent each program participant must pay while receiving rapid rehousing assistance;
- (v) Policies and procedures for determining and prioritizing which eligible individuals and families will receive permanent supportive housing assistance; and
- (vi) Where the Continuum is designated a high-performing community, as described in subpart G of this part, policies and procedures set forth in 24 CFR 576.400(e)(3)(vi), (e)(3)(vii), (e)(3)(viii), and (e)(3)(ix).

(b) *Designating and operating an HMIS.* The Continuum of Care must:

(1) Designate a single Homeless Management Information System (HMIS) for the geographic area;

(2) Designate an eligible applicant to manage the Continuum's HMIS, which will be known as the HMIS Lead;

(3) Review, revise, and approve a privacy plan, security plan, and data quality plan for the HMIS.

(4) Ensure consistent participation of recipients and subrecipients in the HMIS; and

(5) Ensure the HMIS is administered in compliance with requirements prescribed by HUD.

(c) *Continuum of Care planning.* The Continuum must develop a plan that includes:

(1) Coordinating the implementation of a housing and service system within its geographic area that meets the needs of the homeless individuals (including unaccompanied youth) and families. At a minimum, such system encompasses the following:

- (i) Outreach, engagement, and assessment;
- (ii) Shelter, housing, and supportive services;
- (iii) Prevention strategies.

(2) Planning for and conducting, at least biennially, a point-in-time count of homeless persons within the geographic area that meets the following requirements:

- (i) Homeless persons who are living in a place not designed or ordinarily used as a regular sleeping accommodation for

humans must be counted as unsheltered homeless persons.

(ii) Persons living in emergency shelters and transitional housing projects must be counted as sheltered homeless persons.

(iii) Other requirements established by HUD by Notice.

(3) Conducting an annual gaps analysis of the homeless needs and services available within the geographic area;

(4) Providing information required to complete the Consolidated Plan(s) within the Continuum's geographic area;

(5) Consulting with State and local government Emergency Solutions Grants program recipients within the Continuum's geographic area on the plan for allocating Emergency Solutions Grants program funds and reporting on and evaluating the performance of Emergency Solutions Grants program recipients and subrecipients.

§ 578.9 Preparing an application for funds.

(a) The Continuum must:

(1) Design, operate, and follow a collaborative process for the development of applications and approve the submission of applications in response to a NOFA published by HUD under § 578.19 of this subpart;

(2) Establish priorities for funding projects in the geographic area;

(3) Determine if one application for funding will be submitted for all projects within the geographic area or if more than one application will be submitted for the projects within the geographic area;

(i) If more than one application will be submitted, designate an eligible applicant to be the collaborative applicant that will collect and combine the required application information from all applicants and for all projects within the geographic area that the Continuum has selected funding. The collaborative applicant will also apply for Continuum of Care planning activities. If the Continuum is an eligible applicant, it may designate itself;

(ii) If only one application will be submitted, that applicant will be the collaborative applicant and will collect and combine the required application information from all projects within the geographic area that the Continuum has selected for funding and apply for Continuum of Care planning activities;

(b) The Continuum retains all of its responsibilities, even if it designates one or more eligible applicants other than itself to apply for funds on behalf of the Continuum. This includes approving the Continuum of Care application.

§ 578.11 Unified Funding Agency.

(a) *Becoming a Unified Funding Agency.* To become designated as the Unified Funding Agency (UFA) for a Continuum, a collaborative applicant must be selected by the Continuum to apply to HUD to be designated as the UFA for the Continuum.

(b) *Criteria for designating a UFA.* HUD will consider these criteria when deciding whether to designate a collaborative applicant a UFA:

(1) The Continuum of Care it represents meets the requirements in § 578.7;

(2) The collaborative applicant has financial management systems that meet the standards set forth in 24 CFR 84.21 (for nonprofit organizations) and 24 CFR 85.20 (for States);

(3) The collaborative applicant demonstrates the ability to monitor subrecipients; and

(4) Such other criteria as HUD may establish by NOFA.

(c) *Requirements.* HUD-designated UFAs shall:

(1) Apply to HUD for funding for all of the projects within the geographic area and enter into a grant agreement with HUD for the entire geographic area.

(2) Enter into legally binding agreements with subrecipients, and receive and distribute funds to subrecipients for all projects within the geographic area.

(3) Require subrecipients to establish fiscal control and accounting procedures as necessary to assure the proper disbursement of and accounting for federal funds in accordance with the requirements of 24 CFR parts 84 and 85 and corresponding OMB circulars.

(4) Obtain approval of any proposed grant agreement amendments by the Continuum of Care before submitting a request for an amendment to HUD.

§ 578.13 Remedial action.

(a) If HUD finds that the Continuum of Care for a geographic area does not meet the requirements of the Act or its implementing regulations, or that there is no Continuum for a geographic area, HUD may take remedial action to ensure fair distribution of grant funds within the geographic area. Such measures may include:

(1) Designating a replacement Continuum of Care for the geographic area;

(2) Designating a replacement collaborative applicant for the Continuum's geographic area; and

(3) Accepting applications from other eligible applicants within the Continuum's geographic area.

(b) HUD must provide a 30-day prior written notice to the Continuum and its

collaborative applicant and give them an opportunity to respond.

Subpart C—Application and Grant Award Process

§ 578.15 Eligible applicants.

(a) *Who may apply.* Nonprofit organizations, States, local governments, and instrumentalities of State or local governments are eligible to apply for grants.

(b) *Designation by the Continuum of Care.* Eligible applicant(s) must have been designated by the Continuum of Care to submit an application for grant funds under this part. The designation must state whether the Continuum is designating more than one applicant to apply for funds and, if it is, which applicant is being designated as the collaborative applicant. If the Continuum is designating only one applicant to apply for funds, the Continuum must designate that applicant to be the collaborative applicant.

(c) *Exclusion.* For-profit entities are not eligible to apply for grants or to be subrecipients of grant funds.

§ 578.17 Overview of application and grant award process.

(a) *Formula.* (1) After enactment of the annual appropriations act for each fiscal year, and issuance of the NOFA, HUD will publish, on its Web site, the Preliminary Pro Rata Need (PPRN) assigned to metropolitan cities, urban counties, and all other counties.

(2) HUD will apply the formula used to determine PPRN established in paragraph (a)(3) of this section, to the amount of funds being made available under the NOFA. That amount is calculated by:

(i) Determining the total amount for the Continuum of Care competition in accordance with section 413 of the Act or as otherwise directed by the annual appropriations act;

(ii) From the amount in paragraph (a)(2)(i) of this section, deducting the amount published in the NOFA as being set aside to provide a bonus to geographic areas for activities that have proven to be effective in reducing homelessness generally or for specific subpopulations listed in the NOFA or achieving homeless prevention and independent living goals established in the NOFA and to meet policy priorities set in the NOFA; and

(iii) Deducting the amount of funding necessary for Continuum of Care planning activities and UFA costs.

(3) PPRN is calculated on the amount determined under paragraph (a)(2) of this section by using the following formula:

(i) Two percent will be allocated among the four insular areas (American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands) on the basis of the ratio of the population of each insular area to the population of all insular areas.

(ii) Seventy-five percent of the remaining amount will be allocated, using the Community Development Block Grant (CDBG) formula, to metropolitan cities and urban counties that have been funded under either the Emergency Shelter Grants or Emergency Solutions Grants programs in any one year since 2004.

(iii) The amount remaining after the allocation under paragraphs (a)(1) and (2) of this section will be allocated, using the CDBG formula, to metropolitan cities and urban counties that have not been funded under the Emergency Solutions Grants program in any year since 2004 and all other counties in the United States and Puerto Rico.

(4) If the calculation in paragraph (a)(2) of this section results in an amount less than the amount required to renew all projects eligible for renewal in that year for at least one year, after making adjustments proportional to increases in fair market rents for the geographic area for leasing, operating, and rental assistance for permanent housing, HUD will reduce, proportionately, the total amount required to renew all projects eligible for renewal in that year for at least one year, for each Continuum of Care. HUD will publish, via the NOFA, the total dollar amount that every Continuum will be required to deduct from renewal projects Continuum-wide.

(b) *Calculating a Continuum of Care's maximum award amount.* (1) *Establish the PPRN amount.* First, HUD will total the PPRN amounts for each metropolitan city, urban county, other county, and insular area claimed by the Continuum as part of its geographic area, excluding any counties applying for or receiving funding from the Rural Housing Stability Assistance program under 24 CFR part 579.

(2) *Establishing renewal demand.* Next, HUD will determine the renewal demand within the Continuum's geographic area. Renewal demand is the sum of the annual renewal amounts of all projects within the Continuum eligible to apply for renewal in that fiscal year's competition, before any adjustments to rental assistance, leasing, and operating line items based on FMR changes.

(3) *Establishing FPRN.* The higher of PPRN or renewal demand for the Continuum of Care is the FPRN, which

is the base for the maximum award amount for the Continuum.

(4) *Establishing the maximum award amount.* The maximum award amount for the Continuum is the FPRN amount plus any additional eligible amounts for Continuum planning; UFA costs; adjustments to leasing, operating and rental assistance line items based on changes to FMR; and available bonuses.

§ 578.19 Application process.

(a) *Notice of Funding Availability.* After enactment of the annual appropriations act for the fiscal year, HUD will issue a NOFA in accordance with the requirements of 24 CFR part 4.

(b) *Applications.* All applications to HUD, including applications for grant funds and requests for designation as a UFA or HPC, must be submitted at such time and in such manner as HUD may require, and contain such information as HUD determines necessary. At a minimum, an application for grant funds must contain a list of the projects for which it is applying for funds; a description of the projects; a list of the projects that will be carried out by subrecipients and the names of the subrecipients; a description of the subpopulations of homeless or at risk of homelessness to be served by projects; the number of units to be provided and/or the number of persons to be served by each project; a budget request by project; and reasonable assurances that the applicant, or the subrecipient, will own or have control of a site for the proposed project not later than the expiration of the 12-month period beginning upon notification of an award for grant assistance.

§ 578.21 Awarding funds.

(a) *Selection.* HUD will review applications in accordance with the guidelines and procedures provided in the NOFA and will award funds to recipients through a national competition based on selection criteria as defined in section 427 of the Act.

(b) *Announcement of awards.* HUD will announce awards and notify selected applicants of any conditions imposed on awards. Conditions must be satisfied before HUD will execute a grant agreement with the applicant.

(c) *Satisfying conditions.* HUD will withdraw an award if the applicant does not satisfy all conditions imposed on it. Correcting all issues and conditions attached to an award must be completed within the time frame established in the NOFA. Proof of site control, match, environmental review, and the documentation of financial feasibility must be completed within 12 months of the announcement of the award, or 24

months in the case of funds for acquisition, rehabilitation, or new construction. The 12-month deadline may be extended by HUD for up to 12 additional months upon a showing of compelling reasons for delay due to factors beyond the control of the recipient or subrecipient.

§ 578.23 Executing grant agreements.

(a) *Deadline.* No later than 45 days from the date when all conditions are satisfied, the recipient and HUD must execute the grant agreement.

(b) *Grant agreements.* (1) *Multiple applicants for one Continuum.* If a Continuum designates more than one applicant for the geographic area, HUD will enter into a grant agreement with each designated applicant for which an award is announced.

(2) *One applicant for a Continuum.* If a Continuum designates only one applicant for the geographic area, after awarding funds, HUD may enter into a grant agreement with that applicant for new awards, if any, and one grant agreement for renewals, Continuum of Care planning, and UFA costs, if any. These two grants will cover the entire geographic area. A default by the recipient under one of those grant agreements will also be a default under the other.

(3) *Unified Funding Agencies.* If a Continuum is a UFA that HUD has approved, then HUD will enter into one grant agreement with the UFA for new awards, if any, and one grant agreement for renewals, Continuum of Care planning and UFA costs, if any. These two grants will cover the entire geographic area. A default by the UFA under one of those grant agreements will also be a default under the other.

(c) *Required agreements.* Recipients will be required to sign a grant agreement in which the recipient agrees:

(1) To ensure the operation of the project(s) in accordance with the provisions of the McKinney-Veto Act and all requirements under 24 CFR part 578;

(2) To monitor and report the progress of the project(s) to the Continuum of Care and HUD;

(3) To ensure, to the maximum extent practicable, that individuals and families experiencing homelessness are involved, through employment, provision of volunteer services, or otherwise, in constructing, rehabilitating, maintaining, and operating facilities for the project and in providing supportive services for the project;

(4) To require certification from all subrecipients that:

(i) Subrecipients will maintain the confidentiality of records pertaining to any individual or family that was provided family violence prevention or treatment services through the project;

(ii) The address or location of any family violence project assisted under this part will not be made public, except with written authorization of the person responsible for the operation of such project;

(iii) Subrecipients will establish policies and practices that are consistent with, and do not restrict, the exercise of rights provided by subtitle B of title VII of the Act and other laws relating to the provision of educational and related services to individuals and families experiencing homelessness;

(iv) In the case of projects that provide housing or services to families, that subrecipients will designate a staff person to be responsible for ensuring that children being served in the program are enrolled in school and connected to appropriate services in the community, including early childhood programs such as Head Start, part C of the Individuals with Disabilities Education Act, and programs authorized under subtitle B of title VII of the Act;

(v) The subrecipient, its officers, and employees are not debarred or suspended from doing business with the Federal Government; and

(vi) Subrecipients will provide information, such as data and reports, as required by HUD; and

(5) To establish such fiscal control and accounting procedures as may be necessary to assure the proper disbursement of, and accounting for grant funds in order to ensure that all financial transactions are conducted, and records maintained in accordance with generally accepted accounting principles, if the recipient is a UFA;

(6) To monitor subrecipient match and report on match to HUD;

(7) To take the educational needs of children into account when families are placed in housing and will, to the maximum extent practicable, place families with children as close as possible to their school of origin so as not to disrupt such children's education;

(8) To monitor subrecipients at least annually;

(9) To use the centralized or coordinated assessment system established by the Continuum of Care as set forth in § 578.7(a)(8). A victim service provider may choose not to use the Continuum of Care's centralized or coordinated assessment system, provided that victim service providers in the area use a centralized or coordinated assessment system that

meets HUD's minimum requirements and the victim service provider uses that system instead;

(10) To follow the written standards for providing Continuum of Care assistance developed by the Continuum of Care, including the minimum requirements set forth in § 578.7(a)(9);

(11) Enter into subrecipient agreements requiring subrecipients to operate the project(s) in accordance with the provisions of this Act and all requirements under 24 CFR part 578; and

(12) To comply with such other terms and conditions as HUD may establish by NOFA.

§ 578.25 Site control.

(a) *In general.* When grant funds will be used for acquisition, rehabilitation, new construction, operating costs, or to provide supportive services, the recipient or subrecipient must demonstrate that it has site control within the time frame established in section § 578.21 before HUD will execute a grant agreement. This requirement does not apply to funds used for housing that will eventually be owned or controlled by the individuals or families served or for supportive services provided at sites not operated by the recipient or subrecipient.

(b) *Evidence.* Acceptable evidence of site control is a deed or lease. If grant funds will be used for acquisition, acceptable evidence of site control will be a purchase agreement. The owner, lessee, and purchaser shown on these documents must be the selected applicant or intended subrecipient identified in the application for assistance.

(c) *Tax credit projects.* (1) Applicants that plan to use the low-income housing tax credit authorized under 26 U.S.C. 42 to finance a project must prove to HUD's satisfaction that the applicant or subrecipient identified in the application is in control of the limited partnership or limited liability corporation that has a deed or lease for the project site.

(i) To have control of the limited partnership, the applicant or subrecipient must be the general partner of the limited partnership or have a 51 percent controlling interest in that general partner.

(ii) To have control of the limited liability company, the applicant or subrecipient must be the sole managing member.

(2) If grant funds are to be used for acquisition, rehabilitation, or new construction, the recipient or subrecipient must maintain control of the partnership or corporation and must

ensure that the project is operated in compliance with law and regulation for 15 years from the date of initial occupancy or initial service provision. The partnership or corporation must own the project site throughout the 15-year period. If grant funds were not used for acquisition, rehabilitation, or new construction, then the recipient or subrecipient must maintain control for the term of the grant agreement and any renewals thereof.

§ 578.27 Consolidated plan.

(a) *States or units of general local government.* An applicant that is a State or a unit of general local government must have a HUD-approved, complete or abbreviated, consolidated plan in accordance with 24 CFR part 91. The applicant must submit a certification that the application for funding is consistent with the HUD-approved consolidated plan(s) for the jurisdiction(s) in which the proposed project will be located. Funded applicants must certify in a grant agreement that they are following the HUD-approved consolidated plan.

(b) *Other applicants.* Applicants that are not States or units of general local government must submit a certification by the jurisdiction(s) in which the proposed project will be located that the applicant's application for funding is consistent with the jurisdiction's HUD-approved consolidated plan. The certification must be made by the unit of general local government or the State, in accordance with the consistency certification provisions under 24 CFR part 91, subpart F. If the jurisdiction refuses to provide a certification of consistency, the applicant may appeal to HUD under § 578.35.

(c) *Timing of consolidated plan certification submissions.* The required certification that the application for funding is consistent with the HUD-approved consolidated plan must be submitted by the funding application submission deadline announced in the NOFA.

§ 578.29 Subsidy layering.

HUD may provide assistance under this program only in accordance with HUD subsidy layering requirements in section 102 of the Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545) and 24 CFR part 4, subpart A. An applicant must submit information in its application on other sources of governmental assistance that the applicant has received, or reasonably expects to receive, for a proposed project or activities. HUD's review of this information is intended to prevent excessive public assistance for

proposed project or activities by combining (layering) assistance under this program with other governmental housing assistance from federal, State, or local agencies, including assistance such as tax concessions or tax credits.

§ 578.31 Environmental review.

(a) Activities under this part are subject to environmental review by HUD under 24 CFR part 50. The recipient or subrecipient shall supply all available, relevant information necessary for HUD to perform, for each property, any environmental review required by 24 CFR part 50. The recipient or subrecipient must carry out mitigating measures required by HUD or select an alternate eligible property. HUD may eliminate from consideration any application that would require an Environmental Impact Statement.

(b) The recipient or subrecipient, its project partners, and their contractors may not acquire, rehabilitate, convert, lease, repair, dispose of, demolish, or construct property for a project under this part, or commit or expend HUD or local funds for such eligible activities under this part, until HUD has performed an environmental review under 24 CFR part 50 and the recipient or subrecipient has received HUD approval of the property.

§ 578.33 Renewals.

(a) *In general.* Awards made under this part and title IV of the Act, as in effect before August 30, 2012 (the Supportive Housing Program and the Shelter Plus Care program), may be renewed to continue ongoing leasing, operations, supportive services, rental assistance, HMIS, and administrative beyond the initial funding period. To be considered for funding, recipients must submit a request in a form specified by HUD, must meet the requirements of this part, and must submit the request within the time frame established by HUD.

(b) *Length of renewal.* HUD may award up to 3 years of funds for supportive services, leasing, HMIS, and operating costs. Renewals of tenant-based and sponsor-based rental assistance may be for up to one year of rental assistance. Renewals of project-based rental assistance may be for up to 15 years of rental assistance, subject to availability of annual appropriations.

(c) *Assistance available.* (1) Assistance during each year of a renewal period may be for:

(i) Up to 100 percent of the amount for supportive services and HMIS costs in the final year of the prior funding period;

(ii) Up to 100 percent of the amount for leasing and operating in the final year of the prior funding period adjusted in proportion to changes in the FMR for the geographic area; and

(iii) For rental assistance, up to 100 percent of the result of multiplying the number and unit size(s) in the grant agreement by the number of months in the renewal grant term and the applicable FMR.

(d) *Review criteria.* (1) Awards made under title IV of the Act, as in effect before August 30, 2012 are eligible for renewal in the Continuum of Care program even if the awardees would not be eligible for a new grant under the program, so long as they continue to serve the same population and the same number of persons or units in the same type of housing as identified in their most recently amended grant agreement signed before August 30, 2012. Grants will be renewed if HUD receives a certification from the Continuum that there is a demonstrated need for the project, and HUD finds that the project complied with program requirements applicable before August 30, 2012. For purposes of meeting the requirements of this part, a project will continue to be administered in accordance with 24 CFR 582.330, if the project received funding under the Shelter Plus Care program, or 24 CFR 583.325, if the project received funding under the Supportive Housing Program.

(2) *Renewal of awards made after August 30, 2012.* Review criteria for competitively awarded renewals made after August 30, 2012 will be described in the NOFA.

(e) *Unsuccessful projects.* HUD may renew a project that was eligible for renewal in the competition and was part of an application that was not funded despite having been submitted on time, in the manner required by HUD, and containing the information required by HUD, upon a finding that the project meets the purposes of the Continuum of Care program. The renewal will not exceed more than one year and will be under such conditions as HUD deems appropriate.

(f) *Annual Performance Report condition.* HUD may terminate the renewal of any grant and require the recipient to repay the renewal grant if:

(1) The recipient fails to timely submit a HUD Annual Performance Report (APR) for the grant year immediately prior to renewal; or

(2) The recipient submits an APR that HUD deems unacceptable or shows noncompliance with the requirements of the grant and this part.

§ 578.35 Appeal.

(a) *In general.* Failure to follow the procedures or meet the deadlines established in this section will result in denial of the appeal.

(b) *Solo applicants.* (1) *Who may appeal.* Nonprofits, States, and local governments, and instrumentalities of State or local governments that attempted to participate in the Continuum of Care planning process in the geographic area in which they operate, that believe they were denied the right to participate in a reasonable manner, and that submitted a solo application for funding by the application deadline established in the NOFA, may appeal the decision of the Continuum to HUD.

(2) *Notice of intent to appeal.* The solo applicant must submit a written notice of intent to appeal, with a copy to the Continuum, with their funding application.

(3) *Deadline for submitting proof.* No later than 30 days after the date that HUD announces the awards, the solo applicant shall submit in writing, with a copy to the Continuum, all relevant evidence supporting its claim, in such manner as HUD may require by Notice.

(4) *Response from the Continuum of Care.* The Continuum shall have 30 days from the date of its receipt of the solo applicant's evidence to respond to HUD in writing and in such manner as HUD may require, with a copy to the solo applicant.

(5) *Decision.* HUD will notify the solo applicant and the Continuum of its decision within 60 days of receipt of the Continuum's response.

(6) *Funding.* If HUD finds that the solo applicant was not permitted to participate in the Continuum of Care planning process in a reasonable manner, then HUD may award a grant to the solo applicant when funds next become available and may direct the Continuum of Care to take remedial steps to ensure reasonable participation in the future. HUD may also reduce the award to the Continuum's applicant(s).

(c) *Denied or decreased funding.* (1) *Who may appeal.* Eligible applicants that are denied funds by HUD, or that requested more funds than HUD awarded to them, may appeal the award by filing a written appeal, in such form and manner as HUD may require by Notice, within 45 days of the date of HUD's announcement of the award.

(2) *Decision.* HUD will notify the applicant of its decision on the appeal within 60 days of HUD's receipt of the written appeal. HUD will reverse a decision only when the applicant can show that HUD error caused the denial or decrease.

(3) *Funding.* Awards and increases to awards made upon appeal will be made from next available funds.

(d) *Competing Continuums of Care.*

(1) *In general.* If more than one Continuum of Care claims the same geographic area, HUD will award funds to the Continuum applicant(s) whose application(s) has the highest total score. No projects will be funded from the lower scoring Continuum. No projects that are submitted in two or more competing Continuum of Care applications will be funded.

(2) *Who may appeal.* The designated applicant(s) for the lower scoring Continuum may appeal HUD's decision to fund the application(s) from the competing Continuum by filing a written appeal, in such form and manner as HUD may require by Notice, within 45 days of the date of HUD's announcement of the award.

(3) *Decision.* HUD will notify the applicant(s) of its decision on the appeal within 60 days of the date of HUD's receipt of the written appeal. HUD will reverse a decision only upon a showing by the applicant that HUD error caused the denial.

(e) *Consolidated plan certification.* (1) *In general.* An applicant may appeal to HUD a jurisdiction's refusal to provide a certification of consistency with the Consolidated Plan.

(2) *Procedure.* The applicant must submit a written appeal with its application to HUD and send a copy of the appeal to the jurisdiction that denied the certification of consistency. The appeal must include, at a minimum:

(i) A copy of the applicant's request to the jurisdiction for the certification of consistency with the Consolidated Plan;

(ii) A copy of the jurisdiction's response stating the reasons for denial, including the reasons the proposed project is not consistent with the jurisdiction's Consolidated Plan in accordance with 24 CFR 91.500(c); and

(iii) A statement of the reasons why the applicant believes its project is consistent with the jurisdiction's Consolidated Plan.

(3) *Jurisdiction response.* The jurisdiction that refused to provide the certification of consistency with the jurisdiction's Consolidated Plan shall have 10 days after receipt of a copy of the appeal to submit a written explanation of the reasons originally given for refusing to provide the certification and a written rebuttal to any claims made by the applicant in the appeal.

(4) *HUD review.* (i) HUD will issue its decision within 45 days of the date of HUD's receipt of the jurisdiction's

response. As part of its review, HUD will consider:

(A) Whether the applicant submitted the request to the appropriate political jurisdiction; and

(B) The reasonableness of the jurisdiction's refusal to provide the certificate.

(ii) If the jurisdiction did not provide written reasons for refusal, including the reasons why the project is not consistent with the jurisdiction's Consolidated Plan in its initial response to the applicant's request for a certification, HUD will find for the applicant without further inquiry or response from the political jurisdiction.

Subpart D—Program Components and Eligible Costs

§ 578.37 Program components and uses of assistance.

(a) Continuum of Care funds may be used to pay for the eligible costs listed in § 578.39 through § 578.63 when used to establish and operate projects under five program components: permanent housing; transitional housing; supportive services only; HMIS; and, in some cases, homelessness prevention. Although grant funds may be used by recipients and subrecipients in all components for the eligible costs of contributing data to the HMIS designated by the Continuum of Care, only HMIS Leads may use grant funds for an HMIS component. Administrative costs are eligible for all components. All components are subject to the restrictions on combining funds for certain eligible activities in a single project found in § 578.87(c). The eligible program components are:

(1) *Permanent housing (PH).* Permanent housing is community-based housing, the purpose of which is to provide housing without a designated length of stay. Grant funds may be used for acquisition, rehabilitation, new construction, leasing, rental assistance, operating costs, and supportive services. PH includes:

(i) *Permanent supportive housing for persons with disabilities (PSH).* PSH can only provide assistance to individuals with disabilities and families in which one adult or child has a disability. Supportive services designed to meet the needs of the program participants must be made available to the program participants.

(ii) *Rapid rehousing.* Continuum of Care funds may provide supportive services, as set forth in § 578.53, and/or short-term (up to 3 months) and/or medium-term (for 3 to 24 months) tenant-based rental assistance, as set forth in § 578.51(c), as necessary to help

a homeless individual or family, with or without disabilities, move as quickly as possible into permanent housing and achieve stability in that housing. When providing short-term and/or medium-term rental assistance to program participants, the rental assistance is subject to § 578.51(a)(1), but not § 578.51(a)(1)(i) and (ii); (a)(2); (c) and (f) through (i); and (l)(1). These projects:

(A) Must follow the written policies and procedures established by the Continuum of Care for determining and prioritizing which eligible families and individuals will receive rapid rehousing assistance, as well as the amount or percentage of rent that each program participant must pay.

(B) May set a maximum amount or percentage of rental assistance that a program participant may receive, a maximum number of months that a program participant may receive rental assistance, and/or a maximum number of times that a program participant may receive rental assistance. The recipient or subrecipient may also require program participants to share in the costs of rent. For the purposes of calculating rent for rapid rehousing, the rent shall equal the sum of the total monthly rent for the unit and, if the tenant pays separately for utilities, the monthly allowance for utilities (excluding telephone) established by the public housing authority for the area in which the housing is located.

(C) Limit rental assistance to no more than 24 months to a household.

(D) May provide supportive services for no longer than 6 months after rental assistance stops.

(E) Must re-evaluate, not less than once annually, that the program participant lacks sufficient resources and support networks necessary to retain housing without Continuum of Care assistance and the types and amounts of assistance that the program participant needs to retain housing. The recipient or subrecipient may require each program participant receiving assistance to notify the recipient or subrecipient of changes in the program participant's income or other circumstances (e.g., changes in household composition) that affect the program participant's need for assistance. When notified of a relevant change, the recipient or subrecipient must reevaluate the program participant's eligibility and the amount and types of assistance that the program participant needs.

(F) Require the program participant to meet with a case manager not less than once per month to assist the program participant in ensuring long-term housing stability. The project is exempt

from this requirement if the Violence Against Women Act of 1994 (42 U.S.C. 13925 *et seq.*) or the Family Violence Prevention and Services Act (42 U.S.C. 10401 *et seq.*) prohibits the recipient carrying out the project from making its housing conditional on the participant's acceptance of services.

(2) *Transitional Housing (TH).*

Transitional housing facilitates the movement of homeless individuals and families to PH within 24 months of entering TH. Grant funds may be used for acquisition, rehabilitation, new construction, leasing, rental assistance, operating costs, and supportive services.

(3) *Supportive Service Only (SSO).*

Funds may be used for acquisition, rehabilitation, relocation costs, or leasing of a facility from which supportive services will be provided, and supportive services in order to provide supportive services to unsheltered and sheltered homeless persons for whom the recipient or subrecipient is not providing housing or housing assistance. SSO includes street outreach.

(4) *HMIS.* Funds may be used by HMIS Leads to lease a structure in which the HMIS is operated or as operating funds to operate a structure in which the HMIS is operated, and for other costs eligible in § 578.57.

(5) *Homelessness prevention.* Funds may be used by recipients in Continuum of Care-designated high-performing communities for housing relocation and stabilization services, and short- and/or medium-term rental assistance, as described in 24 CFR 576.105 and 24 CFR 576.106, that are necessary to prevent an individual or family from becoming homeless.

(b) *Uses of assistance.* Funds are available to pay for the eligible costs listed in § 578.39 through § 578.63 when used to:

- (1) Establish new housing or new facilities to provide supportive services;
- (2) Expand existing housing and facilities in order to increase the number of homeless persons served;
- (3) Bring existing housing and facilities into compliance with State and local government health and safety standards, as described in § 578.87;
- (4) Preserve existing permanent housing and facilities that provide supportive services;
- (5) Provide supportive services for residents of supportive housing or for homeless persons not residing in supportive housing;
- (6) Continue funding permanent housing when the recipient has received funding under this part for leasing, supportive services, operating costs, or rental assistance;

(7) Establish and operate an HMIS or comparable database; and

(8) Establish and carry out a Continuum of Care planning process and operate a Continuum of Care.

(c) *Multiple purposes.* Structures used to provide housing, supportive housing, supportive services, or as a facility for HMIS activities may also be used for other purposes. However, assistance under this part will be available only in proportion to the use of the structure for supportive housing or supportive services. If eligible and ineligible activities are carried out in separate portions of the same structure or in separate structures, grant funds may not be used to pay for more than the actual cost of acquisition, construction, or rehabilitation of the portion of the structure or structures used for eligible activities. If eligible and ineligible activities are carried out in the same structure, the costs will be prorated based on the amount of time that the space is used for eligible versus ineligible activities.

§ 578.39 Continuum of Care planning activities.

(a) *In general.* Collaborative applicants may use up to 3 percent of their FPRN, or a maximum amount to be established by the NOFA, for costs of:

- (1) Designing and carrying out a collaborative process for the development of an application to HUD;
- (2) Evaluating the outcomes of projects for which funds are awarded in the geographic area under the Continuum of Care and the Emergency Solutions Grants programs; and
- (3) Participating in the consolidated plan(s) for the geographic area(s).

(b) *Continuum of Care planning activities.* Eligible planning costs include the costs of:

- (1) Developing a communitywide or regionwide process involving the coordination of nonprofit homeless providers, victim service providers, faith-based organizations, governments, businesses, advocates, public housing agencies, school districts, social service providers, mental health agencies, hospitals, universities, affordable housing developers, law enforcement, organizations that serve veterans, and homeless and formerly homeless individuals;
- (2) Determining the geographic area that the Continuum of Care will serve;
- (3) Developing a Continuum of Care system;
- (4) Evaluating the outcomes of projects for which funds are awarded in the geographic area, including the Emergency Solutions Grants program;

(5) Participating in the consolidated plan(s) of the jurisdiction(s) in the geographic area; and

(6) Preparing and submitting an application to HUD on behalf of the entire Continuum of Care membership, including conducting a sheltered and unsheltered point-in-time count and other data collection as required by HUD.

(c) *Monitoring costs.* The costs of monitoring recipients and subrecipients and enforcing compliance with program requirements are eligible.

§ 578.41 Unified Funding Agency costs.

(a) *In general.* UFAs may use up to 3 percent of their FPRN, or a maximum amount to be established by the NOFA, whichever is less, for fiscal control and accounting costs necessary to assure the proper disbursement of, and accounting for, federal funds awarded to subrecipients under the Continuum of Care program.

(b) *UFA costs.* UFA costs include costs of ensuring that all financial transactions carried out under the Continuum of Care program are conducted and records are maintained in accordance with generally accepted accounting principles, including arranging for an annual survey, audit, or evaluation of the financial records of each project carried out by a subrecipient funded by a grant received through the Continuum of Care program.

(c) *Monitoring costs.* The costs of monitoring subrecipients and enforcing compliance with program requirements are eligible for costs.

§ 578.43 Acquisition.

Grant funds may be used to pay up to 100 percent of the cost of acquisition of real property selected by the recipient or subrecipient for use in the provision of housing or supportive services for homeless persons.

§ 578.45 Rehabilitation.

(a) *Use.* Grant funds may be used to pay up to 100 percent of the cost of rehabilitation of structures to provide housing or supportive services to homeless persons.

(b) *Eligible costs.* Eligible rehabilitation costs include installing cost-effective energy measures, and bringing an existing structure to State and local government health and safety standards.

(c) *Ineligible costs.* Grant funds may not be used for rehabilitation of leased property.

§ 578.47 New construction.

(a) *Use.* Grant funds may be used to:

- (1) Pay up to 100 percent of the cost of new construction, including the

building of a new structure or building an addition to an existing structure that increases the floor area by 100 percent or more, and the cost of land associated with that construction, for use as housing.

(2) If grant funds are used for new construction, the applicant must demonstrate that the costs of new construction are substantially less than the costs of rehabilitation or that there is a lack of available appropriate units that could be rehabilitated at a cost less than new construction. For purposes of this cost comparison, costs of rehabilitation or new construction may include the cost of real property acquisition.

(b) *Ineligible costs.* Grant funds may not be used for new construction on leased property.

§ 578.49 Leasing.

(a) *Use.* (1) Where the recipient or subrecipient is leasing the structure, or portions thereof, grant funds may be used to pay for 100 percent of the costs of leasing a structure or structures, or portions thereof, to provide housing or supportive services to homeless persons for up to 3 years. Leasing funds may not be used to lease units or structures owned by the recipient, subrecipient, their parent organization(s), any other related organization(s), or organizations that are members of a partnership, where the partnership owns the structure, unless HUD authorized an exception for good cause.

(2) Any request for an exception must include the following:

(i) A description of how leasing these structures is in the best interest of the program;

(ii) Supporting documentation showing that the leasing charges paid with grant funds are reasonable for the market; and

(iii) A copy of the written policy for resolving disputes between the landlord and tenant, including a recusal for officers, agents, and staff who work for both the landlord and tenant.

(b) *Requirements.* (1) *Leasing structures.* When grants are used to pay rent for all or part of a structure or structures, the rent paid must be reasonable in relation to rents being charged in the area for comparable space. In addition, the rent paid may not exceed rents currently being charged by the same owner for comparable unassisted space.

(2) *Leasing individual units.* When grants are used to pay rent for individual housing units, the rent paid must be reasonable in relation to rents being charged for comparable units, taking into account the location, size,

type, quality, amenities, facilities, and management services. In addition, the rents may not exceed rents currently being charged for comparable units, and the rent paid may not exceed HUD-determined fair market rents.

(3) *Utilities.* If electricity, gas, and water are included in the rent, these utilities may be paid from leasing funds. If utilities are not provided by the landlord, these utility costs are an operating cost, except for supportive service facilities. If the structure is being used as a supportive service facility, then these utility costs are a supportive service cost.

(4) *Security deposits and first and last month's rent.* Recipients and subrecipients may use grant funds to pay security deposits, in an amount not to exceed 2 months of actual rent. An advance payment of the last month's rent may be provided to the landlord in addition to the security deposit and payment of the first month's rent.

(5) *Occupancy agreements and subleases.* Occupancy agreements and subleases are required as specified in § 578.77(a).

(6) *Calculation of occupancy charges and rent.* Occupancy charges and rent from program participants must be calculated as provided in § 578.77.

(7) *Program income.* Occupancy charges and rent collected from program participants are program income and may be used as provided under § 578.97.

(8) *Transition.* Beginning in the first year awards are made under the Continuum of Care program, renewals of grants for leasing funds entered into under the authority of title IV, subtitle D of the Act as it existed before May 20, 2009, will be renewed either as grants for leasing or as rental assistance, depending on the characteristics of the project. Leasing funds will be renewed as rental assistance if the funds are used to pay rent on units where the lease is between the program participant and the landowner or lessor. Projects requesting leasing funds will be renewed as leasing if the funds were used to lease a unit or structure and the lease is between the recipient or subrecipient and the landowner.

§ 578.51 Rental assistance.

(a) *Use.* (1) Grant funds may be used for rental assistance for homeless individuals and families. Rental assistance cannot be provided to a program participant who is already receiving rental assistance, or living in a housing unit receiving rental assistance or operating assistance through other federal, State, or local sources.

(i) The rental assistance may be short-term, up to 3 months of rent; medium-term, for 3 to 24 months of rent; or long-term, for longer than 24 months of rent and must be administered in accordance with the policies and procedures established by the Continuum as set forth in § 578.7(a)(9) and this section.

(ii) The rental assistance may be tenant-based, project-based, or sponsor-based, and may be for transitional or permanent housing.

(2) Grant funds may be used for security deposits in an amount not to exceed 2 months of rent. An advance payment of the last month's rent may be provided to the landlord, in addition to the security deposit and payment of first month's rent.

(b) *Rental assistance administrator.* Rental assistance must be administered by a State, unit of general local government, or a public housing agency.

(c) *Tenant-based rental assistance.* Tenant-based rental assistance is rental assistance in which program participants choose housing of an appropriate size in which to reside. When necessary to facilitate the coordination of supportive services, recipients and subrecipients may require program participants to live in a specific area for their entire period of participation, or in a specific structure for the first year and in a specific area for the remainder of their period of participation. Program participants who are receiving rental assistance in transitional housing may be required to live in a specific structure for their entire period of participation in transitional housing.

(1) Up to 5 years worth of rental assistance may be awarded to a project in one competition.

(2) Program participants who have complied with all program requirements during their residence retain the rental assistance if they move within the Continuum of Care geographic area.

(3) Program participants who have complied with all program requirements during their residence and who have been a victim of domestic violence, dating violence, sexual assault, or stalking, and who reasonably believe they are imminently threatened by harm from further domestic violence, dating violence, sexual assault, or stalking (which would include threats from a third party, such as a friend or family member of the perpetrator of the violence), if they remain in the assisted unit, and are able to document the violence and basis for their belief, may retain the rental assistance and move to a different Continuum of Care geographic area if they move out of the

assisted unit to protect their health and safety.

(d) *Sponsor-based rental assistance.* Sponsor-based rental assistance is provided through contracts between the recipient and sponsor organization. A sponsor may be a private, nonprofit organization, or a community mental health agency established as a public nonprofit organization. Program participants must reside in housing owned or leased by the sponsor. Up to 5 years worth of rental assistance may be awarded to a project in one competition.

(e) *Project-based rental assistance.* Project-based rental assistance is provided through a contract with the owner of an existing structure, where the owner agrees to lease the subsidized units to program participants. Program participants will not retain rental assistance if they move. Up to 15 years of rental assistance may be awarded in one competition.

(f) *Grant amount.* The amount of rental assistance in each project will be based on the number and size of units proposed by the applicant to be assisted over the grant period. The amount of rental assistance in each project will be calculated by multiplying the number and size of units proposed by the FMR of each unit on the date the application is submitted to HUD, by the term of the grant.

(g) *Rent reasonableness.* HUD will only provide rental assistance for a unit if the rent is reasonable. The recipient or subrecipient must determine whether the rent charged for the unit receiving rental assistance is reasonable in relation to rents being charged for comparable unassisted units, taking into account the location, size, type, quality, amenities, facilities, and management and maintenance of each unit. Reasonable rent must not exceed rents currently being charged by the same owner for comparable unassisted units.

(h) *Payment of grant.* (1) The amount of rental assistance in each project will be reserved for rental assistance over the grant period. An applicant's request for rental assistance in each grant is an estimate of the amount needed for rental assistance. Recipients will make draws from the grant funds to pay the actual costs of rental assistance for program participants.

(2) For tenant-based rental assistance, on demonstration of need:

(i) Up to 25 percent of the total rental assistance awarded may be spent in any year of a 5-year grant term; or

(ii) A higher percentage if approved in advance by HUD, if the recipient provides evidence satisfactory to HUD that it is financially committed to

providing the housing assistance described in the application for the full 5-year period.

(3) A recipient must serve at least as many program participants as shown in its application for assistance.

(4) If the amount in each grant reserved for rental assistance over the grant period exceeds the amount that will be needed to pay the actual costs of rental assistance, due to such factors as contract rents being lower than FMRs and program participants being able to pay a portion of the rent, recipients or subrecipients may use the excess funds for covering the costs of rent increases, or for serving a greater number of program participants.

(i) *Vacancies.* If a unit assisted under this section is vacated before the expiration of the lease, the assistance for the unit may continue for a maximum of 30 days from the end of the month in which the unit was vacated, unless occupied by another eligible person. No additional assistance will be paid until the unit is occupied by another eligible person. Brief periods of stays in institutions, not to exceed 90 days for each occurrence, are not considered vacancies.

(j) *Property damage.* Recipients and subrecipients may use grant funds in an amount not to exceed one month's rent to pay for any damage to housing due to the action of a program participant. This shall be a one-time cost per participant, incurred at the time a participant exits a housing unit.

(k) *Resident rent.* Rent must be calculated as provided in § 578.77. Rents collected from program participants are program income and may be used as provided under § 578.97.

(l) *Leases.* (1) *Initial lease.* For project-based, sponsor-based, or tenant-based rental assistance, program participants must enter into a lease agreement for a term of at least one year, which is terminable for cause. The leases must be automatically renewable upon expiration for terms that are a minimum of one month long, except on prior notice by either party.

(2) *Initial lease for transitional housing.* Program participants in transitional housing must enter into a lease agreement for a term of at least one month. The lease must be automatically renewable upon expiration, except on prior notice by either party, up to a maximum term of 24 months.

§ 578.53 Supportive services.

(a) *In general.* Grant funds may be used to pay the eligible costs of supportive services that address the special needs of the program

participants. If the supportive services are provided in a supportive service facility not contained in a housing structure, the costs of day-to-day operation of the supportive service facility, including maintenance, repair, building security, furniture, utilities, and equipment are eligible as a supportive service.

(1) Supportive services must be necessary to assist program participants obtain and maintain housing.

(2) Recipients and subrecipients shall conduct an annual assessment of the service needs of the program participants and should adjust services accordingly.

(b) *Duration.* (1) For a transitional housing project, supportive services must be made available to residents throughout the duration of their residence in the project.

(2) Permanent supportive housing projects must provide supportive services for the residents to enable them to live as independently as is practicable throughout the duration of their residence in the project.

(3) Services may also be provided to former residents of transitional housing and current residents of permanent housing who were homeless in the prior 6 months, for no more than 6 months after leaving transitional housing or homelessness, respectively, to assist their adjustment to independent living.

(4) Rapid rehousing projects must require the program participant to meet with a case manager not less than once per month as set forth in § 578.37(a)(1)(ii)(F), to assist the program participant in maintaining long-term housing stability.

(c) *Special populations.* All eligible costs are eligible to the same extent for program participants who are unaccompanied homeless youth; persons living with HIV/AIDS; and victims of domestic violence, dating violence, sexual assault, or stalking.

(d) *Ineligible costs.* Any cost that is not described as an eligible cost under this section is not an eligible cost of providing supportive services using Continuum of Care program funds. Staff training and the costs of obtaining professional licenses or certifications needed to provide supportive services are not eligible costs.

(e) *Eligible costs.*

(1) *Annual Assessment of Service Needs.* The costs of the assessment required by § 578.53(a)(2) are eligible costs.

(2) *Assistance with moving costs.* Reasonable one-time moving costs are eligible and include truck rental and hiring a moving company.

(3) *Case management.* The costs of assessing, arranging, coordinating, and monitoring the delivery of individualized services to meet the needs of the program participant(s) are eligible costs. Component services and activities consist of:

- (i) Counseling;
- (ii) Developing, securing, and coordinating services;
- (iii) Using the centralized or coordinated assessment system as required under § 578.23(c)(9).
- (iv) Obtaining federal, State, and local benefits;
- (v) Monitoring and evaluating program participant progress;
- (vi) Providing information and referrals to other providers;
- (vii) Providing ongoing risk assessment and safety planning with victims of domestic violence, dating violence, sexual assault, and stalking; and
- (viii) Developing an individualized housing and service plan, including planning a path to permanent housing stability.

(4) *Child care.* The costs of establishing and operating child care, and providing child-care vouchers, for children from families experiencing homelessness, including providing meals and snacks, and comprehensive and coordinated developmental activities, are eligible.

- (i) The children must be under the age of 13, unless they are disabled children.
- (ii) Disabled children must be under the age of 18.
- (iii) The child-care center must be licensed by the jurisdiction in which it operates in order for its costs to be eligible.

(5) *Education services.* The costs of improving knowledge and basic educational skills are eligible.

(i) Services include instruction or training in consumer education, health education, substance abuse prevention, literacy, English as a Second Language, and General Educational Development (GED).

(ii) Component services or activities are screening, assessment and testing; individual or group instruction; tutoring; provision of books, supplies, and instructional material; counseling; and referral to community resources.

(6) *Employment assistance and job training.* The costs of establishing and operating employment assistance and job training programs are eligible, including classroom, online and/or computer instruction, on-the-job instruction, services that assist individuals in securing employment, acquiring learning skills, and/or increasing earning potential. The cost of

providing reasonable stipends to program participants in employment assistance and job training programs is also an eligible cost.

(i) Learning skills include those skills that can be used to secure and retain a job, including the acquisition of vocational licenses and/or certificates.

(ii) Services that assist individuals in securing employment consist of:

- (A) Employment screening, assessment, or testing;
 - (B) Structured job skills and job-seeking skills;
 - (C) Special training and tutoring, including literacy training and pre-vocational training;
 - (D) Books and instructional material;
 - (E) Counseling or job coaching; and
 - (F) Referral to community resources.
- (7) *Food.* The cost of providing meals or groceries to program participants is eligible.

(8) *Housing search and counseling services.* Costs of assisting eligible program participants to locate, obtain, and retain suitable housing are eligible.

(i) Component services or activities are tenant counseling; assisting individuals and families to understand leases; securing utilities; and making moving arrangements.

(ii) Other eligible costs are:

- (A) Mediation with property owners and landlords on behalf of eligible program participants;
- (B) Credit counseling, accessing a free personal credit report, and resolving personal credit issues; and
- (C) The payment of rental application fees.

(9) *Legal services.* Eligible costs are the fees charged by licensed attorneys and by person(s) under the supervision of licensed attorneys, for advice and representation in matters that interfere with the homeless individual or family's ability to obtain and retain housing.

(i) Eligible subject matters are child support; guardianship; paternity; emancipation; legal separation; orders of protection and other civil remedies for victims of domestic violence, dating violence, sexual assault, and stalking; appeal of veterans and public benefit claim denials; landlord tenant disputes; and the resolution of outstanding criminal warrants.

(ii) Component services or activities may include receiving and preparing cases for trial, provision of legal advice, representation at hearings, and counseling.

(iii) Fees based on the actual service performed (i.e., fee for service) are also eligible, but only if the cost would be less than the cost of hourly fees. Filing fees and other necessary court costs are also eligible. If the subrecipient is a

legal services provider and performs the services itself, the eligible costs are the subrecipient's employees' salaries and other costs necessary to perform the services.

(iv) Legal services for immigration and citizenship matters and issues related to mortgages and homeownership are ineligible. Retainer fee arrangements and contingency fee arrangements are ineligible.

(10) *Life skills training.* The costs of teaching critical life management skills that may never have been learned or have been lost during the course of physical or mental illness, domestic violence, substance abuse, and homelessness are eligible. These services must be necessary to assist the program participant to function independently in the community. Component life skills training are the budgeting of resources and money management, household management, conflict management, shopping for food and other needed items, nutrition, the use of public transportation, and parent training.

(11) *Mental health services.* Eligible costs are the direct outpatient treatment of mental health conditions that are provided by licensed professionals. Component services are crisis interventions; counseling; individual, family, or group therapy sessions; the prescription of psychotropic medications or explanations about the use and management of medications; and combinations of therapeutic approaches to address multiple problems.

(12) *Outpatient health services.* Eligible costs are the direct outpatient treatment of medical conditions when provided by licensed medical professionals including:

- (i) Providing an analysis or assessment of an individual's health problems and the development of a treatment plan;
- (ii) Assisting individuals to understand their health needs;
- (iii) Providing directly or assisting individuals to obtain and utilize appropriate medical treatment;
- (iv) Preventive medical care and health maintenance services, including in-home health services and emergency medical services;
- (v) Provision of appropriate medication;
- (vi) Providing follow-up services; and
- (vii) Preventive and noncosmetic dental care.

(13) *Outreach services.* The costs of activities to engage persons for the purpose of providing immediate support and intervention, as well as identifying

potential program participants, are eligible.

(i) Eligible costs include the outreach worker's transportation costs and a cell phone to be used by the individual performing the outreach.

(ii) Component activities and services consist of: initial assessment; crisis counseling; addressing urgent physical needs, such as providing meals, blankets, clothes, or toiletries; actively connecting and providing people with information and referrals to homeless and mainstream programs; and publicizing the availability of the housing and/or services provided within the geographic area covered by the Continuum of Care.

(14) *Substance abuse treatment services.* The costs of program participant intake and assessment, outpatient treatment, group and individual counseling, and drug testing are eligible. Inpatient detoxification and other inpatient drug or alcohol treatment are ineligible.

(15) *Transportation.* Eligible costs are:

(i) The costs of program participant's travel on public transportation or in a vehicle provided by the recipient or subrecipient to and from medical care, employment, child care, or other services eligible under this section.

(ii) Mileage allowance for service workers to visit program participants and to carry out housing quality inspections;

(iii) The cost of purchasing or leasing a vehicle in which staff transports program participants and/or staff serving program participants;

(iv) The cost of gas, insurance, taxes, and maintenance for the vehicle;

(v) The costs of recipient or subrecipient staff to accompany or assist program participants to utilize public transportation; and

(vi) If public transportation options are not sufficient within the area, the recipient may make a one-time payment on behalf of a program participant needing car repairs or maintenance required to operate a personal vehicle, subject to the following:

(A) Payments for car repairs or maintenance on behalf of the program participant may not exceed 10 percent of the Blue Book value of the vehicle (Blue Book refers to the guidebook that compiles and quotes prices for new and used automobiles and other vehicles of all makes, models, and types);

(B) Payments for car repairs or maintenance must be paid by the recipient or subrecipient directly to the third party that repairs or maintains the car; and

(C) The recipients or subrecipients may require program participants to

share in the cost of car repairs or maintenance as a condition of receiving assistance with car repairs or maintenance.

(16) *Utility deposits.* This form of assistance consists of paying for utility deposits. Utility deposits must be a one-time fee, paid to utility companies.

(17) *Direct provision of services.* If the service described in paragraphs (e)(1) through (e)(16) of this section is being directly delivered by the recipient or subrecipient, eligible costs for those services also include:

(i) The costs of labor or supplies, and materials incurred by the recipient or subrecipient in directly providing supportive services to program participants; and

(ii) The salary and benefit packages of the recipient and subrecipient staff who directly deliver the services.

§ 578.55 Operating costs.

(a) *Use.* Grant funds may be used to pay the costs of the day-to-day operation of transitional and permanent housing in a single structure or individual housing units.

(b) *Eligible costs.* (1) The maintenance and repair of housing;

(2) Property taxes and insurance;

(3) Scheduled payments to a reserve for replacement of major systems of the housing (provided that the payments must be based on the useful life of the system and expected replacement cost);

(4) Building security for a structure where more than 50 percent of the units or area is paid for with grant funds;

(5) Electricity, gas, and water;

(6) Furniture; and

(7) Equipment.

(c) *Ineligible costs.* Program funds may not be used for rental assistance and operating costs in the same project. Program funds may not be used for the operating costs of emergency shelter and supportive service-only facilities. Program funds may not be used for the maintenance and repair of housing where the costs of maintaining and repairing the housing are included in the lease.

§ 578.57 Homeless Management Information System.

(a) *Eligible costs.* (1) The recipient or subrecipient may use Continuum of Care program funds to pay the costs of contributing data to the HMIS designated by the Continuum of Care, including the costs of:

(i) Purchasing or leasing computer hardware;

(ii) Purchasing software or software licenses;

(iii) Purchasing or leasing equipment, including telephones, fax machines, and furniture;

(iv) Obtaining technical support;

(v) Leasing office space;

(vi) Paying charges for electricity, gas, water, phone service, and high-speed data transmission necessary to operate or contribute data to the HMIS;

(vii) Paying salaries for operating HMIS, including:

(A) Completing data entry;

(B) Monitoring and reviewing data quality;

(C) Completing data analysis;

(D) Reporting to the HMIS Lead;

(E) Training staff on using the HMIS; and

(F) Implementing and complying with HMIS requirements;

(viii) Paying costs of staff to travel to and attend HUD-sponsored and HUD-approved training on HMIS and programs authorized by Title IV of the McKinney-Vento Homeless Assistance Act;

(ix) Paying staff travel costs to conduct intake; and

(x) Paying participation fees charged by the HMIS Lead, as authorized by HUD, if the recipient or subrecipient is not the HMIS Lead.

(2) If the recipient or subrecipient is the HMIS Lead, it may also use Continuum of Care funds to pay the costs of:

(i) Hosting and maintaining HMIS software or data;

(ii) Backing up, recovering, or repairing HMIS software or data;

(iii) Upgrading, customizing, and enhancing the HMIS;

(iv) Integrating and warehousing data, including development of a data warehouse for use in aggregating data from subrecipients using multiple software systems;

(v) Administering the system;

(vi) Reporting to providers, the Continuum of Care, and HUD; and

(vii) Conducting training on using the system, including traveling to the training.

(3) If the recipient or subrecipient is a victim services provider, or a legal services provider, it may use Continuum of Care funds to establish and operate a comparable database that complies with HUD's HMIS requirements.

(b) *General restrictions.* Activities funded under this section must comply with the HMIS requirements.

§ 578.59 Project administrative costs.

(a) *Eligible costs.* The recipient or subrecipient may use up to 10 percent of any grant awarded under this part, excluding the amount for Continuum of Care Planning Activities and UFA costs, for the payment of project administrative costs related to the planning and execution of Continuum

of Care activities. This does not include staff and overhead costs directly related to carrying out activities eligible under § 578.43 through § 578.57, because those costs are eligible as part of those activities. Eligible administrative costs include:

(1) *General management, oversight, and coordination.* Costs of overall program management, coordination, monitoring, and evaluation. These costs include, but are not limited to, necessary expenditures for the following:

(i) Salaries, wages, and related costs of the recipient's staff, the staff of subrecipients, or other staff engaged in program administration. In charging costs to this category, the recipient may include the entire salary, wages, and related costs allocable to the program of each person whose primary responsibilities with regard to the program involve program administration assignments, or the pro rata share of the salary, wages, and related costs of each person whose job includes any program administration assignments. The recipient may use only one of these methods for each fiscal year grant. Program administration assignments include the following:

(A) Preparing program budgets and schedules, and amendments to those budgets and schedules;

(B) Developing systems for assuring compliance with program requirements;

(C) Developing agreements with subrecipients and contractors to carry out program activities;

(D) Monitoring program activities for progress and compliance with program requirements;

(E) Preparing reports and other documents directly related to the program for submission to HUD;

(F) Coordinating the resolution of audit and monitoring findings;

(G) Evaluating program results against stated objectives; and

(H) Managing or supervising persons whose primary responsibilities with regard to the program include such assignments as those described in paragraph (a)(1)(i)(A) through (G) of this section.

(ii) Travel costs incurred for monitoring of subrecipients;

(iii) Administrative services performed under third-party contracts or agreements, including general legal services, accounting services, and audit services; and

(iv) Other costs for goods and services required for administration of the program, including rental or purchase of equipment, insurance, utilities, office

supplies, and rental and maintenance (but not purchase) of office space.

(2) *Training on Continuum of Care requirements.* Costs of providing training on Continuum of Care requirements and attending HUD-sponsored Continuum of Care trainings.

(3) *Environmental review.* Costs of carrying out the environmental review responsibilities under § 578.31.

(b) *Sharing requirement.* (1) *UFAs.* If the recipient is a UFA that carries out a project, it may use up to 10 percent of the grant amount awarded for the project on project administrative costs. The UFA must share the remaining project administrative funds with its subrecipients.

(2) *Recipients that are not UFAs.* If the recipient is not a UFA, it must share at least 50 percent of project administrative funds with its subrecipients.

§ 578.61 Relocation costs.

(a) *In general.* Relocation costs under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 are eligible.

(b) *Eligible relocation costs.* Eligible costs are costs to provide relocation payments and other assistance to persons displaced by a project assisted with grant funds in accordance with § 578.83.

§ 578.63 Indirect costs.

(a) *In general.* Continuum of Care funds may be used to pay indirect costs in accordance with OMB Circulars A-87 or A-122, as applicable.

(b) *Allocation.* Indirect costs may be allocated to each eligible activity as provided in subpart D, so long as that allocation is consistent with an indirect cost rate proposal developed in accordance with OMB Circulars A-87 or A-122, as applicable.

(c) *Expenditure limits.* The indirect costs charged to an activity subject to an expenditure limit under §§ 578.39, 578.41, and 578.59 must be added to the direct costs charged for that activity when determining the total costs subject to the expenditure limits.

Subpart E—High-Performing Communities

§ 578.65 Standards.

(a) *In general.* The collaborative applicant for a Continuum may apply to HUD to have the Continuum be designated a high-performing community (HPC). The designation shall be for grants awarded in the same competition in which the designation is applied for and made.

(b) *Applying for HPC designation.* The application must be submitted at such

time and in such manner as HUD may require, must use HMIS data where required to show the standards for qualifying are met, and must contain such information as HUD requires, including at a minimum:

(1) A report showing how the Continuum of Care program funds received in the preceding year were expended;

(2) A specific plan for how grant funds will be expended; and

(3) Information establishing that the Continuum of Care meets the standards for HPCs.

(c) *Standards for qualifying as an HPC.* To qualify as an HPC, a Continuum must demonstrate through:

(1) Reliable data generated by the Continuum of Care's HMIS that it meets all of the following standards:

(i) *Mean length of homelessness.*

Either the mean length of episode of homelessness within the Continuum's geographic area is fewer than 20 days, or the mean length of episodes of homelessness for individuals or families in similar circumstances was reduced by at least 10 percent from the preceding federal fiscal year.

(ii) *Reduced recidivism.* Of individuals and families who leave homelessness, less than 5 percent become homeless again at any time within the next 2 years; or the percentage of individuals and families in similar circumstances who become homeless again within 2 years after leaving homelessness was decreased by at least 20 percent from the preceding federal fiscal year.

(iii) *HMIS coverage.* The Continuum's HMIS must have a bed coverage rate of 80 percent and a service volume coverage rate of 80 percent as calculated in accordance with HUD's HMIS requirements.

(iv) *Serving families and youth.* With respect to Continuums that served homeless families and youth defined as homeless under other federal statutes in paragraph (3) of the definition of homeless in § 576.2:

(A) 95 percent of those families and youth did not become homeless again within a 2-year period following termination of assistance; or

(B) 85 percent of those families achieved independent living in permanent housing for at least 2 years following termination of assistance.

(2) Reliable data generated from sources other than the Continuum's HMIS that is provided in a narrative or other form prescribed by HUD that it meets both of the following standards:

(i) *Community action.* All the metropolitan cities and counties within the Continuum's geographic area have a

comprehensive outreach plan, including specific steps for identifying homeless persons and referring them to appropriate housing and services in that geographic area.

(ii) *Renewing HPC status.* If the Continuum was designated an HPC in the previous federal fiscal year and used Continuum of Care grant funds for activities described under § 578.71, that such activities were effective at reducing the number of individuals and families who became homeless in that community.

§ 578.67 Publication of application.

HUD will publish the application to be designated an HPC through the HUD Web site, for public comment as to whether the Continuum seeking designation as an HPC meets the standards for being one.

§ 578.69 Cooperation among entities.

An HPC must cooperate with HUD in distributing information about its successful efforts to reduce homelessness.

§ 578.71 HPC-eligible activities.

In addition to using grant funds for the eligible costs described in subpart D of this part, recipients and subrecipients in Continuums of Care designated as HPCs may also use grant funds to provide housing relocation and stabilization services and short- and/or medium-term rental assistance to individuals and families at risk of homelessness as set forth in 24 CFR 576.103 and 24 CFR 576.104, if necessary to prevent the individual or family from becoming homeless. Activities must be carried out in accordance with the plan submitted in the application. When carrying out housing relocation and stabilization services and short- and/or medium-term rental assistance, the written standards set forth in § 578.7(a)(9)(v) and recordkeeping requirements of 24 CFR 576.500 apply.

Subpart F—Program Requirements

§ 578.73 Matching requirements.

(a) *In general.* The recipient or subrecipient must match all grant funds, except for leasing funds, with no less than 25 percent of funds or in-kind contributions from other sources. For Continuum of Care geographic areas in which there is more than one grant agreement, the 25 percent match must be provided on a grant-by-grant basis. Recipients that are UFAs or are the sole recipient for their Continuum, may provide match on a Continuum-wide basis. Cash match must be used for the costs of activities that are eligible under

subpart D of this part, except that HPCs may use such match for the costs of activities that are eligible under § 578.71.

(b) *Cash sources.* A recipient or subrecipient may use funds from any source, including any other federal sources (excluding Continuum of Care program funds), as well as State, local, and private sources, provided that funds from the source are not statutorily prohibited to be used as a match. The recipient must ensure that any funds used to satisfy the matching requirements of this section are eligible under the laws governing the funds in order to be used as matching funds for a grant awarded under this program.

(c) *In-kind contributions.* (1) The recipient or subrecipient may use the value of any real property, equipment, goods, or services contributed to the project as match, provided that if the recipient or subrecipient had to pay for them with grant funds, the costs would have been eligible under Subpart D, or, in the case of HPCs, eligible under § 578.71.

(2) The requirements of 24 CFR 84.23 and 85.24 apply.

(3) Before grant execution, services to be provided by a third party must be documented by a memorandum of understanding (MOU) between the recipient or subrecipient and the third party that will provide the services. Services provided by individuals must be valued at rates consistent with those ordinarily paid for similar work in the recipient's or subrecipient's organization. If the recipient or subrecipient does not have employees performing similar work, the rates must be consistent with those ordinarily paid by other employers for similar work in the same labor market.

(i) The MOU must establish the unconditional commitment, except for selection to receive a grant, by the third party to provide the services, the specific service to be provided, the profession of the persons providing the service, and the hourly cost of the service to be provided.

(ii) During the term of the grant, the recipient or subrecipient must keep and make available, for inspection, records documenting the service hours provided.

§ 578.75 General operations.

(a) *State and local requirements.* (1) Housing and facilities constructed or rehabilitated with assistance under this part must meet State or local building codes, and in the absence of State or local building codes, the International Residential Code or International Building Code (as applicable to the type

of structure) of the International Code Council.

(2) Services provided with assistance under this part must be provided in compliance with all applicable State and local requirements, including licensing requirements.

(b) *Housing quality standards.* Housing leased with Continuum of Care program funds, or for which rental assistance payments are made with Continuum of Care program funds, must meet the applicable housing quality standards (HQS) under 24 CFR 982.401 of this title, except that 24 CFR 982.401(j) applies only to housing occupied by program participants receiving tenant-based rental assistance. For housing rehabilitated with funds under this part, the lead-based paint requirements in 24 CFR part 35, subparts A, B, J, and R apply. For housing that receives project-based or sponsor-based rental assistance, 24 CFR part 35, subparts A, B, H, and R apply. For residential property for which funds under this part are used for acquisition, leasing, services, or operating costs, 24 CFR part 35, subparts A, B, K, and R apply.

(1) Before any assistance will be provided on behalf of a program participant, the recipient, or subrecipient, must physically inspect each unit to assure that the unit meets HQS. Assistance will not be provided for units that fail to meet HQS, unless the owner corrects any deficiencies within 30 days from the date of the initial inspection and the recipient or subrecipient verifies that all deficiencies have been corrected.

(2) Recipients or subrecipients must inspect all units at least annually during the grant period to ensure that the units continue to meet HQS.

(c) *Suitable dwelling size.* The dwelling unit must have at least one bedroom or living/sleeping room for each two persons.

(1) Children of opposite sex, other than very young children, may not be required to occupy the same bedroom or living/sleeping room.

(2) If household composition changes during the term of assistance, recipients and subrecipients may relocate the household to a more appropriately sized unit. The household must still have access to appropriate supportive services.

(d) *Meals.* Each recipient and subrecipient of assistance under this part who provides supportive housing for homeless persons with disabilities must provide meals or meal preparation facilities for residents.

(e) *Ongoing assessment of supportive services.* To the extent practicable, each

project must provide supportive services for residents of the project and homeless persons using the project, which may be designed by the recipient or participants. Each recipient and subrecipient of assistance under this part must conduct an ongoing assessment of the supportive services needed by the residents of the project, the availability of such services, and the coordination of services needed to ensure long-term housing stability and must make adjustments, as appropriate.

(f) *Residential supervision.* Each recipient and subrecipient of assistance under this part must provide residential supervision as necessary to facilitate the adequate provision of supportive services to the residents of the housing throughout the term of the commitment to operate supportive housing. Residential supervision may include the employment of a full- or part-time residential supervisor with sufficient knowledge to provide or to supervise the provision of supportive services to the residents.

(g) *Participation of homeless individuals.* (1) Each recipient and subrecipient must provide for the participation of not less than one homeless individual or formerly homeless individual on the board of directors or other equivalent policymaking entity of the recipient or subrecipient, to the extent that such entity considers and makes policies and decisions regarding any project, supportive services, or assistance provided under this part. This requirement is waived if a recipient or subrecipient is unable to meet such requirement and obtains HUD approval for a plan to otherwise consult with homeless or formerly homeless persons when considering and making policies and decisions.

(2) Each recipient and subrecipient of assistance under this part must, to the maximum extent practicable, involve homeless individuals and families through employment; volunteer services; or otherwise in constructing, rehabilitating, maintaining, and operating the project, and in providing supportive services for the project.

(h) *Supportive service agreement.* Recipients and subrecipients may require the program participants to take part in supportive services that are not disability-related services provided through the project as a condition of continued participation in the program. Examples of disability-related services include, but are not limited to, mental health services, outpatient health services, and provision of medication, which are provided to a person with a disability to address a condition caused

by the disability. Notwithstanding this provision, if the purpose of the project is to provide substance abuse treatment services, recipients and subrecipients may require program participants to take part in such services as a condition of continued participation in the program.

(i) *Retention of assistance after death, incarceration, or institutionalization for more than 90 days of qualifying member.* For permanent supportive housing projects surviving, members of any household who were living in a unit assisted under this part at the time of the qualifying member's death, long-term incarceration, or long-term institutionalization, have the right to rental assistance under this section until the expiration of the lease in effect at the time of the qualifying member's death, long-term incarceration, or long-term institutionalization.

§ 578.77 Calculating occupancy charges and rent.

(a) *Occupancy agreements and leases.* Recipients and subrecipients must have signed occupancy agreements or leases (or subleases) with program participants residing in housing.

(b) *Calculation of occupancy charges.* Recipients and subrecipients are not required to impose occupancy charges on program participants as a condition of residing in the housing. However, if occupancy charges are imposed, they may not exceed the highest of:

(1) 30 percent of the family's monthly adjusted income (adjustment factors include the number of people in the family, age of family members, medical expenses, and child-care expenses);

(2) 10 percent of the family's monthly 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 for housing costs.

(4) *Income.* Income must be calculated in accordance with 24 CFR 5.609 and 24 CFR 5.611(a). Recipients and subrecipients must examine a program participant's income initially, and if there is a change in family composition (e.g., birth of a child) or a decrease in the resident's income during the year, the resident may request an interim reexamination, and the occupancy charge will be adjusted accordingly.

(c) *Resident rent.* (1) *Amount of rent.*

(i) Each program participant on whose behalf rental assistance payments are

made must pay a contribution toward rent in accordance with section 3(a)(1) of the U.S. Housing Act of 1937 (42 U.S.C. 1437a(a)(1)).

(ii) Income of program participants must be calculated in accordance with 24 CFR 5.609 and 24 CFR 5.611(a).

(2) *Review.* Recipients or subrecipients must examine a program participant's income initially, and at least annually thereafter, to determine the amount of the contribution toward rent payable by the program participant. Adjustments to a program participant's contribution toward the rental payment must be made as changes in income are identified.

(3) *Verification.* As a condition of participation in the program, each program participant must agree to supply the information or documentation necessary to verify the program participant's income. Program participants must provide the recipient or subrecipient with information at any time regarding changes in income or other circumstances that may result in changes to a program participant's contribution toward the rental payment.

§ 578.79 Limitation on transitional housing.

A homeless individual or family may remain in transitional housing for a period longer than 24 months, if permanent housing for the individual or family has not been located or if the individual or family requires additional time to prepare for independent living. However, HUD may discontinue assistance for a transitional housing project if more than half of the homeless individuals or families remain in that project longer than 24 months.

§ 578.81 Term of commitment, repayment of grants, and prevention of undue benefits.

(a) *In general.* All recipients and subrecipients receiving grant funds for acquisition, rehabilitation, or new construction must operate the housing or provide supportive services in accordance with this part, for at least 15 years from the date of initial occupancy or date of initial service provision. Recipient and subrecipients must execute and record a HUD-approved Declaration of Restrictive Covenants before receiving payment of grant funds.

(b) *Conversion.* Recipients and subrecipients carrying out a project that provides transitional or permanent housing or supportive services in a structure may submit a request to HUD to convert a project for the direct benefit of very low-income persons. The request must be made while the project is operating as homeless housing or supportive services for homeless

individuals and families, must be in writing, and must include an explanation of why the project is no longer needed to provide transitional or permanent housing or supportive services. The primary factor in HUD's decision on the proposed conversion is the unmet need for transitional or permanent housing or supportive services in the Continuum of Care's geographic area.

(c) *Repayment of grant funds.* If a project is not operated as transitional or permanent housing for 10 years following the date of initial occupancy, HUD will require repayment of the entire amount of the grant used for acquisition, rehabilitation, or new construction, unless conversion of the project has been authorized under paragraph (b) of this section. If the housing is used for such purposes for more than 10 years, the payment amount will be reduced by 20 percentage points for each year, beyond the 10-year period in which the project is used for transitional or permanent housing.

(d) *Prevention of undue benefits.* Except as provided under paragraph (e) of this section, upon any sale or other disposition of a project site that received grant funds for acquisition, rehabilitation, or new construction, occurring before the 15-year period, the recipient must comply with such terms and conditions as HUD may prescribe to prevent the recipient or subrecipient from unduly benefiting from such sale or disposition.

(e) *Exception.* A recipient or subrecipient will not be required to comply with the terms and conditions prescribed under paragraphs (c) and (d) of this section if:

(1) The sale or disposition of the property used for the project results in the use of the property for the direct benefit of very low-income persons;

(2) All the proceeds are used to provide transitional or permanent housing that meet the requirements of this part;

(3) Project-based rental assistance or operating cost assistance from any federal program or an equivalent State or local program is no longer made available and the project is meeting applicable performance standards, provided that the portion of the project that had benefitted from such assistance continues to meet the tenant income and rent restrictions for low-income units under section 42(g) of the Internal Revenue Code of 1986; or

(4) There are no individuals and families in the Continuum of Care geographic area who are homeless, in which case the project may serve

individuals and families at risk of homelessness.

§ 578.83 Displacement, relocation, and acquisition.

(a) *Minimizing displacement.* Consistent with the other goals and objectives of this part, recipients and subrecipients must ensure that they have taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of projects assisted under this part. "Project," as used in this section, means any activity or series of activities assisted with Continuum of Care funds received or anticipated in any phase of an undertaking.

(b) *Temporary relocation.* (1) *Existing Building Not Assisted under Title IV of the McKinney-Vento Act.* No tenant may be required to relocate temporarily for a project if the building in which the project is being undertaken or will be undertaken is not currently assisted under Title IV of the McKinney-Vento Act. The absence of such assistance to the building means the tenants are not homeless and the tenants are therefore not eligible to receive assistance under the Continuum of Care program. When a tenant moves for such a project under conditions that cause the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA), 42 U.S.C. 4601–4655, to apply, the tenant must be treated as permanently displaced and offered relocation assistance and payments consistent with paragraph (c) of this section.

(2) *Existing Transitional Housing or Permanent Housing Projects Assisted Under Title IV of the McKinney-Vento Act.* Consistent with paragraph (c)(2)(ii) of this section, no program participant may be required to relocate temporarily for a project if the person cannot be offered a decent, safe, and sanitary unit in the same building or complex upon project completion under reasonable terms and conditions. The length of occupancy requirements in § 578.79 may prevent a program participant from returning to the property upon completion (See paragraph (c)(2)(iii)(D) of this section). Any program participant who has been temporarily relocated for a period beyond one year must be treated as permanently displaced and offered relocation assistance and payments consistent with paragraph (c) of this section. Program participants temporarily relocated in accordance with the policies described in this paragraph must be provided:

(i) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary

relocation, including the cost of moving to and from the temporarily occupied housing and any increase in monthly rent/occupancy charges and utility costs; and

(ii) Appropriate advisory services, including reasonable advance written notice of:

(A) The date and approximate duration of the temporary relocation;

(B) The location of the suitable, decent, safe, and sanitary dwelling to be made available for the temporary period;

(C) The reasonable terms and conditions under which the program participant will be able to occupy a suitable, decent, safe, and sanitary dwelling in the building or complex upon completion of the project; and

(D) The provisions of paragraph (b)(2)(i) of this section.

(c) *Relocation assistance for displaced persons.* (1) *In general.* A displaced person (defined in paragraph (c)(2) of this section) must be provided relocation assistance in accordance with the requirements of the URA and implementing regulations at 49 CFR part 24. A displaced person must be advised of his or her rights under the Fair Housing Act. Whenever possible, minority persons must be given reasonable opportunities to relocate to decent, safe, and sanitary replacement dwellings, not located in an area of minority concentration, that are within their financial means. This policy, however, does not require providing a person a larger payment than is necessary to enable a person to relocate to a comparable replacement dwelling. See 49 CFR 24.205(c)(2)(ii)(D).

(2) *Displaced person.* (i) For the purposes of paragraph (c) of this section, the term "displaced person" means any 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. This includes any permanent, involuntary move for a project, including any permanent move from the real property that is made:

(A) After the owner (or person in control of the site) issues a notice to move permanently from the property, or refuses to renew an expiring lease, if the move occurs after the date of the submission by the recipient or subrecipient of an application for assistance to HUD (or the recipient, as applicable) that is later approved and funded and the recipient or subrecipient has site control as evidenced in accordance with § 578.25(b); or

(B) After the owner (or person in control of the site) issues a notice to move permanently from the property, or refuses to renew an expiring lease, if the move occurs after the date the recipient or subrecipient obtains site control, as evidenced in accordance with § 578.25(b), if that occurs after the application for assistance; or

(C) Before the date described under paragraph (c)(2)(i)(A) or (B) of this section, if the recipient or HUD determines that the displacement resulted directly from acquisition, rehabilitation, or demolition for the project; or

(D) By a tenant of a building that is not assisted under Title IV of the McKinney-Vento Act, if the tenant moves after execution of the agreement covering the acquisition, rehabilitation, or demolition of the property for the project; or

(ii) For the purposes of paragraph (c) of this section, the term "displaced person" means any 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. This includes any permanent, involuntary move for a project that is made by a program participant occupying transitional housing or permanent housing assisted under Title IV of the McKinney-Vento Act, if any one of the following three situations occurs:

(A) The program participant moves after execution of the agreement covering the acquisition, rehabilitation, or demolition of the property for the project and is either not eligible to return upon project completion or the move occurs before the program participant is provided written notice offering the program participant an opportunity to occupy a suitable, decent, safe, and sanitary dwelling in the same building or complex upon project completion under reasonable terms and conditions. Such reasonable terms and conditions must include a lease (or occupancy agreement, as applicable) consistent with Continuum of Care program requirements, including a monthly rent or occupancy charge and monthly utility costs that does not exceed the maximum amounts established in § 578.77; or

(B) The program participant is required to relocate temporarily, does not return to the building or complex, and any one of the following situations occurs:

(1) The program participant is not offered payment for all reasonable out-

of-pocket expenses incurred in connection with the temporary relocation;

(2) The program participant is not eligible to return to the building or complex upon project completion; or

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

(C) The program participant is required to move to another unit in the same building or complex, and any one of the following situations occurs:

(1) The program participant is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move;

(2) The program participant is not eligible to remain in the building or complex upon project completion; or

(3) Other conditions of the move are not reasonable.

(iii) Notwithstanding the provisions of paragraph (c)(2)(i) or (ii) of this section, a person does not qualify as a "displaced person" if:

(A) The person has been evicted for serious or repeated violation of the terms and conditions of the lease or occupancy agreement; the eviction complied with applicable federal, State, or local requirements (see § 578.91); and the recipient or subrecipient determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance;

(B) The person moved into the property after the submission of the application but, before signing a lease or occupancy agreement and commencing occupancy, was provided written notice of the project's possible impact on the person (e.g., the person may be displaced, temporarily relocated, or incur a rent increase) and the fact that the person would not qualify as a "displaced person" (or for any relocation assistance provided under this section), as a result of the project;

(C) The person is ineligible under 49 CFR 24.2(a)(9)(ii);

(D) The person is a program participant occupying transitional housing or permanent housing assisted under Title IV of the Act who must move as a direct result of the length-of-occupancy restriction under § 578.79; or

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

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

(3) *Initiation of negotiations.* For purposes of determining the formula for computing replacement housing payment assistance to be provided to a displaced person pursuant to this

section, if the displacement is a direct result of privately undertaken rehabilitation, demolition, or acquisition of the real property, "initiation of negotiations" means the execution of the agreement between the recipient and the subrecipient, or between the recipient (or subrecipient, as applicable) and the person owning or controlling the property. In the case of an option contract to acquire property, the initiation of negotiations does not become effective until execution of a written agreement that creates a legally enforceable commitment to proceed with the purchase, such as a purchase agreement.

(d) *Real property acquisition requirements.* Except for acquisitions described in 49 CFR 24.101(b)(1) through (5), the URA and the requirements of 49 CFR part 24, subpart B apply to any acquisition of real property for a project where there are Continuum of Care funds in any part of the project costs.

(e) *Appeals.* A person who disagrees with the recipient's (or subrecipient's, if applicable) 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 recipient (see 49 CFR 24.10). A low-income person who is dissatisfied with the recipient's determination on his or her appeal may submit a written request for review of that determination to the local HUD field office.

§ 578.85 Timeliness standards.

(a) *In general.* Recipients must initiate approved activities and projects promptly.

(b) *Construction activities.* Recipients of funds for rehabilitation or new construction must meet the following standards:

(1) Construction activities must begin within 9 months of the later of signing of the grant agreement or of signing an addendum to the grant agreement authorizing use of grant funds for the project.

(2) Construction activities must be completed within 24 months of signing the grant agreement.

(3) Activities that cannot begin until after construction activities are completed must begin within 3 months of the date that construction activities are completed.

(c) *Distribution.* A recipient that receives funds through this part must:

(1) Distribute the funds to subrecipients (in advance of expenditures by the subrecipients);

(2) Distribute the appropriate portion of the funds to a subrecipient no later than 45 days after receiving an approvable request for such distribution from the subrecipient; and

(3) Draw down funds at least once per quarter of the program year, after eligible activities commence.

§ 578.87 Limitation on use of funds.

(a) *Maintenance of effort.* No assistance provided under this part (or any State or local government funds used to supplement this assistance) may be used to replace State or local funds previously used, or designated for use, to assist homeless persons.

(b) *Faith-based activities.* (1) *Equal treatment of program participants and program beneficiaries.* (i) *Program participants.* Organizations that are religious or faith-based are eligible, on the same basis as any other organization, to participate in the Continuum of Care program. Neither the Federal Government nor a State or local government receiving funds under the Continuum of Care program shall discriminate against an organization on the basis of the organization's religious character or affiliation. Recipients and subrecipients of program funds shall not, in providing program assistance, discriminate against a program participant or prospective program participant on the basis of religion or religious belief.

(ii) *Beneficiaries.* In providing services supported in whole or in part with federal financial assistance, and in their outreach activities related to such services, program participants shall not discriminate against current or prospective program beneficiaries on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.

(2) *Separation of explicitly religious activities.* Recipients and subrecipients of Continuum of Care funds that engage in explicitly religious activities, including activities that involve overt religious content such as worship, religious instruction, or proselytization, must perform such activities and offer such services outside of programs that are supported with federal financial assistance separately, in time or location, from the programs or services funded under this part, and participation in any such explicitly religious activities must be voluntary for the program beneficiaries of the HUD-funded programs or services.

(3) *Religious identity.* A faith-based organization that is a recipient or subrecipient of Continuum of Care program funds is eligible to use such

funds as provided under the regulations of this part without impairing its independence, autonomy, expression of religious beliefs, or religious character. Such organization will retain its independence from federal, State, and local government, and may continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs, provided that it does not use direct program funds to support or engage in any explicitly religious activities, including activities that involve overt religious content, such as worship, religious instruction, or proselytization, or any manner prohibited by law. Among other things, faith-based organizations may use space in their facilities to provide program-funded services, without removing or altering religious art, icons, scriptures, or other religious symbols. In addition, a Continuum of Care program-funded religious organization retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

(4) *Alternative provider.* If a program participant or prospective program participant of the Continuum of Care program supported by HUD objects to the religious character of an organization that provides services under the program, that organization shall, within a reasonably prompt time after the objection, undertake reasonable efforts to identify and refer the program participant to an alternative provider to which the prospective program participant has no objection. Except for services provided by telephone, the Internet, or similar means, the referral must be to an alternate provider in reasonable geographic proximity to the organization making the referral. In making the referral, the organization shall comply with applicable privacy laws and regulations. Recipients and subrecipients shall document any objections from program participants and prospective program participants and any efforts to refer such participants to alternative providers in accordance with the requirements of § 578.103(a)(13). Recipients shall ensure that all subrecipient agreements make organizations receiving program funds aware of these requirements.

(5) *Structures.* Program funds may not be used for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used for explicitly religious activities. Program funds may

be used for the acquisition, construction, or rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under this part. When a structure is used for both eligible and explicitly religious activities, program funds may not exceed the cost of those portions of the acquisition, new construction, or rehabilitation that are attributable to eligible activities in accordance with the cost accounting requirements applicable to the Continuum of Care program. Sanctuaries, chapels, or other rooms that a Continuum of Care program-funded religious congregation uses as its principal place of worship, however, are ineligible for Continuum of Care program-funded improvements. Disposition of real property after the term of the grant, or any change in the use of the property during the term of the grant, is subject to governmentwide regulations governing real property disposition (see 24 CFR parts 84 and 85).

(6) *Supplemental funds.* If a State or local government voluntarily contributes its own funds to supplement federally funded activities, the State or local government has the option to segregate the federal funds or commingle them. However, if the funds are commingled, this section applies to all of the commingled funds.

(c) *Restriction on combining funds.* In a single structure or housing unit, the following types of assistance may not be combined:

- (1) Leasing and acquisition, rehabilitation, or new construction;
 - (2) Tenant-based rental assistance and acquisition, rehabilitation, or new construction;
 - (3) Short- or medium-term rental assistance and acquisition, rehabilitation, or new construction;
 - (4) Rental assistance and leasing; or
 - (5) Rental assistance and operating.
- (d) *Program fees.* Recipients and subrecipients may not charge program participants program fees.

§ 578.89 Limitation on use of grant funds to serve persons defined as homeless under other federal laws.

(a) *Application requirement.* Applicants that intend to serve unaccompanied youth and families with children and youth defined as homeless under other federal laws in paragraph (3) of the homeless definition in § 576.2 must demonstrate in their application, to HUD's satisfaction, that the use of grant funds to serve such persons is an equal or greater priority than serving persons defined as homeless under paragraphs (1), (2), and (4) of the

definition of homeless in § 576.2. To demonstrate that it is of equal or greater priority, applicants must show that it is equally or more cost effective in meeting the overall goals and objectives of the plan submitted under section 427(b)(1)(B) of the Act, especially with respect to children and unaccompanied youth.

(b) *Limit.* No more than 10 percent of the funds awarded to recipients within a single Continuum of Care's geographic area may be used to serve such persons.

(c) *Exception.* The 10 percent limitation does not apply to Continuums in which the rate of homelessness, as calculated in the most recent point-in-time count, is less than one-tenth of one percent of the total population.

§ 578.91 Termination of assistance to program participants.

(a) *Termination of assistance.* The recipient or subrecipient may terminate assistance to a program participant who violates program requirements or conditions of occupancy. Termination under this section does not bar the recipient or subrecipient from providing further assistance at a later date to the same individual or family.

(b) *Due process.* In terminating assistance to a program participant, the recipient or subrecipient must provide a formal process that recognizes the rights of individuals receiving assistance under the due process of law. This process, at a minimum, must consist of:

(1) Providing the program participant with a written copy of the program rules and the termination process before the participant begins to receive assistance;

(2) Written notice to the program participant containing a clear statement of the reasons for termination;

(3) A review of the decision, in which the program participant is given the opportunity to present written or oral objections before a person other than the person (or a subordinate of that person) who made or approved the termination decision; and

(4) Prompt written notice of the final decision to the program participant.

(c) *Hard-to-house populations.* Recipients and subrecipients that are providing permanent supportive housing for hard-to-house populations of homeless persons must exercise judgment and examine all extenuating circumstances in determining when violations are serious enough to warrant termination so that a program participant's assistance is terminated only in the most severe cases.

§ 578.93 Fair Housing and Equal Opportunity.

(a) *Nondiscrimination and equal opportunity requirements.* The nondiscrimination and equal opportunity requirements set forth in 24 CFR 5.105(a) are applicable.

(b) *Housing for specific subpopulations.* Recipients and subrecipients may exclusively serve a particular homeless subpopulation in transitional or permanent housing if the housing addresses a need identified by the Continuum of Care for the geographic area and meets one of the following:

(1) The housing may be limited to one sex where such housing consists of a single structure with shared bedrooms or bathing facilities such that the considerations of personal privacy and the physical limitations of the configuration of the housing make it appropriate for the housing to be limited to one sex;

(2) The housing may be limited to a specific subpopulation, so long as admission does not discriminate against any protected class under federal nondiscrimination laws in 24 CFR 5.105 (e.g., the housing may be limited to homeless veterans, victims of domestic violence and their children, or chronically homeless persons and families).

(3) The housing may be limited to families with children.

(4) If the housing has in residence at least one family with a child under the age of 18, the housing may exclude registered sex offenders and persons with a criminal record that includes a violent crime from the project so long as the child resides in the housing.

(5) Sober housing may exclude persons who refuse to sign an occupancy agreement or lease that prohibits program participants from possessing, using, or being under the influence of illegal substances and/or alcohol on the premises.

(6) If the housing is assisted with funds under a federal program that is limited by federal statute or Executive Order to a specific subpopulation, the housing may be limited to that subpopulation (e.g., housing also assisted with funding from the Housing Opportunities for Persons with AIDS program under 24 CFR part 574 may be limited to persons with acquired immunodeficiency syndrome or related diseases).

(7) Recipients may limit admission to or provide a preference for the housing to subpopulations of homeless persons and families who need the specialized supportive services that are provided in the housing (e.g., substance abuse

addiction treatment, domestic violence services, or a high intensity package designed to meet the needs of hard-to-reach homeless persons). While the housing may offer services for a particular type of disability, no otherwise eligible individuals with disabilities or families including an individual with a disability, who may benefit from the services provided may be excluded on the grounds that they do not have a particular disability.

(c) *Affirmatively furthering fair housing.* A recipient must implement its programs in a manner that affirmatively furthers fair housing, which means that the recipient must:

(1) Affirmatively market their housing and supportive services to eligible persons regardless of race, color, national origin, religion, sex, age, familial status, or handicap who are least likely to apply in the absence of special outreach, and maintain records of those marketing activities;

(2) Where a recipient encounters a condition or action that impedes fair housing choice for current or prospective program participants, provide such information to the jurisdiction that provided the certification of consistency with the Consolidated Plan; and

(3) Provide program participants with information on rights and remedies available under applicable federal, State and local fair housing and civil rights laws.

(d) *Accessibility and integrative housing and services for persons with disabilities.* Recipients and subrecipients must comply with the accessibility requirements of the Fair Housing Act (24 CFR part 100), Section 504 of the Rehabilitation Act of 1973 (24 CFR part 8), and Titles II and III of the Americans with Disabilities Act, as applicable (28 CFR parts 35 and 36). In accordance with the requirements of 24 CFR 8.4(d), recipients must ensure that their program's housing and supportive services are provided in the most integrated setting appropriate to the needs of persons with disabilities.

(e) *Prohibition against involuntary family separation.* The age and gender of a child under age 18 must not be used as a basis for denying any family's admission to a project that receives funds under this part.

§ 578.95 Conflicts of interest.

(a) *Procurement.* For the procurement of property (goods, supplies, or equipment) and services, the recipient and its subrecipients must comply with the codes of conduct and conflict-of-interest requirements under 24 CFR 85.36 (for governments) and 24 CFR

84.42 (for private nonprofit organizations).

(b) *Continuum of Care board members.* No Continuum of Care board member may participate in or influence discussions or resulting decisions concerning the award of a grant or other financial benefits to the organization that the member represents.

(c) *Organizational conflict.* An organizational conflict of interest arises when, because of activities or relationships with other persons or organizations, the recipient or subrecipient is unable or potentially unable to render impartial assistance in the provision of any type or amount of assistance under this part, or when a covered person's, as in paragraph (d)(1) of this section, objectivity in performing work with respect to any activity assisted under this part is or might be otherwise impaired. Such an organizational conflict would arise when a board member of an applicant participates in decision of the applicant concerning the award of a grant, or provision of other financial benefits, to the organization that such member represents. It would also arise when an employee of a recipient or subrecipient participates in making rent reasonableness determinations under § 578.49(b)(2) and § 578.51(g) and housing quality inspections of property under § 578.75(b) that the recipient, subrecipient, or related entity owns.

(d) *Other conflicts.* For all other transactions and activities, the following restrictions apply:

(1) No covered person, meaning a person who is an employee, agent, consultant, officer, or elected or appointed official of the recipient or its subrecipients and who exercises or has exercised any functions or responsibilities with respect to activities assisted under this part, or who is in a position to participate in a decision-making process or gain inside information with regard to activities assisted under this part, may obtain a financial interest or benefit from an assisted activity, have a financial interest in any contract, subcontract, or agreement with respect to an assisted activity, or have a financial interest in the proceeds derived from an assisted activity, either for him or herself or for those with whom he or she has immediate family or business ties, during his or her tenure or during the one-year period following his or her tenure.

(2) *Exceptions.* Upon the written request of the recipient, HUD may grant an exception to the provisions of this section on a case-by-case basis, taking into account the cumulative effects of

the criteria in paragraph (d)(2)(ii) of this section, provided that the recipient has satisfactorily met the threshold requirements of paragraph (d)(2)(ii) of this section.

(i) *Threshold requirements.* HUD will consider an exception only after the recipient has provided the following documentation:

(A) Disclosure of the nature of the conflict, accompanied by a written assurance, if the recipient is a government, that there has been public disclosure of the conflict and a description of how the public disclosure was made; and if the recipient is a private nonprofit organization, that the conflict has been disclosed in accordance with their written code of conduct or other conflict-of-interest policy; and

(B) An opinion of the recipient's attorney that the interest for which the exception is sought would not violate State or local law, or if the subrecipient is a private nonprofit organization, the exception would not violate the organization's internal policies.

(ii) *Factors to be considered for exceptions.* In determining whether to grant a requested exception after the recipient has satisfactorily met the threshold requirements under paragraph (c)(3)(i) of this section, HUD must conclude that the exception will serve to further the purposes of the Continuum of Care program and the effective and efficient administration of the recipient's or subrecipient's project, taking into account the cumulative effect of the following factors, as applicable:

(A) 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;

(B) Whether an opportunity was provided for open competitive bidding or negotiation;

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

(D) Whether the interest or benefit was present before the affected person was in the position described in paragraph (c)(1) of this section;

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

(F) Whether the person affected is a member of a group or class of persons intended to be the beneficiaries of the assisted activity, 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; and

(G) Any other relevant considerations.

§ 578.97 Program Income.

(a) *Defined.* Program income is the income received by the recipient or subrecipient directly generated by a grant-supported activity.

(b) *Use.* Program income earned during the grant term shall be retained by the recipient, and added to funds committed to the project by HUD and the recipient, used for eligible activities in accordance with the requirements of this part. Costs incident to the generation of program income may be deducted from gross income to calculate program income, provided that the costs have not been charged to grant funds.

(c) *Rent and occupancy charges.* Rents and occupancy charges collected from program participants are program income. In addition, rents and occupancy charges collected from residents of transitional housing may be reserved, in whole or in part, to assist the residents from whom they are collected to move to permanent housing.

§ 578.99 Applicability of other federal requirements.

In addition to the requirements set forth in 24 CFR part 5, use of assistance provided under this part must comply with the following federal requirements:

(a) *Environmental review.* Activities under this part are subject to environmental review by HUD under 24 CFR part 50 as noted in § 578.31.

(b) *Section 6002 of the Solid Waste Disposal Act.* State agencies and agencies of a political subdivision of a state that are using assistance under this part for procurement, and any person contracting with such an agency with respect to work performed under an assisted contract, must comply with the requirements of Section 6003 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. In accordance with Section 6002, these agencies and persons must:

(1) Procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired in the preceding fiscal year exceeded \$10,000;

(2) Procure solid waste management services in a manner that maximizes energy and resource recovery; and

(3) Must have established an affirmative procurement program for the procurement of recovered materials identified in the EPA guidelines.

(c) *Transparency Act Reporting.* Section 872 of the Duncan Hunter Defense Appropriations Act of 2009, and additional requirements published by the Office of Management and Budget (OMB), requires recipients to report subawards made either as pass-through awards, subrecipient awards, or vendor awards in the Federal Government Web site *www.fgfrs.gov* or its successor system. The reporting of award and subaward information is in accordance with the requirements of the Federal Financial Assistance Accountability and Transparency Act of 2006, as amended by section 6202 of Public Law 110-252 and in OMB Policy Guidance issued to the federal agencies on September 14, 2010 (75 FR 55669).

(d) *The Coastal Barrier Resources Act of 1982* (16 U.S.C. 3501 *et seq.*) may apply to proposals under this part, depending on the assistance requested.

(e) *Applicability of OMB Circulars.* The requirements of 24 CFR part 85—Administrative Requirements for Grants and Cooperative Agreements to State, Local, and Federally Recognized Indian Tribal Governments and 2 CFR part 225—Cost Principles for State, Local and Indian Tribal Governments (OMB Circular A-87)—apply to governmental recipients and subrecipients except where inconsistent with the provisions of this part. The requirements of 24 CFR part 84—Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations; 2 CFR part 230—Cost Principles for Non-Profit Organizations (OMB Circular A-122); and 2 CFR part 220—Cost Principles for Education Institutions apply to the nonprofit recipients and subrecipients, except where inconsistent with the provisions of the McKiuney-Vento Act or this part.

(f) *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 24 CFR part 35, subparts A, B, H, J, K, M, and R apply to activities under this program.

(g) *Audit.* Recipients and subrecipients must comply with the audit requirements of OMB Circular A-133, "Audits of States, Local Governments, and Non-profit Organizations."

(h) *Davis-Bacon Act.* The provisions of the Davis-Bacon Act do not apply to this program.

(i) *Section 3 of the Housing and Urban Development Act.* Recipients and subrecipients must, as applicable, comply with Section 3 of the Housing and Urban Development Act of 1968 and its implementing regulations at 24 CFR part 135, as applicable.

Subpart G—Grant Administration

§ 578.101 Technical assistance.

(a) *Purpose.* The purpose of Continuum of Care technical assistance is to increase the effectiveness with which Continuums of Care, eligible applicants, recipients, subrecipients, and UFAs implement and administer their Continuum of Care planning process; improve their capacity to prepare applications; prevent the separation of families in projects funded under the Emergency Solutions Grants, Continuum of Care, and Rural Housing Stability Assistance programs; and adopt and provide best practices in housing and services for persons experiencing homelessness.

(b) *Defined.* Technical assistance means the transfer of skills and knowledge to entities that may need, but do not possess, such skills and knowledge. The assistance may include, but is not limited to, written information such as papers, manuals, guides, and brochures; person-to-person exchanges; web-based curriculums, training and Webinars, and their costs.

(c) *Set-aside.* HUD may set aside funds annually to provide technical assistance, either directly by HUD staff or indirectly through third-party providers.

(d) *Awards.* From time to time, as HUD determines the need, HUD may advertise and competitively select providers to deliver technical assistance. HUD may enter into contracts, grants, or cooperative agreements, when necessary, to implement the technical assistance. HUD may also enter into agreements with other federal agencies for awarding the technical assistance funds.

§ 578.103 Recordkeeping requirements.

(a) *In general.* The recipient and its subrecipients must establish and maintain standard operating procedures for ensuring that Continuum of Care program funds are used in accordance with the requirements of this part and must establish and maintain sufficient records to enable HUD to determine whether the recipient and its subrecipients are meeting the requirements of this part, including:

(1) *Continuum of Care records.* Each collaborative applicant must keep the following documentation related to

establishing and operating a Continuum of Care:

(i) Evidence that the Board selected by the Continuum of Care meets the requirements of § 578.5(b);

(ii) Evidence that the Continuum has been established and operated as set forth in subpart B of this part, including published agendas and meeting minutes, an approved Governance Charter that is reviewed and updated annually, a written process for selecting a board that is reviewed and updated at least once every 5 years, evidence required for designating a single HMIS for the Continuum, and monitoring reports of recipients and subrecipients;

(iii) Evidence that the Continuum has prepared the application for funds as set forth in § 578.9, including the designation of the eligible applicant to be the collaborative applicant.

(2) *Unified funding agency records.* UFAs that requested grant amendments from HUD, as set forth in § 578.105, must keep evidence that the grant amendment was approved by the Continuum. This evidence may include minutes of meetings at which the grant amendment was discussed and approved.

(3) *Homeless status.* Acceptable evidence of the homeless as status is set forth in 24 CFR 576.500(b).

(4) *At risk of homelessness status.* For those recipients and subrecipients that serve persons at risk of homelessness, the recipient or subrecipient must keep records that establish "at risk of homelessness" status of each individual or family who receives Continuum of Care homelessness prevention assistance. Acceptable evidence is found in 24 CFR 576.500(c).

(5) *Records of reasonable belief of imminent threat of harm.* For each program participant who moved to a different Continuum of Care due to imminent threat of further domestic violence, dating violence, sexual assault, or stalking under § 578.51(c)(3), each recipient or subrecipient of assistance under this part must retain:

(i) Documentation of the original incidence of domestic violence, dating violence, sexual assault, or stalking, only if the original violence is not already documented in the program participant's case file. This may be written observation of the housing or service provider; a letter or other documentation from a victim service provider, social worker, legal assistance provider, pastoral counselor, mental health provider, or other professional from whom the victim has sought assistance; medical or dental records; court records or law enforcement records; or written certification by the

program participant to whom the violence occurred or by the head of household.

(ii) Documentation of the reasonable belief of imminent threat of further domestic violence, dating violence, or sexual assault or stalking, which would include threats from a third-party, such as a friend or family member of the perpetrator of the violence. This may be written observation by the housing or service provider; a letter or other documentation from a victim service provider, social worker, legal assistance provider, pastoral counselor, mental health provider, or other professional from whom the victim has sought assistance; current restraining order; recent court order or other court records; law enforcement report or records; communication records from the perpetrator of the violence or family members or friends of the perpetrator of the violence, including emails, voicemails, text messages, and social media posts; or a written certification by the program participant to whom the violence occurred or the head of household.

(6) *Annual income.* For each program participant who receives housing assistance where rent or an occupancy charge is paid by the program participant, the recipient or subrecipient must keep the following documentation of annual income:

(i) Income evaluation form specified by HUD and completed by the recipient or subrecipient; and

(ii) Source documents (e.g., most recent wage statement, unemployment compensation statement, public benefits statement, bank statement) for the assets held by the program participant and income received before the date of the evaluation;

(iii) To the extent that source documents are unobtainable, a written statement by the relevant third party (e.g., employer, government benefits administrator) or the written certification by the recipient's or subrecipient's intake staff of the oral verification by the relevant third party of the income the program participant received over the most recent period; or

(iv) To the extent that source documents and third-party verification are unobtainable, the written certification by the program participant of the amount of income that the program participant is reasonably expected to receive over the 3-month period following the evaluation.

(7) *Program participant records.* In addition to evidence of "homeless" status or "at-risk-of-homelessness" status, as applicable, the recipient or

subrecipient must keep records for each program participant that document:

(i) The services and assistance provided to that program participant, including evidence that the recipient or subrecipient has conducted an annual assessment of services for those program participants that remain in the program for more than a year and adjusted the service package accordingly, and including case management services as provided in § 578.37(a)(1)(ii)(F); and

(ii) Where applicable, compliance with the termination of assistance requirement in § 578.91.

(8) *Housing standards.* The recipient or subrecipient must retain documentation of compliance with the housing standards in § 578.75(b), including inspection reports.

(9) *Services provided.* The recipient or subrecipient must document the types of supportive services provided under the recipient's program and the amounts spent on those services. The recipient or subrecipient must keep record that these records were reviewed at least annually and that the service package offered to program participants was adjusted as necessary.

(10) *Match.* The recipient must keep records of the source and use of contributions made to satisfy the match requirement in § 578.73. The records must indicate the grant and fiscal year for which each matching contribution is counted. The records must show how the value placed on third party in-kind contributions was derived. To the extent feasible, volunteer services must be supported by the same methods that the organization uses to support the allocation of regular personnel costs.

(11) *Conflicts of interest.* The recipient and its subrecipients must keep records to show compliance with the organizational conflict-of-interest requirements in § 578.95(c), the Continuum of Care board conflict-of-interest requirements in § 578.95(b), the other conflict requirements in § 578.95(d), a copy of the personal conflict-of-interest policy developed and implemented to comply with the requirements in § 578.95, and records supporting exceptions to the personal conflict-of-interest prohibitions.

(12) *Homeless participation.* The recipient or subrecipient must document its compliance with the homeless participation requirements under § 578.75(g).

(13) *Faith-based activities.* The recipient and its subrecipients must document their compliance with the faith-based activities requirements under § 578.87(b).

(14) *Affirmatively Furthering Fair Housing.* Recipients and subrecipients

must maintain copies of their marketing, outreach, and other materials used to inform eligible persons of the program to document compliance with the requirements in § 578.93(c).

(15) *Other federal requirements.* The recipient and its subrecipients must document their compliance with the federal requirements in § 578.99, as applicable.

(16) *Subrecipients and contractors.* (i) The recipient must retain copies of all solicitations of and agreements with subrecipients, records of all payment requests by and dates of payments made to subrecipients, and documentation of all monitoring and sanctions of subrecipients, as applicable.

(ii) The recipient must retain documentation of monitoring subrecipients, including any monitoring findings and corrective actions required.

(iii) The recipient and its subrecipients must retain copies of all procurement contracts and documentation of compliance with the procurement requirements in 24 CFR 85.36 and 24 CFR part 84.

(17) *Other records specified by HUD.* The recipient and subrecipients must keep other records specified by HUD.

(b) *Confidentiality.* In addition to meeting the specific confidentiality and security requirements for HMIS data, the recipient and its subrecipients must develop and implement written procedures to ensure:

(1) All records containing protected identifying information of any individual or family who applies for and/or receives Continuum of Care assistance will be kept secure and confidential;

(2) The address or location of any family violence project assisted with Continuum of Care funds will not be made public, except with written authorization of the person responsible for the operation of the project; and

(3) The address or location of any housing of a program participant will not be made public, except as provided under a preexisting privacy policy of the recipient or subrecipient and consistent with State and local laws regarding privacy and obligations of confidentiality;

(c) *Period of record retention.* All records pertaining to Continuum of Care funds must be retained for the greater of 5 years or the period specified below. Copies made by microfilming, photocopying, or similar methods may be substituted for the original records.

(1) Documentation of each program participant's qualification as a family or individual at risk of homelessness or as a homeless family or individual and other program participant records must

be retained for 5 years after the expenditure of all funds from the grant under which the program participant was served; and

(2) Where Continuum of Care funds are used for the acquisition, new construction, or rehabilitation of a project site, records must be retained until 15 years after the date that the project site is first occupied, or used, by program participants.

(d) *Access to records.* (1) *Federal Government rights.* Notwithstanding the confidentiality procedures established under paragraph (b) of this section, HUD, the HUD Office of the Inspector General, and the Comptroller General of the United States, or any of their authorized representatives, must have the right of access to all books, documents, papers, or other records of the recipient and its subrecipients that are pertinent to the Continuum of Care grant, in order to make audits, examinations, excerpts, and transcripts. These rights of access are not limited to the required retention period, but last as long as the records are retained.

(2) *Public rights.* The recipient must provide citizens, public agencies, and other interested parties with reasonable access to records regarding any uses of Continuum of Care funds the recipient received during the preceding 5 years, consistent with State and local laws regarding privacy and obligations of confidentiality and confidentiality requirements in this part.

(e) *Reports.* In addition to the reporting requirements in 24 CFR parts 84 and 85, the recipient must collect and report data on its use of Continuum of Care funds in an Annual Performance Report (APR), as well as in any additional reports as and when required by HUD. Projects receiving grant funds only for acquisition, rehabilitation, or new construction must submit APRs for 15 years from the date of initial occupancy or the date of initial service provision, unless HUD provides an exception under § 578.81(e).

§ 578.105 Grant and project changes.

(a) *For Unified Funding Agencies and Continuums having only one recipient.*

(1) The recipient may not make any significant changes without prior HUD approval, evidenced by a grant amendment signed by HUD and the recipient. Significant grant changes include a change of recipient, a shift in a single year of more than 10 percent of the total amount awarded under the grant for one approved eligible activity category to another activity and a permanent change in the subpopulation served by any one project funded under the grant, as well as a permanent

proposed reduction in the total number of units funded under the grant.

(2) Approval of substitution of the recipient is contingent on the new recipient meeting the capacity criteria in the NOFA under which the grant was awarded, or the most recent NOFA. Approval of shifting funds between activities and changing subpopulations is contingent on the change being necessary to better serve eligible persons within the geographic area and ensuring that the priorities established under the NOFA in which the grant was originally awarded, or the most recent NOFA, are met.

(b) *For Continuums having more than one recipient.* (1) The recipients or subrecipients may not make any significant changes to a project without prior HUD approval, evidenced by a grant amendment signed by HUD and the recipient. Significant changes include a change of recipient, a change of project site, additions or deletions in the types of eligible activities approved for a project, a shift of more than 10 percent from one approved eligible activity to another, a reduction in the number of units, and a change in the subpopulation served.

(2) Approval of substitution of the recipient is contingent on the new recipient meeting the capacity criteria in the NOFA under which the grant was awarded, or the most recent NOFA. Approval of shifting funds between activities and changing subpopulations is contingent on the change being necessary to better serve eligible persons within the geographic area and ensuring that the priorities established under the NOFA in which the grant was originally awarded, or the most recent NOFA, are met.

(c) *Documentation of changes not requiring a grant amendment.* Any other changes to an approved grant or project must be fully documented in the recipient's or subrecipient's records.

§ 578.107 Sanctions.

(a) *Performance reviews.* (1) HUD will review the performance of each recipient in carrying out its responsibilities under this part, with or without prior notice to the recipient. In conducting performance reviews, HUD will rely primarily on information obtained from the records and reports from the recipient and subrecipients, as well as information from on-site monitoring, audit reports, and information generated from HUD's financial and reporting systems (e.g., LOCCS and e-snaps) and HMIS. Where applicable, HUD may also consider relevant information pertaining to the recipient's performance gained from

other sources, including citizen comments, complaint determinations, and litigation.

(2) If HUD determines preliminarily that the recipient or one of its subrecipients has not complied with a program requirement, HUD will give the recipient notice of this determination and an opportunity to demonstrate, within the time prescribed by HUD and on the basis of substantial facts and data that the recipient has complied with the requirements. HUD may change the method of payment to require the recipient to submit documentation before payment and obtain HUD's prior approval each time the recipient draws down funds. To obtain prior approval, the recipient may be required to manually submit its payment requests and supporting documentation to HUD in order to show that the funds to be drawn down will be expended on eligible activities in accordance with all program requirements.

(3) If the recipient fails to demonstrate to HUD's satisfaction that the activities were carried out in compliance with program requirements, HUD may take one or more of the remedial actions or sanctions specified in paragraph (b) of this section.

(b) *Remedial actions and sanctions.* Remedial actions and sanctions for a failure to meet a program requirement will be designed to prevent a continuation of the deficiency; to mitigate, to the extent possible, its adverse effects or consequences; and to prevent its recurrence.

(1) HUD may instruct the recipient to submit and comply with proposals for action to correct, mitigate, and prevent noncompliance with program requirements, including:

(i) Preparing and following a schedule of actions for carrying out activities and projects affected by the noncompliance, including schedules, timetables, and milestones necessary to implement the affected activities and projects;

(ii) Establishing and following a management plan that assigns responsibilities for carrying out the remedial actions;

(iii) Canceling or revising activities or projects likely to be affected by the noncompliance, before expending grant funds for them;

(iv) Reprogramming grant funds that have not yet been expended from affected activities or projects to other eligible activities or projects;

(v) Suspending disbursement of grant funds for some or all activities or projects;

(vi) Reducing or terminating the remaining grant of a subrecipient and either reallocating those funds to other

subrecipients or returning funds to HUD; and

(vii) Making matching contributions before or as draws are made from the recipient's grant.

(2) HUD may change the method of payment to a reimbursement basis.

(3) HUD may suspend payments to the extent HUD determines necessary to preclude the further expenditure of funds for affected activities or projects.

(4) HUD may continue the grant with a substitute recipient of HUD's choosing.

(5) HUD may deny matching credit for all or part of the cost of the affected activities and require the recipient to make further matching contributions to make up for the contribution determined to be ineligible.

(6) HUD may require the recipient to reimburse the recipient's line of credit in an amount equal to the funds used for the affected activities.

(7) HUD may reduce or terminate the remaining grant of a recipient.

(8) HUD may condition a future grant.

(9) HUD may take other remedies that are legally available.

(c) *Recipient sanctions.* If the recipient determines that a subrecipient is not complying with a program requirement or its subrecipient agreement, the recipient must take one of the actions listed in paragraphs (a) and (b) of this section.

(d) *Deobligation.* HUD may deobligate funds for the following reasons:

(1) If the timeliness standards in § 578.85 are not met;

(2) If HUD determines that delays completing construction activities for a project will mean that the funds for

other funded activities cannot reasonably be expected to be expended for eligible costs during the remaining term of the grant;

(3) If the actual total cost of acquisition, rehabilitation, or new construction for a project is less than the total cost agreed to in the grant agreement;

(4) If the actual annual leasing costs, operating costs, supportive services costs, rental assistance costs, or HMIS costs are less than the total cost agreed to in the grant agreement for a one-year period;

(5) Program participants have not moved into units within 3 months of the time that the units are available for occupancy; and

(6) The grant agreement may set forth in detail other circumstances under which funds may be deobligated and other sanctions may be imposed.

§ 578.109 Closeout.

(a) *In general.* Grants will be closed out in accordance with the requirements of 24 CFR parts 84 and 85, and closeout procedures established by HUD.

(b) *Reports.* Applicants must submit all reports required by HUD no later than 90 days from the date of the end of the project's grant term.

(c) *Closeout agreement.* Any obligations remaining as of the date of the closeout must be covered by the terms of a closeout agreement. The agreement will be prepared by HUD in consultation with the recipient. The agreement must identify the grant being closed out, and include provisions with respect to the following:

(1) Identification of any closeout costs or contingent liabilities subject to payment with Continuum of Care program funds after the closeout agreement is signed;

(2) Identification of any unused grant funds to be deobligated by HUD;

(3) Identification of any program income on deposit in financial institutions at the time the closeout agreement is signed;

(4) Description of the recipient's responsibility after closeout for:

(i) Compliance with all program requirements in using program income on deposit at the time the closeout agreement is signed and in using any other remaining Continuum of Care program funds available for closeout costs and contingent liabilities;

(ii) Use of real property assisted with Continuum of Care program funds in accordance with the terms of commitment and principles;

(iii) Use of personal property purchased with Continuum of Care program funds; and

(iv) Compliance with requirements governing program income received subsequent to grant closeout.

(5) Other provisions appropriate to any special circumstances of the grant closeout, in modification of or in addition to the obligations in paragraphs (c)(1) through (4) of this section.

Dated: June 28, 2012.

Mark Johnston,

Assistant Secretary for Community Planning and Development (Acting).

[FR Doc. 2012-17546 Filed 7-30-12; 8:45 am]

BILLING CODE 4210-67-P

July 18, 2013

Board of Commissioners
 Clackamas County

Members of the Board:

Approval of a Renewal Grant Agreement from the U.S. Department of Housing and Urban Development, Supportive Housing Program, for the Jackson Place Program to Provide Transitional Housing and Services for the Homeless

Propose/ Outcomes	Approval of a grant agreement with the U.S. Department of Housing and Urban Development (HUD), Supportive Housing Program for the Jackson Place Program to provide transitional housing and services for the homeless.
Dollar Amount and Fiscal Impact	Total amount of the grant award is \$65,277 for a one-year period. The grant requires a 25% match or in-kind contribution which is met through Emergency Housing Account (EHA) state funds and in-kind services from area providers. This agreement partially funds one case management position. No County General Funds are involved.
Funding Source	HUD
Safety Impact	None
Duration	One year period beginning July 8, 2013 with options for renewal
Previous Board Action	Approval to Apply for this grant was approved on December 5, 2012
Contact Person	Brenda Durbin, Director, Social Services Division - 503-655-8641
Contract No.	6293

Background

The Social Services Division of the Health, Housing and Human Services Department requests the approval of a renewal grant agreement from the U.S. Department of Housing and Urban Development, Supportive Housing Program, for the Jackson Place Program for the purpose of providing transitional housing for the homeless. These grant funds provide housing in a one bedroom apartment complex to homeless singles and couples for up to two years. Individuals receive case management and support services, along with housing. Up to 6 households receive services each year.

Issues

The grant agreement is late due to HUD not being able to release the agreement until issues or conditions identified for this project in the HUD review process were addressed. In addition, this was the first year that grant renewals were being processed through the electronic grants management system managed by HUD's Office of Special Needs Assistance Programs (E-SNAPS). A copy of the

grant agreement was released and transmitted through E-SNAPS on July 8, 2013. This agreement was approved by County Counsel on July 2, 2013.

Recommendation

We recommend the approval of this grant agreement and that Cindy Becker, Director of Health, Housing & Human Services is authorized to sign all documents necessary to accomplish this action on behalf of the Board of County Commissioners.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Cindy Becker", with a long horizontal flourish extending to the right.

Cindy Becker,
Director



U.S. Department of Housing and Urban Development
Office of Community Planning and Development
400 SW 6th Avenue
Suite 700
Portland, OR 97204

Tax ID No.: 93-6002286
Project Location: 419005 (Clackmas County, OR)
Grant Number: OR0101L0E071205
Effective Date: 7/8/2013
DUNS No.: 096992656

2012 CONTINUUM OF CARE PROGRAM GRANT AGREEMENT

This Grant Agreement ("this Agreement") is made by and between the United States Department of Housing and Urban Development ("HUD") and Clackamas Dept. Health, Housing & Human Svcs (the "Recipient").

This Agreement is governed by title IV of the McKinney-Vento Homeless Assistance Act 42 U.S.C. 11301 et seq. (the "Act") and the Continuum of Care Program regulation (the "Regulation").

The terms "Grant" or "Grant Funds" mean the funds that are provided under this Agreement. The term "Application" means the application submissions on the basis of which the Grant was approved by HUD, including the certifications, assurances, and any information or documentation required to meet any grant award condition. All other terms shall have the meanings given in the Regulation.

The Application is incorporated herein as part of this Agreement, except that only the project listed, and only in the amount listed on the Scope of Work, is funded by this Agreement. In the event of any conflict between any application provision and any provision contained in this Agreement, this Agreement shall control.

Exhibit 1, the FY2012 Scope of Work, is attached hereto and made a part hereof. If appropriations are available for Continuum of Care grants; and if Recipient applies under a Notice of Funds Availability published by HUD; and, if pursuant to the selection criteria in the Notice of Funds Availability, HUD selects Recipient and the project for renewal, then additional exhibits may be attached to this Agreement. Those additional exhibits, when attached, will also become a part hereof.

The effective date of the Agreement shall be the date of execution by HUD and it is the date use of funds under this Agreement may begin. If the project funded by this Agreement is a new project, Recipient and HUD will set an operating start date in LOCCS for the project, which will be used to track expenditures and to determine when the project is eligible for renewal. If this Agreement renews funding for a project, the term of this Agreement shall begin at the end of the Recipient's final operating year for the grant being renewed, and eligible costs incurred for the project between the end of Recipient's final operating year under the grant being renewed and the execution of this Agreement may be paid with funds from the first operating year of this Agreement.

This Agreement shall remain in effect until termination either 1) by agreement of the parties; 2) by HUD alone, acting under the authority of 24 CFR 578.107; or 3) upon expiration of the final operating year of the project funded under this Agreement.

Recipient agrees:

1. To ensure the operation of the project listed on the Scope of Work in accordance with the provisions of the Act and all requirements of the Regulation;
2. To monitor and report the progress of the project to the Continuum of Care and HUD;
3. To ensure, to the maximum extent practicable, that individuals and families experiencing homelessness are involved, through employment, provision of volunteer services, or otherwise, in constructing, rehabilitating, maintaining, and operating facilities for the project and in providing supportive services for the project;
4. To require certification from any subrecipient that:
 - a. Subrecipient will maintain the confidentiality of records pertaining to any individual or family that was provided family violence prevention or treatment services through the project;
 - b. The address or location of any family violence project assisted with grant funds will not be made public, except with written authorization of the person responsible for the operation of such project;
 - c. Subrecipient will establish policies and practices that are consistent with, and do not restrict, the exercise of rights provided by subtitle B of title VII of the Act and other laws relating to the provision of educational and related services to individuals and families experiencing homelessness;
 - d. In the case of a project that provides housing or services to families, that subrecipient will designate a staff person to be responsible for ensuring that children being served in the program are enrolled in school and connected to appropriate services in the community, including early childhood programs such as Head Start, part C of the Individuals with Disabilities Education Act, and programs authorized under subtitle B of title VII of the Act;
 - e. The subrecipient, its officers, and employees are not debarred or suspended from doing business with the Federal Government; and
 - f. Subrecipient will provide information, such as data and reports, as required by HUD; and
5. To establish such fiscal control and accounting procedures as may be necessary to assure the proper disbursement of, and accounting for grant funds in order to ensure that all financial transactions are conducted, and records maintained in accordance with generally accepted accounting principles, if the Recipient is a Unified Funding Agency;
6. To monitor subrecipient match and report on match to HUD;
7. To take the educational needs of children into account when families are placed in housing and will, to the maximum extent practicable, place families with children as close as possible to their school of origin so as not to disrupt such children's education;
8. To monitor subrecipient at least annually;
9. To use the centralized or coordinated assessment system established by the Continuum of Care as required by §578.7(a)(8). A victim service provider may choose not to use the Continuum of Care's centralized or coordinated assessment system, provided that victim service providers in the area use a centralized or coordinated assessment system that meets HUD's minimum requirements and the victim service provider uses that system instead;
10. To follow the written standards for providing Continuum of Care assistance developed by the Continuum of Care, including the minimum requirements set forth in §578.7(a)(9);

11. Enter into a subrecipient agreement requiring subrecipient to operate the project in accordance with the provisions of this Act and all requirements under 24 CFR 578; and
12. To comply with such other terms and conditions as HUD may have established in the applicable Notice of Funds Availability.

HUD notifications to the Recipient shall be to the address of the Recipient as stated in the Application, unless HUD is otherwise advised in writing. Recipient notifications to HUD shall be to the HUD Field Office executing the Agreement. No right, benefit, or advantage of the Recipient hereunder may be assigned without prior written approval of HUD.

The Agreement constitutes the entire agreement between the parties hereto, and may be amended only in writing executed by HUD and the Recipient.

By signing below, Recipients that are states and units of local government certify that they are following a current HUD approved CHAS (Consolidated Plan).

This agreement is hereby executed on behalf of the parties as follows:

**UNITED STATES OF AMERICA,
Secretary of Housing and Urban Development**

By:



(Signature)

Douglas Carlson, Director

(Typed Name and Title)

July 8, 2013

(Date)

RECIPIENT

Clackamas Dept. Health, Housing & Human Svcs

(Name of Organization)

By:

(Signature of Authorized Official)

Cindy Becker, Director

(Typed Name and Title of Authorized Official)

(Date)

Tax ID Number: 93-6002286
Project Location: 419005 (Clackmas County, OR)
Grant Number: OR0101L0E071205
Effective Date: 7/8/2013
DUNS Number: 096992656

EXHIBIT 1
SCOPE OF WORK for FY2012 COMPETITION

1. This Agreement is governed by the Continuum of Care program Interim Rule attached hereto and made a part hereof as Exhibit 1a. Upon publication for effect of a Final Rule for the Continuum of Care program, the Final Rule will govern this Agreement instead of the Interim Rule. The project listed on this Exhibit at 3., below, is also subject to the terms of the FY2012 Notice of Funds Availability.
2. The Continuum that designated Recipient to apply for grant funds is not a high-performing community.
3. Recipient is not a Unified Funding Agency and was not the only Applicant the Continuum of Care designated to apply for and receive grant funds and is not the only Recipient for the Continuum of Care that designated it. HUD's total funding obligation for this grant is \$65,277 for project number OR0101L0E071205. In accordance with 24 CFR 578.105(b), Recipient is prohibited from moving more than 10% from one budget line item in a project's approved budget to another without a written amendment to this Agreement. The obligation for this project shall be allocated as follows:

a. CoC Planning cost	\$ 0
b. Acquisition	\$ 0
c. New construction	\$ 0
d. Rehabilitation	\$ 0
e. Leasing	\$ 15,688
f. Rental assistance	\$ 0
g. Supportive services	\$ 26,764
h. Operating costs	\$ 18,583
i. HMIS	\$ 0
j. Administration	\$ 4,242

4. No funds for new projects may be drawn down by Recipient until HUD has approved site control pursuant to §578.21 and §578.25 and no funds for renewal projects may be drawn down by Recipient before the end date of the project's final operating year under the grant that has been renewed.

Exhibit 1a

Continuum of Care Program Interim Rule



FEDERAL REGISTER

Vol. 77

Tuesday,

No. 147

July 31, 2012

Part II

Department of Housing and Urban Development

24 CFR Part 578

Homeless Emergency Assistance and Rapid Transition to Housing:
Continuum of Care Program; Interim Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 578

[Docket No. FR-5476-I-01]

RIN 2506-AC29

Homeless Emergency Assistance and Rapid Transition to Housing: Continuum of Care Program

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Interim rule.

SUMMARY: The Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009 (HEARTH Act), enacted into law on May 20, 2009, consolidates three of the separate homeless assistance programs administered by HUD under the McKiuney-Vento Homeless Assistance Act into a single grant program, and revises the Emergency Shelter Grants program and renames it the Emergency Solutions Grants program. The HEARTH Act also codifies in law the Continuum of Care planning process, a longstanding part of HUD's application process to assist homeless persons by providing greater coordination in responding to their needs. The HEARTH Act also directs HUD to promulgate regulations for these new programs and processes.

This interim rule focuses on regulatory implementation of the Continuum of Care program, including the Continuum of Care planning process. The existing homeless assistance programs that comprise the Continuum of Care program are the following: the Supportive Housing program, the Shelter Plus Care program, and the Moderate Rehabilitation/Single Room Occupancy (SRO) program. This rule establishes the regulations for the Continuum of Care program, and, through the establishment of such regulations, the funding made available for the Continuum of Care program in the statute appropriating Fiscal Year (FY) 2012 funding for HUD can more quickly be disbursed, consistent with the HEARTH Act requirements, and avoid any disruption in current Continuum of Care activities.

DATES: *Effective Date:* August 30, 2012.

Comment Due Date: October 1, 2012.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, 451 7th Street SW., Room 10276, Department of Housing and Urban Development, Washington, DC 20410-0500.

Communications must refer to the above

docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410-0500.

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at www.regulations.gov. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the www.regulations.gov Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the Federal Relay Service at 800-877-8339. Copies of all comments submitted are available for inspection and downloading at www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Ann Marie Oliva, Director, Office of Special Needs Assistance Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410-7000; telephone number 202-708-4300 (this is not a toll-free number). Hearing- and speech-impaired persons may access this number through TTY by calling the

Federal Relay Service at 800-877-8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION:

Executive Summary

Purpose of and Legal Authority for This Interim Rule

This interim rule implements the Continuum of Care program authorized by the Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009 (HEARTH Act). Section 1504 of the HEARTH Act directs HUD to establish regulations for this program. (See 42 U.S.C. 11301.) The purpose of the Continuum of Care program is to promote communitywide commitment to the goal of ending homelessness; provide funding for efforts by nonprofit providers, and State and local governments to quickly rehouse homeless individuals and families while minimizing the trauma and dislocation caused to homeless individuals, families, and communities by homelessness; promote access to and effective utilization of mainstream programs by homeless individuals and families; and optimize self-sufficiency among individuals and families experiencing homelessness.

The HEARTH Act streamlines HUD's homeless grant programs by consolidating the Supportive Housing, Shelter Plus Care, and Single Room Occupancy grant programs into one grant program: The Continuum of Care program. Local continuums of care, which are community-based homeless assistance program planning networks, will apply for Continuum of Care grants. By consolidating homeless assistance grant programs and creating the Continuum of Care planning process, the HEARTH Act intended to increase the efficiency and effectiveness of coordinated, community-based systems that provide housing and services to the homeless. Through this interim final rule, HUD will implement the Continuum of Care program by establishing the framework for establishing a local continuum of care and the process for applying for Continuum of Care grants.

Summary of Major Provisions

The major provisions of this rulemaking relate to how to establish and operate a Continuum of Care, how to apply for funds under the program, and how to use the funds for projects approved by HUD. These provisions are summarized below.

1. *General Provisions (Subpart A):*

The Continuum of Care program includes transitional housing, permanent supportive housing for

disabled persons, permanent housing, supportive services, and Homeless Management Information Systems (HMIS). To implement the program, HUD had to define several key terms. In particular, HUD distinguishes between "Continuum of Care," "applicant," and "collaborative applicant." A "Continuum of Care" is a geographically based group of representatives that carries out the planning responsibilities of the Continuum of Care program, as set out in this regulation. These representatives come from organizations that provide services to the homeless, or represent the interests of the homeless or formerly homeless. A Continuum of Care then designates certain "applicants" as the entities responsible for carrying out the projects that the Continuum has identified through its planning responsibilities. A "Continuum of Care" also designates one particular applicant to be a "collaborative applicant." The collaborative applicant is the only entity that can apply for a grant from HUD on behalf of the Continuum that the collaborative applicant represents.

2. Establishing and Operating a Continuum of Care (Subpart B): In order to be eligible for funds under the Continuum of Care program, representatives from relevant organizations within a geographic area must establish a Continuum of Care. The three major duties of a Continuum of Care are to: (1) Operate the Continuum of Care, (2) designate an HMIS for the Continuum of Care, and (3) plan for the Continuum of Care. HUD has delineated certain operational requirements of each Continuum to help measure a Continuum's overall performance at reducing homelessness, in addition to tracking of performance on a project-by-project basis. In addition, each Continuum is responsible for establishing and operating a centralized or coordinated assessment system that will provide a comprehensive assessment of the needs of individuals and families for housing and services. HUD has also defined the minimum planning requirements for a Continuum so that it coordinates and implements a system that meets the needs of the homeless population within its geographic area. Continuums are also responsible for preparing and overseeing an application for funds. Continuums will have to establish the funding priorities for its geographic area when submitting an application.

3. Application and Grant Award Process (Subpart C): The Continuum of Care grant award process begins with a determination of a Continuum's maximum award amount. As directed

by statute, HUD has developed a formula for determining award amounts that includes the following factors: A Continuum's Preliminary Pro Rata Need (PPRN) amount; renewal demand; any additional increases in amounts for leasing, rental assistance, and operating costs based on Fair Market Rents, planning and Unified Funding Agency cost funds, and amounts available for bonus dollars. HUD has established selection criteria for determining which applications will receive funding under the Continuum of Care program. Recipients awarded Continuum of Care funds must satisfy several conditions prior to executing their grant agreements. All grants submitted for renewal must also submit an annual performance report. For those applicants not awarded funding, the process also provides an appeals process.

4. Program Components and Eligible Costs (Subpart D): Continuum of Care funds may be used for projects under five program components: Permanent housing, transitional housing, supportive services only, HMIS, and, in some limited cases, homelessness prevention. The rule further clarifies how the following activities are considered eligible costs under the Continuum of Care program: Continuum of Care planning activities, Unified Funding Agency costs, acquisition, rehabilitation, new construction, leasing, rental assistance, supportive services, operating costs, HMIS, project administrative costs, relocation costs, and indirect costs.

5. High-Performing Communities (Subpart E): HUD will annually, subject to the availability of appropriate data, select those Continuums of Care that best meet application requirements to be designated a high-performing community (HPC). An HPC may use grant funds to provide housing relocation and stabilization services, and short- and/or medium-term rental assistance to individuals and families at risk of homelessness. This is the only time that Continuum of Care funds may be used to serve individuals and families at risk of homelessness.

6. Program Requirements (Subpart F): All recipients of Continuum of Care funding must comply with the program regulations and the requirements of the Notice of Funding Availability that HUD will issue each year. Notably, the HEARTH Act requires that all eligible funding costs, except leasing, must be matched with no less than 25 percent cash or in-kind match by the Continuum. Other program requirements of recipients include: Abiding by housing quality standards

and suitable dwelling size, assessing supportive services on an ongoing basis, initiating and completing approved activities and projects within certain timelines, and providing a formal process for termination of assistance to participants who violate program requirements or conditions of occupancy.

7. Grant Administration (Subpart G): To effectively administer the grants, HUD will provide technical assistance to those who apply for Continuum of Care funds, as well as those who are selected for Continuum of Care funds. After having been selected for funding, grant recipients must satisfy certain recordkeeping requirements so that HUD can assess compliance with the program requirements. For any amendments to grants after the funds have been awarded, HUD has established a separate amendment procedure. As appropriate, HUD has also established sanctions to strengthen its enforcement procedures.

Benefits and Costs

This interim rule is intended to help respond to and work toward the goal of eliminating homelessness. This interim rule provides greater clarity and guidance about planning and performance review to the more than 430 existing Continuums of Care that span all 50 states and 6 United States territories. As reported in HUD's Annual Homelessness Assessment Report to Congress, there were approximately 1.59 million homeless persons who entered emergency shelters or transitional housing in FY 2010. HUD serves roughly half that many persons, nearly 800,000 annually, through its three programs that will be consolidated into the Continuum of Care program under the McKinney-Vento Act as amended by the HEARTH Act (i.e., Shelter Plus Care Supportive Housing Program, Single Room Occupancy). The changes initiated by this interim rule will encourage Continuums of Care to establish formal policies and review procedures, including evaluation of the effectiveness of their projects, by emphasizing performance measurement and developing performance targets for homeless populations. HUD is confident that this systematic review by Continuums of Care will lead to better use of limited resources and more efficient service models, with the end result of preventing and ending homelessness.

The Consolidated and Further Continuing Appropriations Act, 2012 (Pub. L. 112-55) appropriated \$1,593,000,000 for the Continuum of Care and Rural Housing Stability

Assistance programs. Upon publication of this rule, those FY 2012 funds will be available for distribution, as governed by these Continuum of Care regulations.

I. Background—HEARTH Act

On May 20, 2009, the President signed into law “An Act to Prevent Mortgage Foreclosures and Enhance Mortgage Credit Availability,” which became Public Law 111–22. This law implements a variety of measures directed toward keeping individuals and families from losing their homes. Division B of this law is the HEARTH Act, which consolidates and amends three separate homeless assistance programs carried out under title IV of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11371 *et seq.*) (McKinney-Vento Act) into a single grant program that is designed to improve administrative efficiency and enhance response coordination and effectiveness in addressing the needs of homeless persons. The HEARTH Act codifies in law and enhances the Continuum of Care planning process, the coordinated response to addressing the needs of the homeless, which was established administratively by HUD in 1995. The single Continuum of Care program established by the HEARTH Act consolidates the following programs: The Supportive Housing program, the Shelter Plus Care program, and the Moderate Rehabilitation/Single Room Occupancy program. The Emergency Shelter Grants program is renamed the Emergency Solutions Grants program and is revised to broaden existing emergency shelter and homelessness prevention activities and to add short- and medium-term rental assistance and services to rapidly rehouse homeless people. The HEARTH Act also creates the Rural Housing Stability program to replace the Rural Homelessness Grant program.

HUD commenced the process to implement the HEARTH Act with rulemaking that focused on the definition of “homeless.” HUD published a proposed rule, entitled “Defining Homeless” on April 20, 2010 (75 FR 20541), which was followed by a final rule that was published on December 5, 2011 (76 FR 75994). The Defining Homeless rule clarified and elaborated upon the new McKinney-Vento Act definitions for “homeless” and “homeless individual with a disability.” In addition, the Defining Homeless rule included recordkeeping requirements related to the “homeless” definition. On December 5, 2011, HUD also published an interim rule for the Emergency Solutions Grants program (76 FR 75954). This interim rule

established the program requirements for the Emergency Solutions Grants program and contained corresponding amendments to the Consolidated Plan regulations. On December 9, 2011, HUD continued the process to implement the HEARTH Act, with the publication of the proposed rule titled “Homeless Management Information Systems Requirements” (76 FR 76917), which provides for uniform technical requirements for Homeless Management Information Systems (HMIS), for proper data collection and maintenance of the database, and ensures the confidentiality of the information in the database. Today’s publication of the interim rule for the Continuum of Care program continues HUD’s implementation of the HEARTH Act.

This rule establishes the regulatory framework for the Continuum of Care program and the Continuum of Care planning process, including requirements applicable to the establishment of a Continuum of Care. Prior to the amendment of the McKinney-Vento Act by the HEARTH Act, HUD’s competitively awarded homeless assistance grant funds were awarded to organizations that participate in local homeless assistance program planning networks referred to as a Continuum of Care, a system administratively established by HUD in 1995. A Continuum of Care is designed to address the critical problem of homelessness through a coordinated community-based process of identifying needs and building a system of housing and services to address those needs. The approach is predicated on the understanding that homelessness is not caused merely by a lack of shelter, but involves a variety of underlying, unmet needs—physical, economic, and social.

The HEARTH Act not only codified in law the planning system known as Continuum of Care, but consolidated the three existing competitive homeless assistance grant programs (Supportive Housing, Shelter Plus Care, and Single Room Occupancy) into the single grant program known as the Continuum of Care program. The consolidation of the three existing homeless assistance programs into the Continuum of Care grant program and the codification in law of the Continuum of Care planning process are intended to increase the efficiency and effectiveness of the coordination of the provision of housing and services to address the needs of the homeless. The regulations established by this rule are directed to carrying out this congressional intent.

II. Overview of Interim Rule

As amended by the HEARTH Act, Subpart C of the McKinney-Vento Homeless Assistance Act establishes the Continuum of Care program. The purpose of the program is to promote communitywide commitment to the goal of ending homelessness; provide funding for efforts by nonprofit providers, and State and local governments to quickly rehouse homeless individuals and families while minimizing the trauma and dislocation caused to homeless individuals, families, and communities by homelessness; promote access to and effective utilization of mainstream programs by homeless individuals and families; and optimize self-sufficiency among individuals and families experiencing homelessness.

This interim rule establishes the Continuum of Care as the planning body responsible for meeting the goals of the Continuum of Care program. Additionally, in order to meet the purpose of the HEARTH Act, established in section 1002(b), and the goals of “Opening Doors: Federal Strategic Plan to Prevent and End Homelessness,” the Continuum of Care must be involved in the coordination of other funding streams and resources—federal, local, or private—of targeted homeless programs and other mainstream resources. In many communities, the Continuum of Care is the coordinating body, while in other communities it is a local Interagency Council on Homelessness (both would be acceptable forms of coordination under this interim rule). As noted earlier, HUD published on December 9, 2011, a proposed rule to establish HMIS regulations in accordance with the HEARTH Act. However, while the HEARTH Act directed that regulations be established for HMIS, HMIS is not new to many HUD grantees. Until regulations for HMIS are promulgated in final, grantees should continue to follow HUD’s existing HMIS instructions and guidance.

The following provides an overview of the proposed rule.

General Provisions (Subpart A)

Purpose and scope. The Continuum of Care program is designed to promote community-wide goals to end homelessness; provide funding to quickly rehouse homeless individuals (including unaccompanied youth) and families while minimizing trauma and dislocation to those persons; promote access to, and effective utilization of, mainstream programs; and optimize self-sufficiency among individuals and

families experiencing homelessness. The program is composed of transitional housing, permanent supportive housing for disabled persons, permanent housing, supportive services, and HMIS.

Definitions. The interim rule adopts the definitions of "developmental disability," "homeless," "homeless individual," and "homeless person" established by the December 5, 2011 Defining Homeless final rule. Public comments have already been solicited and additional public comment is not solicited through this rule. The December 5, 2011, final rule was preceded by an April 20, 2010, proposed rule, which sought public comment on these definitions. The final definitions of these terms took into consideration the public comments received on the proposed definitions as set out in the April 20, 2010, proposed rule. This interim rule adopts the definition of "at risk of homelessness" established by the December 5, 2011, the Emergency Solutions Grants program interim rule. The interim rule sought public comment on this definition, and additional public comment is not being sought through this rule.

HUD received valuable public comment on the definition of "chronically homeless," through the public comment process on the Emergency Solutions Grants program interim rule. Based on public comment, this rule for the Continuum of Care program is not adopting the full definition of "chronically homeless" that was included in the conforming amendments to the Consolidated Plan that were published as a part of the Emergency Solutions Grants program rule. Commenters raised concerns with the meaning of the phrase "where each homeless occasion was at least 15 days." The concerns raised about this phrase, used for the first time in a definition of "chronically homeless," has caused HUD to reconsider proceeding to apply a definition that includes this phrase, without further consideration and opportunity for comment. In this rule, HUD therefore amends the definition of "chronically homeless" in the Consolidated Plan regulations to strike this phrase. The removal of this phrase returns the definition to one with which service providers are familiar. The following highlights key definitions used in the Continuum of Care program regulations, and HUD solicits comment on these definitions.

Applicant is defined to mean an entity that has been designated by the Continuum of Care as eligible to apply for assistance on behalf of that

Continuum. HUD highlights that the Act does not contain different definitions for "applicant" and "collaborative applicant." HUD distinguishes between the applicant(s) designated to apply for and carry out projects (the "applicant") and the collaborative applicant designated to apply for a grant on behalf of the Continuum of Care (the "collaborative applicant"). Please see below for more information on the definition of a collaborative applicant, which is the only entity that may apply for and receive Continuum of Care planning funds.

Centralized or coordinated assessment system is defined to mean a centralized or coordinated process designed to coordinate program participant intake, assessment, and provision of referrals. A centralized or coordinated assessment system covers the geographic area, is easily accessed by individuals and families seeking housing or services, is well advertised, and includes a comprehensive and standardized assessment tool. This definition establishes basic minimum requirements for the Continuum's centralized or coordinated assessment system.

Collaborative applicant is defined to mean an eligible applicant that has been designated by the Continuum of Care to apply for a grant for Continuum of Care planning funds on behalf of the Continuum. As discussed above, the "applicant" is the entity(ies) designated to apply for and carry out projects on behalf of the Continuum. In contrast to the definition of "applicant" above, the collaborative applicant applies for a grant to carry out the planning activities on behalf of the Continuum of Care. The interim rule simplifies the statutory language in order to make the Continuum of Care planning process clear.

HUD highlights that its definition of collaborative applicant does not track the statutory definition, which is found in section 401 of the McKinney-Vento Act. As will be discussed in further detail later in this preamble, the concept of collaborative applicant, its duties and functions, as provided in the statute, is provided for in this rule. However, HUD uses the term Continuum of Care to refer to the organizations that carry out the duties and responsibilities assigned to the collaborative applicant, with the exception of applying to HUD for grant funds. The clarification is necessary in this rule because Continuums of Care are not required to be legal entities, but HUD can enter into contractual agreements with legal entities only.

Continuum of Care and Continuum are defined to mean the group that is

organized to carry out the responsibilities required under this part and that is composed of representatives of organizations including nonprofit homeless providers, victim service providers, faith-based organizations, governments, businesses, advocates, public housing agencies, school districts, social service providers, mental health agencies, hospitals, universities, affordable housing developers, law enforcement, organizations that serve homeless and formerly homeless veterans, and homeless and formerly homeless persons. These organizations consist of the relevant parties in the geographic area. Continuums are expected to include representation to the extent that the type of organization exists within the geographic area that the Continuum represents and is available to participate in the Continuum. For example, if a Continuum of Care did not have a university within its geographic boundaries, then HUD would not expect the Continuum to have representation from a university within the Continuum.

These organizations carry out the responsibilities and duties established under Subpart B of this interim rule. The Continuum of Care, as noted above, carries out the statutory duties and responsibilities of a collaborative applicant. HUD established the Continuum of Care in 1995. Local grantees and stakeholders are familiar with the Continuum of Care as the coordinating body for homeless services and homelessness prevention activities across the geographic area. Consequently, HUD is maintaining the Continuum of Care terminology, and the rule provides for the duties and responsibilities of a collaborative applicant to be carried out under the name Continuum of Care.

High-performing community is defined to mean the geographic area under the jurisdiction of a Continuum of Care that has been designated as a high-performing community by HUD. Section 424 of the McKinney-Vento Act provides that HUD shall designate, on an annual basis, which collaborative applicants represent high-performing communities. Consistent with HUD's substitution of the term "Continuum of Care" for "collaborative applicant," the definition of "high-performing community" in this interim rule provides for designation of Continuums of Care that represent geographic areas designated as high-performing communities. The standards for becoming a high-performing community can be found in § 578.65 of this interim

rule and will be discussed later in this preamble.

Private nonprofit organization is based on the statutory definition for "private nonprofit organization." The term "private nonprofit organization" is defined in section 424 of the McKinney-Vento Act as follows: "The term 'private nonprofit organization' means an organization: (A) No part of the net earnings of which inures to the benefit of any member, founder, contributor, or individual; (B) that has a voluntary board; (C) that has an accounting system, or has designated a fiscal agent in accordance with requirements established by the Secretary; and (D) that practices nondiscrimination in the provision of assistance." In HUD's regulatory definition of "private nonprofit organization," HUD clarifies that the organization's accounting system must be functioning and operated in accordance with generally accepted accounting principles. HUD has included this language to make certain that accounting systems are workable and abide by definite, accurate standards. As reflected in the statutory definition of "private nonprofit organization," HUD may establish requirements for the designation of a fiscal agent. HUD has determined that the fiscal agent, such as a Unified Funding Agency, a term that is also defined in section 424 of the McKinney-Vento Act, must maintain a functioning accounting system for the organization in accordance with generally accepted accounting principles.

Permanent housing is consistent with the statutory definition of "permanent housing" in section 401 of the McKinney-Vento Act, but does not track the statutory language. HUD's regulatory definition of "permanent housing" states: "The term 'permanent housing' means community-based housing without a designated length of stay, and includes both permanent supportive housing and rapid re-housing." Additionally, in the regulatory definition of "permanent housing," HUD clarifies that to be permanent housing, "the program participant must be the tenant on a lease for a term of at least one year that is renewable and is terminable only for cause. The lease must be renewable for terms that are a minimum of one month long. HUD has determined that requiring a lease for a term of at least one year that is renewable and terminable only for cause, assists program participants in obtaining stability in housing, even when the rental assistance is temporary. These requirements are consistent with Section 8 requirements.

Specific request for comment. HUD specifically requests comment on requiring a lease for a term of at least one year to be considered permanent housing.

Project is consistent with the statutory definition of "project" in section 401 of the McKinney-Vento Act, but does not track the statutory language. Section 401 defines "project" as, with respect to activities carried out under subtitle C, eligible activities described in section 423(a), undertaken pursuant to a specific endeavor, such as serving a particular population or providing a particular resource. In HUD's definition of "project" in this interim rule, the eligible activities described in section 423(a) of the McKinney-Vento Act have been identified. In the regulatory text, HUD has clarified that it is a group of one or more of these eligible costs that are identified as a project in an application to HUD for Continuum of Care funds.

Recipient is defined to mean an applicant that signs a grant agreement with HUD. HUD's definition of "recipient" is consistent with the statutory definition of "recipient," but does not track the statutory language. Section 424 of the McKinney-Vento Act defines "recipient" as "an eligible entity who—(A) submits an application for a grant under section 422 that is approved by the Secretary; (B) receives the grant directly from the Secretary to support approved projects described in the application; and (C)(i) serves as a project sponsor for the projects; or (ii) awards the funds to project sponsors to carry out the projects." All of the activities specified by the statutory definition are in the rule: (A) and (B) are contained in the definition and (C) is covered in the sections of the rule dealing with what a recipient can do with grant funds.

Safe haven is based on the definition of safe haven in the McKinney-Vento Act prior to amendment by the HEARTH Act. Although no longer used in statute, HUD's position is that the term remains relevant for implementation of the Continuum of Care program and, therefore, HUD proposes to include the term in the Continuum of Care program regulations. The term "safe haven" is used for purposes of determining whether a person is chronically homeless. The housing must serve hard-to-reach homeless persons with severe mental illness who came from the streets and have been unwilling or unable to participate in supportive services. In addition, the housing must provide 24-hour residence for eligible persons for an unspecified period, have an overnight capacity limited to 25 or

fewer persons, and provide low-demand services and referrals for the residents.

Subrecipient is defined to mean a private nonprofit organization, State or local government, or instrumentality of a State or local government that receives a subgrant from the recipient to operate a project. The definition of "subrecipient" is consistent with the definition of "project sponsor" found in section 401 of the McKinney-Vento Act, but does not track the statutory language. To be consistent with the Emergency Solutions Grants program regulation, and also to ensure that the relationship between the recipient and subrecipient is clear, HUD is using the term subrecipient, instead of project sponsor, throughout this regulation.

Transitional housing is based on the definition of "transitional housing" in section 401 of the McKinney-Vento Act, as follows: "The term 'transitional housing' means housing, the purpose of which is to facilitate the movement of individuals and families experiencing homelessness to permanent housing within 24 months or such longer period as the Secretary determines necessary." The definition has been expanded to distinguish this type of housing from emergency shelter. This distinction is necessitated by the McKinney-Vento Act's explicit distinction between what activities can or cannot be funded under the Continuum of Care program. The regulatory definition clarifies that, to be transitional housing, program participants must have signed a lease or occupancy agreement that is for a term of at least one month and that ends in 24 months and cannot be extended.

Unified Funding Agency (UFA) means an eligible applicant selected by the Continuum of Care to apply for a grant for the entire Continuum, which has the capacity to carry out the duties delegated to a UFA in this rule, which is approved by HUD and to which HUD awards a grant. HUD's regulatory definition of UFA departs slightly from the statutory definition. The statutory definition refers to the collaborative applicant. The differences between the statutory definition and HUD's regulatory definition reflect HUD's substitution of Continuum of Care for collaborative applicant.

Establishing and Operating the Continuum of Care (Subpart B)

In general. The statutory authority for the Continuum of Care program is section 422 of the McKinney-Vento Act. As stated under section 1002 of the HEARTH Act, one of the main purposes of the HEARTH Act is to codify the Continuum of Care planning process. Consequently, under this interim rule,

HUD focuses on the rules and responsibilities of those involved in the Continuum of Care planning process and describes how applications and grant funds will be processed.

As discussed earlier in the preamble, HUD's interim rule provides for the duties and functions of the collaborative applicant found in section 401 of the McKinney-Vento Act to be designated to the Continuum of Care, with the exception of applying to HUD for grant funds. HUD chose this approach because the Continuum might not be a legal entity, and therefore cannot enter into enforceable contractual agreements, but is the appropriate body for establishing and implementing decisions that affect the entire geographic area covered by the Continuum, including decisions related to funding. This approach allows the Continuum to retain its duties related to planning and prioritizing need (otherwise designated by statute to the collaborative applicant), while the authority to sign a grant agreement with HUD is designated to an eligible applicant that can enter into a contractual agreement. All of the duties assigned to the Continuum are based on the comparable duties of section 402(f) of the McKinney-Vento Act.

Subpart B of the interim rule identifies how Continuums of Care are established, as well as the required duties and functions of the Continuum of Care.

Establishing the Continuum of Care. In order to be eligible for funds under the Continuum of Care program, representatives from relevant organizations within a geographic area must establish a Continuum of Care. As discussed earlier in this preamble, this body is responsible for carrying out the duties identified in this interim regulation. Representatives from relevant organizations include nonprofit homeless assistance providers, victim service providers, faith-based organizations, governments, businesses, advocates, public housing agencies, school districts, social service providers, mental health agencies, hospitals, universities, affordable housing developers, law enforcement, and organizations that serve veterans and homeless and formerly homeless individuals. Where these organizations are located within the geographic area served by the Continuum of Care, HUD expects a representative of the organization to be a part of the Continuum of Care.

Specific request for comment. HUD specifically requests comments on requiring Continuums of Care to have a board that makes the decisions for the

Continuum. HUD requires two characteristics for all board compositions. These characteristics are that the Board must be representative of the subpopulations of homeless persons that exist within the geographic area, and include a homeless or formerly homeless person. Continuums will have 2 years from the effective date of the interim rule to establish a board that meets the criteria established in this section. No board member may participate or influence discussions or decisions concerning the award of a grant or other financial benefits for an organization that the member represents.

HUD is considering four additional characteristics for all board compositions for incorporation in the final rule. HUD did not implement them at this stage in order to seek public comment prior to implementing them as requirements. HUD proposes that all boards must have a chair or co-chairs; be composed of an uneven number, serving staggered terms; include members from the public and private sectors; and include a member from at least one Emergency Solutions Grants program (ESG) recipient's agency located within the Continuum's geographic area. HUD is requesting comment on all of these proposed requirements; however, HUD specifically requests comments from Continuums of Care and ESG recipients on the requirement that the Board include an ESG recipient as part of its membership. HUD invites ESG recipients and Continuums to share challenges that will be encountered when implementing this requirement. Ensuring that ESG recipients are represented on the Board is important to HUD; therefore, in communities where ESG recipients and/or Continuums do not feel this requirement is feasible, HUD asks commenters to provide suggestions for how ESG recipients can be involved in the Continuum at one of the core decision-making levels.

Responsibilities of the Continuum of Care. The interim rule establishes three major duties for which the Continuum of Care is responsible: To operate the Continuum of Care, to designate an HMIS for the Continuum of Care, and to plan for the Continuum of Care.

This section of the interim rule establishes requirements within these three major duties.

Operating the Continuum of Care. The interim rule provides that the Continuum of Care must abide by certain operational requirements. These requirements will ensure the effective management of the Continuum of Care process and ensure that the process is

inclusive and fair. HUD has established eight duties required of the Continuum necessary to effectively operate the Continuum of Care. HUD has established the specific minimum standards for operating and managing a Continuum of Care for two main reasons. First, the selection criteria established under section 427 of the McKinney-Vento Act require HUD to measure the Continuum of Care's performance in reducing homelessness by looking at the overall performance of the Continuum, as opposed to measuring performance project-by-project as was done prior to the enactment of the HEARTH Act. This Continuum of Care performance approach results in cooperation and coordination among providers. Second, because Continuums of Care will have grants of up to 3 percent of Final Pro Rata Need (FPRN) to be used for eligible Continuum of Care planning costs, HUD is requiring more formal decision-making and operating standards for the Continuum of Care. This requirement ensures that the Continuums have appropriate funding to support planning costs.

One of the duties established in this interim rule is the requirement that the Continuum establish and operate a centralized or coordinated assessment system that provides an initial, comprehensive assessment of the needs of individuals and families for housing and services. As detailed in the Emergency Solutions Grants program interim rule published on December 5, 2011, through the administration of the Rapid Re-Housing for Families Demonstration program and the Homelessness Prevention and Rapid Re-Housing program, as well as best practices identified in communities, HUD has learned that centralized or coordinated assessment systems are important in ensuring the success of homeless assistance and homeless prevention programs in communities. In particular, such assessment systems help communities systematically assess the needs of program participants and effectively match each individual or family with the most appropriate resources available to address that individual or family's particular needs.

Therefore, HUD has required, through this interim rule, each Continuum of Care to develop and implement a centralized or coordinated assessment system for its geographic area. Such a system must be designed locally in response to local needs and conditions. For example, rural areas will have significantly different systems than urban ones. While the common thread between typical models is the use of a

common assessment tool, the form, detail, and use of that tool will vary from one community to the next. Some examples of centralized or coordinated assessment systems include: A central location or locations within a geographic area where individuals and families must be present to receive homeless services; a 211 or other hotline system that screens and directly connects callers to appropriate homeless housing/service providers in the area; a "no wrong door" approach in which a homeless family or individual can show up at any homeless service provider in the geographic area but is assessed using the same tool and methodology so that referrals are consistently completed across the Continuum of Care; a specialized team of case workers that provides assessment services to providers within the Continuum of Care; or in larger geographic areas, a regional approach in which "hubs" are created within smaller geographic areas. HUD intends to develop technical assistance materials on a range of centralized and coordinated assessment types, including those most appropriate for rural areas.

HUD recognizes that imposing a requirement for a centralized or coordinated assessment system may have certain costs and risks. Among the risks that HUD wishes specifically to address are the risks facing individuals and families fleeing domestic violence, dating violence, sexual assault, and stalking. In developing the baseline requirements for a centralized or coordinated intake system, HUD is considering whether victim service providers should be exempt from participating in a local centralized or coordinated assessment process, or whether victim service providers should have the option to participate or not.

Specific request for comment. HUD specifically seeks comment from Continuum of Care-funded victim service providers on this question. As set forth in this interim rule, each Continuum of Care is to develop a specific policy on how its particular system will address the needs of individuals and families who are fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, or stalking, but who are seeking shelter or services from non-victim service providers. These policies could include reserving private areas at an assessment location for evaluations of individuals or families who are fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, or stalking; a separate "track" within the assessment framework that is specifically designed for domestic

violence victims; or the location of victim service providers with centralized assessment teams.

HUD invites suggestions for ensuring that the requirements it imposes regarding centralized or coordinated assessment systems will best help communities use their resources effectively and best meet the needs of all families and individuals who need assistance. Questions that HUD asks commenters to specifically address are: What barriers to accessing housing/services might a centralized or coordinated intake system pose to victims of domestic violence? How can those barriers be eliminated? What specific measures should be implemented to ensure safety and confidentiality for individuals and families who are fleeing or attempting to flee domestic violence situations? How should those additional standards be implemented to ensure that victims of domestic violence have immediate access to housing and services without increasing the burden on those victims? For communities that already have centralized or coordinated assessment systems in place, are victims of domestic violence and/or domestic violence service providers integrated into that system? Under either scenario (they are integrated into an assessment process or they are not integrated into it), how does your community ensure the safety and confidentiality of this population, as well as access to homeless housing and services? What HUD-sponsored training would be helpful to assist communities in completing the initial assessment of victims of domestic violence in a safe and confidential manner?

In addition to comments addressing the needs of victims of domestic violence, dating violence, sexual assault, and stalking, HUD invites general comments on the use of a centralized or coordinated assessment system, particularly from those in communities that have already implemented one of these systems who can share both what has worked well and how these systems could be improved. HUD specifically seeks comment on any additional risks that a centralized or coordinated assessment system may create for victims of domestic violence, dating violence, sexual assault, or stalking who are seeking emergency shelter services due to immediate danger, regardless of whether they are seeking services through a victim service provider or nonvictim service provider.

Another duty set forth in this part, is the requirement to establish and consistently follow written standards

when administering assistance under this part. These requirements, established in consultation with recipients of Emergency Solutions Grants program funds within the geographic area, are intended to coordinate service delivery across the geographic area and assist Continuums of Care and their recipients in evaluating the eligibility of individuals and families consistently and administering assistance fairly and methodically. The written standards can be found in § 578.7(a)(9) of this interim rule.

Designating and operating an HMIS. The Continuum of Care is responsible for designating an HMIS and an eligible applicant to manage the HMIS, consistent with the requirements, which will be codified in 24 CFR part 580. This duty is listed under section 402(f)(2) of the McKinney-Vento Act. In addition, the Continuum is responsible for reviewing, revising, and approving a privacy plan, security plan, and data quality plan for the HMIS and ensuring consistent participation of recipients and subrecipients in the HMIS.

Continuum of Care planning. The Continuum is responsible for coordinating and implementing a system for its geographic area to meet the needs of the homeless population and subpopulations within the geographic area. The interim rule defines the minimum requirements for this systematic approach under § 578.7(c)(1), such as emergency shelters, rapid rehousing, transitional housing, permanent supportive housing, and prevention strategies. Because there are not sufficient resources available through the Continuum of Care program to prevent and end homelessness, coordination and integration of other funding streams, including the Emergency Solutions Grants program and mainstream resources, is integral to carrying out the Continuum of Care System.

HUD has determined that since the Continuum of Care will be the larger planning organization, the Continuum of Care must develop and follow a Continuum of Care plan that adheres, not only to the requirements being established by this interim rule, but to the requirements and directions of the most recently issued notice of funding availability (NOFA).

While these planning duties are not explicitly provided in section 402(f) of the Act, HUD has included them to facilitate and clarify the Continuum of Care planning process. Consistent with the goals of the HEARTH Act, HUD strives, through this interim rule, to provide a comprehensive, well-

coordinated and clear planning process, which involves the creation of the Continuum of Care and the duties the Continuum of Care will have to fulfill.

Other planning duties for Continuums established in this section of the interim rule are planning for and conducting at least a biennial-point-in-time count of homeless persons within the geographic area, conducting an annual gaps analysis of the homeless needs and services available within the geographic area, providing information necessary to complete the Consolidated Plan(s) within the geographic area, and consulting with State and local government Emergency Solutions Grants program recipients within the Continuum of Care on the plan for allocating Emergency Solutions Grants program funds and reporting on and evaluating the performance of Emergency Solutions Grants program recipients and subrecipients.

Preparing an application for funds. A major function of the Continuum of Care is preparing and overseeing an application for funds under this part. This section of the interim rule establishes the duties of the Continuum of Care related to the preparation of the application. This section of the interim rule establishes that the Continuum is responsible for designing, operating, and following a collaborative process for the development of applications, as well as approving the submission of applications, in response to a NOFA published by HUD.

The Continuum must also establish priorities for funding projects within the geographic area and determine the number of applications being submitted for funding. As previously noted in this preamble, since the Continuum of Care might not be a legal entity, and therefore may not be able to enter into a contractual agreement with HUD, the Continuum must select one or more eligible applicants to submit an application for funding to HUD on its behalf. If the Continuum of Care is an eligible applicant, the Continuum of Care may submit an application. If the Continuum selects more than one application, the Continuum must select one eligible applicant to be the collaborative applicant. That applicant will collect and combine the required application information from all of the other eligible applicants and for all projects within the geographic area that the Continuum has designated. If only one application is submitted by the collaborative applicant, the collaborative applicant will collect and combine the required application information from all projects within the geographic area that the Continuum has

designated for funding. The collaborative applicant will always be the only applicant that can apply for Continuum of Care planning costs. In the case that there is one application for projects, the recipient of the funds is required to have signed agreements with its subrecipients as set forth in § 578.23(c), and is required to monitor and sanction subrecipients in compliance with § 578.107.

Whether the Continuum of Care submits the application or designates an eligible applicant to submit the application for funding, the Continuum of Care retains all of its duties.

Unified Funding Agencies. To be designated as the Unified Funding Agency (UFA) for the Continuum of Care, the Continuum must select the collaborative applicant to apply to HUD to be designated as the UFA for the Continuum. The interim rule establishes the criteria HUD will use when determining whether to designate the collaborative applicant as a UFA. These standards were developed to ensure that collaborative applicants have the capacity to manage the grant and carry out the duties in 578.11(b), and are described below.

The duties of the UFA established in § 578.11 are consistent with the duties set forth in section 402(g) of the Act. Even if the Continuum designates a UFA to submit the application for funding, the Continuum of Care retains all of its duties.

Remedial actions. Section 402(c) of the McKinney-Vento Act gives HUD the authority to ensure the fair distribution of grant amounts for this program, such as designating another body as a collaborative applicant, replacing the Continuum of Care for the geographic area, or permitting other eligible entities to apply directly for grants. Section 578.13 of this interim rule addresses the remedial actions that may be taken.

Overview of the Application and Grant Award Process (Subpart C)

Eligible applicants. Under this interim rule, eligible applicants consist of nonprofit organizations, State and local governments, and instrumentalities of local governments. An eligible applicant must have been designated by the Continuum of Care to submit an application for grant funds under this part. The Continuum's designation must state whether the Continuum is designating more than one applicant to apply for funds, and if it is, which applicant is being designated the collaborative applicant. A Continuum of Care that is designating only one applicant for funds must designate that applicant to be the collaborative

applicant. For-profit entities are not eligible to apply for grants or to be subrecipients of grant funds.

Section 401(10) of the McKinney-Vento Act identifies that collaborative applicants may be legal entities, and a legal entity may include a consortium of instrumentalities of a State or local government that has constituted itself as an entity. HUD has not included a consortium in the list of eligible applicants. As noted earlier in this preamble, a Continuum of Care is defined to mean a group that is composed of representatives of organizations across the entire geographic area claimed by the Continuum of Care. A Continuum is able to combine more than one metropolitan city or county into the geographic area that the Continuum represents. In essence, the Continuum of Care acts as a consortium, and it is therefore HUD's position that the inclusion of consortiums in the interim rule would be redundant.

Determining the Continuum's maximum award amount. The total amount for which a Continuum of Care is eligible to apply and be awarded is determined through a four-step process, including the following factors: A Continuum's PPRN amount; renewal demand; any additional increases in amounts for leasing, rental assistance, and operating costs based on Fair Market Rents (FMRs); planning and UFA cost funds; and the amounts available for bonus dollars.

Using the formula that will be discussed below, HUD will first determine a Continuum of Care's PPRN amount, as authorized under section 427(b)(2)(B) of the McKinney-Vento Act. This amount is the sum of the PPRN amounts for each metropolitan city, urban county, non-urban county, and insular area claimed by the Continuum of Care as part of its geographic area, excluding any counties applying for, or receiving funds under the Rural Housing Stability Assistance program, the regulations for which will be established in 24 CFR part 579. The PPRN for each of these areas is based upon the "need formula" under § 579.17(a)(2) and (3). Under the McKinney-Vento Act, HUD is required to publish, by regulation, the formula used to establish grant amounts. The need formula under § 579.17(a)(2) and (3) satisfies this requirement, and HUD specifically seeks comment on this formula. HUD will announce the PPRN amounts prior to the publication of the NOFA on its Web site.

To establish the amount on which the need formula is run, HUD will deduct an amount, which will be published in

the NOFA, to be set aside to provide a bonus, and the amount necessary to fund Continuum of Care planning activities and UFA costs from the total funds made available for the program each fiscal year. On this amount, HUD will use the following process to establish an area's PPRN. First, 2 percent of the total funds available shall be allocated among the four insular areas (American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands) based upon the percentage each area received in the previous fiscal year under section 106 of the Housing and Community Development Act of 1974. Second, 75 percent of the remaining funds made available shall be allocated to metropolitan cities and urban counties that have been funded under the Emergency Solutions Grants program (formerly known as the Emergency Shelter Grants program) every year since 2004. Third, the remaining funds made available shall be allocated to Community Development Block Grant (CDBG) metropolitan cities and urban counties that have not been funded under the Emergency Solutions Grants program every year since 2004 and all other counties in the United States and Puerto Rico.

Recognizing that in some federal fiscal years, the amount available for the formula may be less than the amount required to renew all existing projects eligible for renewal in that year for at least one year, HUD has included a method for distributing the reduction of funds proportionally across all Continuums of Care in § 578.17(a)(4) of this interim rule. HUD will publish the total dollar amount that each Continuum will be required to deduct from renewal projects Continuum-wide, and Continuums will have the authority to determine how to administer the cuts to projects across the Continuum.

Specific request for comment. HUD specifically requests comment on the method established in § 578.17(a)(4) to reduce the total amount required to renew all projects eligible for renewal in that one year, for at least one year, for each Continuum of Care when funding is not sufficient to renew all projects nationwide for at least one year.

The second step in determining a Continuum's maximum award amount is establishing a Continuum of Care's "renewal demand." The Continuum's renewal demand is the sum of the annual renewal amounts of all projects eligible within the Continuum of Care's geographic area to apply for renewal in that federal fiscal year's competition before any adjustments to rental assistance, leasing, and operating line

items based on changes to the FMRs in the geographic area.

Third, HUD will determine the Continuum of Care's Final Pro Rata Need (FPRN), which is the higher of: (1) PPRN, or (2) renewal demand for the Continuum of Care. The FPRN establishes the base for the maximum award amount for the Continuum of Care.

Fourth, HUD will determine the maximum award amount. The maximum award amount for the Continuum of Care is the FPRN amount plus any additional eligible amounts for Continuum planning; establishing fiscal controls for the Continuum; updates to leasing, operating, and rental assistance line items based on changes to FMR; and the availability of any bonus funding during the competition.

Application process. Each fiscal year, HUD will issue a NOFA. All applications, including applications for grant funds, and requests for designation as a UFA or HPC, must be submitted to HUD in accordance with the requirements of the NOFA and contain such information as the NOFA specifies. Applications may request up to the maximum award amount for Continuums of Care.

An applicant that is a State or a unit of general local government must have a HUD-approved, consolidated plan in accordance with HUD's Consolidated Plan regulations in 24 CFR part 91. The applicant must submit a certification that the application for funding is consistent with the HUD-approved consolidated plan(s) in the project's jurisdiction(s). Applicants that are not States or units of general local government must submit a certification that the application for funding is consistent with the jurisdiction's HUD-approved consolidated plan. The certification must be made by the unit of general local government or the State, in accordance with HUD's regulations in 24 CFR part 91, subpart F. The required certification must be submitted by the funding application submission deadline announced in the NOFA.

An applicant may provide assistance under this program only in accordance with HUD subsidy layering requirements in section 102 of the Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545). In this interim rule, HUD clarifies that the applicant must submit information in its application on other sources of funding the applicant has received, or reasonably expects to receive, for a proposed project or activities.

Awarding funds. HUD will review applications in accordance with the guidelines and procedures specified in

the NOFA and award funds to recipients through a national competition based on selection criteria as defined in section 427 of the McKinney-Vento Act. HUD will announce the awards and notify selected applicants of any conditions imposed on the awards.

Grant agreements. A recipient of a conditionally awarded grant must satisfy all requirements for obligation of funds; otherwise, HUD will withdraw its offer of the award. These conditions include establishing site control, providing proof of match, complying with environmental review under § 578.31, and documenting financial feasibility within the deadlines under § 578.21(a)(3). HUD has included in the interim rule the deadlines for conditions that may be extended and the reasons for which HUD will consider an extension.

The interim rule requires that site control be established by each recipient receiving funds for acquisition, rehabilitation funding, new construction, or operating costs, or for providing supportive services. HUD has determined that the time to establish site control is 12 months for projects not receiving new construction, acquisition, or rehabilitation funding, as stated under section 426(a) of the McKinney-Vento Act, not 9 months as stated under section 422(d) of the McKinney-Vento Act, for projects receiving operating and supportive service funds. HUD's determination on the time needed to establish site control is based on previous program policy, and the longer time frame takes into consideration the reality of the housing market. Projects receiving acquisition, rehabilitation, or new construction funding must provide evidence of site control no later than 24 months after the announcement of grant awards, as provided under section 422(d) of the McKinney-Vento Act.

The interim rule requires that HUD perform an environmental review for each property as required under HUD's environmental regulations in 24 CFR part 50. All recipients of Continuum of Care program funding under this part must supply all available, relevant information necessary to HUD, and carry out mitigating measures required by HUD. The recipient, its project partners, and its project partner's contractors may not perform any eligible activity for a project under this part, or commit or expend HUD or local funds for such activities until HUD has performed an environmental review and the recipient has received HUD approval of the property agreements.

Executing grant agreements. If a Continuum designates more than one applicant for the geographic area, HUD

will enter into a grant agreement with each designated recipient for which an award is announced. If a Continuum designates only one recipient for the geographic area, HUD may enter into one grant agreement with that recipient for new awards, if any; and one grant agreement for renewals and Continuum of Care planning costs and UFA costs, if any. These two grant agreements will cover the entire geographic area, and a default by the recipient under one of these agreements will also constitute a default under the other. If the Continuum is a UFA, HUD will enter into one grant agreement with the UFA for new awards, if any; and one for renewal and Continuum of Care planning costs and UFA costs, if any. Similarly, these two grant agreements will cover the entire geographic area and a default by the recipient under one of those agreements will also constitute a default under the other.

HUD requires the recipient to enter into the agreement described in § 578.23(c). Under this agreement, the grant recipient must agree to ensure that the operation of the project will be in accordance with the McKinney-Veto Act and the requirements under this part. In addition, the recipient must monitor and report the progress of the projects to the Continuum of Care and to HUD. The recipient must ensure that individuals and families experiencing homelessness are involved in the operation of the project, maintain confidentiality of program participants, and monitor and report matching funds to HUD, among other requirements. The recipient must also agree to use the centralized or coordinated assessment system established by the Continuum of Care, unless the recipient or subrecipient is a victim service provider. Victim service providers may choose not to use the centralized or coordinated assessment system provided that all victim service providers in the area use a centralized or coordinated assessment system that meets HUD's minimum requirements. HUD has provided this optional exception because it understands the unique role that victim service providers have within the Continuum of Care.

Renewals. The interim rule provides that HUD may fund, through the Continuum of Care program, all projects that were previously eligible under the McKinney-Vento Act prior to the enactment of the HEARTH Act. These projects may be renewed to continue ongoing leasing, operations, supportive services, rental assistance, HMIS, and administration beyond the initial funding period even if those projects

would not be eligible under the Continuum of Care program. For projects that would no longer be eligible under the Continuum of Care program (e.g., safe havens), but which are serving homeless persons; HUD wants to ensure that housing is maintained and that persons do not become homeless because funding is withdrawn.

HUD may renew projects that were submitted on time and in such manner as required by HUD, but did not have a total score that would allow the project to be competitively funded. HUD may choose to exercise this option to ensure that homeless or formerly homeless persons do not lose their housing. The interim rule provides, based on the language in section 421(e) of the McKinney-Vento Act, that HUD may renew the project, upon a finding that the project meets the purposes of the Continuum of Care program, for up to one year and under such conditions as HUD deems appropriate.

Annual Performance Report. The interim rule also provides that HUD may terminate the renewal of any grant and require the recipient to repay the renewal grant if the recipient fails to submit a HUD Annual Performance Report (APR) within 90 days of the end of the program year or if the recipient submits an APR that HUD deems unacceptable or shows noncompliance with the requirements of the grant and this part. Section 578.103(e) of the Continuum of Care program regulations further clarifies that recipients receiving grant funds for acquisition, rehabilitation, or new construction are expected to submit APRs for 15 years from the date of initial occupancy or the date of initial service provision, unless HUD provides an exception. The recipient's submission of the APR helps HUD review whether the recipient is carrying out the project in the manner proposed in the application. Recipients agree to submit an APR as a condition of their grant agreement. This requirement allows HUD to ensure that recipients submit APRs on grant agreements that have expired as a condition of receiving approval for a new grant agreement for the renewal project.

Appeals. The interim rule provides certain appeal options for applicants that were not awarded funding.

Under section 422(g) of the McKinney-Vento Act, if more than one collaborative applicant submits an application covering the same geographic area, HUD must award funds to the application that scores the highest score based on the selection criteria set forth in section 427 of the Act. Consistent with HUD's use of the term

Continuum of Care in the interim rule where the statute uses collaborative applicant, as explained earlier in the preamble, the interim rule stipulates that if more than one Continuum of Care claims the same geographic area, then HUD will award funds to the Continuum applicant(s) whose application(s) has the highest total score and that no projects from the lower scoring Continuum of Care will be funded (and that any projects submitted with both applications will not be funded). To appeal HUD's decision to fund the competing Continuum of Care, the applicant(s) from the lower-scoring Continuum of Care must file the written appeal in such form and manner as HUD may require within 45 days of the date of HUD's announcement of award.

If an applicant has had a certification of consistency with a consolidated plan withheld, that applicant may appeal such a decision to HUD. HUD has established a procedure to process the appeals and no later than 45 days after the date of receipt of an appeal, HUD will make a decision.

Section 422(h) of the McKinney-Vento Act provides the authority for a solo applicant to submit an application to HUD and be awarded a grant by HUD if it meets the criteria under section 427 of the McKinney-Vento Act. The interim rule clarifies that a solo applicant must submit its application to HUD by the deadline established in the NOFA to be considered for funding. The statute also requires that HUD establish an appeal process for organizations that attempted to participate in the Continuum of Care's process and believe they were denied the right to reasonable participation, as reviewed in the context of the local Continuum's process. An organization may submit a solo application to HUD and appeal the Continuum's decision not to include it in the Continuum's application. If HUD finds that the solo applicant was not permitted to participate in the Continuum of Care process in a reasonable manner, then HUD may award the grant to that solo applicant and may direct the Continuum to take remedial steps to ensure reasonable participation in the future. HUD may also reduce the award to the Continuum's applicant(s).

Section 422(h)(1) of the McKinney-Vento Act requires that "HUD establish a timely appeal procedure for grant amounts awarded or denied under this subtitle to a collaborative application." The interim rule sets an appeal process for denied or decreased funding under § 578.35(c). Applicants that are denied funds by HUD, or that requested more funds than HUD awarded, may appeal

by filing a written appeal within 45 days of the date of HUD's announcement of the award. HUD will notify applicant of its decision on the appeal within 60 days of the date of HUD's receipt of the written appeal.

Program Components and Eligible Costs (Subpart D)

Program components. The interim rule provides that Continuum of Care funds may be used for projects under five program components: Permanent housing, transitional housing, supportive services only, HMIS, and, in some cases, homelessness prevention. Administrative costs are eligible under all components. Where possible, the components set forth in the Continuum of Care program are consistent with the components set forth under the Emergency Solutions Grants program. This will ease the administrative burden on recipients of both programs and will ensure that reporting requirements and data quality benchmarks are consistently established and applied to like projects. One significant distinction between the Emergency Solutions Grants program and this part can be found in the eligible activities and administration requirements for assistance provided under the rapid rehousing component in this interim rule. The significant differences between this component in the Emergency Solutions Grants program and this part are discussed below.

The interim rule sets forth the costs eligible for each program component in § 578.37(a). The eligible costs for contributing data to the HMIS designated by the Continuum of Care are also eligible under all components.

Consistent with the definition of permanent housing in section 401 of the McKinney-Vento Act and § 578.3 of this interim rule, the permanent housing component is community-based housing without a designated length of stay that permits formerly homeless individuals and families to live as independently as possible. The interim rule clarifies that Continuum of Care funds may be spent on two types of permanent housing: Permanent supportive housing for persons with disabilities (PSH) and rapid rehousing that provides temporary assistance (i.e., rental assistance and/or supportive services) to program participants in a unit that the program participant retains after the assistance ends.

Although the McKinney-Vento Act authorizes permanent housing without supportive services, the interim rule does not. Based on its experience with the Supportive Housing and Shelter Plus Care programs, HUD has

determined that programs should require at least case management for some initial period after exiting homelessness. HUD has imposed the requirement that rapid rehousing include, at a minimum, monthly case management meetings with program participants (except where prohibited by the Violence Against Women Act (VAWA) and the Family Violence Prevention and Services Act (FVPSA)) and allows for a full range of supportive services to be provided for up to 6 months after the rental assistance stops. Many other HUD programs, such as Section 8 and HOME, provide housing without supportive services to low-income individuals and families.

With respect to rapid rehousing, the interim rule provides that funds under this part may be used to provide supportive services and short-term and/or medium-term rental assistance. While the time frames under which a program participant may receive short-term or medium-term rental assistance set forth in this part match the time frames set forth in the Emergency Solutions Grants program, the supportive services available to program participants receiving rapid rehousing assistance under the Continuum of Care program are not limited to housing relocation and stabilization services as they are in the Emergency Solutions Grants program. Program participants receiving rapid rehousing under this part may receive any of the supportive services set forth in § 578.53 during their participation in the program. The Continuum of Care, however, does have the discretion to develop written policies and procedures that limit the services available to program participants that better align the services available to program participants with those set forth in the Emergency Solutions Grants program.

Specific request for comment. While HUD's experience with the Supportive Housing and Shelter Plus Care programs is the basis for HUD's determination to require case management for some initial period after exiting homelessness, HUD specifically welcomes comment on other experiences with monthly case management.

The interim rule provides that the HMIS component is for funds that are used by HMIS Leads only. Eligible costs include leasing a structure in which the HMIS is operated, operating funds to operate a structure in which the HMIS is operated, and HMIS costs related to establishing, operating, and customizing a Continuum of Care's HMIS.

As set forth in Section 424(c) of the McKinney-Vento Act, Continuum of Care funds may be used only for the

homelessness prevention component by recipients in Continuums of Care that have been designated HPCs by HUD. Eligible activities are housing relocation and stabilization services, and short- and/or medium-term rental assistance, as set forth in 24 CFR 576.103, necessary to prevent an individual or family from becoming homeless.

Planning activities. Under this interim rule, HUD lists eligible planning costs for the Continuum of Care under § 578.39(b) and (c). HUD will allow no more than 3 percent of the FPRN, or a maximum amount to be established by the NOFA, to be used for certain costs. These costs must be related to designing a collaborative process for an application to HUD, evaluating the outcomes of funded projects under the Continuum of Care and Emergency Solutions Grants programs, and participating in the consolidated plan(s) for the geographic area(s). Under section 423 of the McKinney-Vento Act, a collaborative applicant may use no more than 3 percent of total funds made available to pay for administrative costs related to Continuum of Care planning.

HUD is defining "of the total funds made available" to mean FPRN, the higher of PPRN or renewal demand, in the interim rule. HUD has determined that FPRN strikes the correct balance, as it is the higher of PPRN or renewal demand. This will help Continuums of Care (CoC) balance: (1) Having sufficient planning dollars to be successful in its duties and compete for new money (which would be the PPRN), and (2) being able to monitor and evaluate actual projects in operation (and plan for renewal demand). The administrative funds related to CoC planning made available will be added to a CoC's FPRN to establish the CoCs maximum award amount.

Unified Funding Agency Costs. Under this interim rule, HUD lists eligible UFA costs in § 578.41(b) and (c). Similar to the cap on planning costs for CoC, HUD will allow no more than 3 percent of the FPRN, or a maximum amount to be established by the NOFA, whichever is less, to be used for UFA costs. This amount is in addition to the amount made available for CoC planning costs. UFA costs include costs associated with ensuring that all financial transactions carried out under the Continuum of Care program are conducted and records maintained in accordance with generally accepted accounting principles, including arranging for an annual survey, audit, or evaluation of the financial records of each project carried out by a subrecipient funded by a grant received through the Continuum of Care program. The funds made

available to UFAs related to establishing fiscal controls will be added to a CoC's FPRN to establish the CoC maximum award amount.

Leasing. Under this interim rule, grant funds may be used to pay the costs of leasing a structure or structures, or portions of structures, to provide housing or supportive services. The interim rule further clarifies that leasing means that the lease is between the recipient of funds and the landlord. HUD recognizes that some grantees receiving funds through the Supportive Housing Program may have been using their leasing funds in a manner consistent with the rental assistance requirements established in § 578.51; therefore, since the Continuum of Care program authorizes both leasing and rental assistance, the rule provides for an allowance for projects originally approved to carry out leasing to renew and request funds for rental assistance, so long as the rental assistance meets the requirements in § 578.51. The rule provides that a recipient of a grant awarded under the McKinney-Vento Act, prior to enactment of the HEARTH Act, must apply for leasing if the lease is between the recipient and the landlord, notwithstanding that the grant was awarded prior to the HEARTH Act amendments to the McKinney-Vento Act.

The interim rule provides that leasing funds may not be used to lease units or structures owned by the recipient, subrecipient, their parent organization(s), any other related organization(s), or organizations that are members of a partnership where the partnership owns the structure, unless HUD authorizes an exception for good cause. The interim rule establishes minimum requirements that a request for an exception must include. These exceptions are based on HUD's experience in administering the Homelessness Prevention and Rapid Re-Housing Program (HPRP).

The interim rule establishes that projects for leasing may require that program participants pay an occupancy charge (or in the case of a sublease, rent) of no more than 30 percent of their income. Income must be calculated in accordance with HUD's regulations in 24 CFR 5.609 and 24 CFR 5.611(a). However, the interim rule clarifies that projects may not charge program fees.

Rental assistance. Under this interim rule, rental assistance is an eligible cost for permanent and transitional housing, and this rule clarifies that the rental assistance may be short-term, up to 3 months of rent; medium-term, for 3 to 24 months of rent; and long-term, for longer than 24 months of rent. This

section provides that rental assistance may include tenant-based, project-based, or sponsor-based rental assistance. This section also provides that project-based rental assistance may include rental assistance to preserve existing permanent supportive housing for homeless individuals and families. Given that the availability of affordable rental housing has been shown to be a key factor in reducing homelessness, the availability of funding for short-term, medium-term, and long-term rental assistance under both the Emergency Solutions Grants program and the Continuum of Care program is not inefficient use of program funds, but rather effective use of funding for an activity that lowers the number of homeless persons.

As noted in the above discussion of rental housing available for funding under the Continuum of Care program, one eligible form of rental assistance is tenant-based, which allows the program participant to retain rental assistance for another unit. The interim rule limits this retention to within the Continuum of Care boundaries. HUD has determined that Continuum of Care program funds must be used within the Continuum's geographic boundaries. If program participants move outside of the Continuum, the Continuum may pay moving costs, security deposits, and the first month of rent for another unit; however, the Continuum would have to organize assistance with the relevant Continuum of Care for the program participant if rental assistance is to continue. The program participant may be transferred to a rental assistance program in a different Continuum without having to become homeless again. The recipient may also limit the movement of the assistance to a smaller area if this is necessary to coordinate service delivery.

Under this interim rule, the only exception to the limitation for retention of tenant-based rental assistance is for program participants who are victims of domestic violence, dating violence, sexual assault, or stalking. Under the definition of "tenant-based" in the McKinney-Vento Act (section 401(28) of the McKinney-Vento Act), these participants must have complied with all other obligations of the program and reasonably believe that he or she is imminently threatened by harm from further violence if he or she remains in the assisted dwelling unit.

In the interim rule, HUD has clarified that the imminent threat of harm must be from further domestic violence, dating violence, sexual assault, or stalking, which would include threats from a third party, such as a friend or

family member of the perpetrator of the violence. HUD requires that the program participant provide appropriate documentation of the original incident of domestic violence, dating violence, sexual assault, or stalking, and any evidence of the current imminent threat of harm. Examples of appropriate documentation of the original incident of domestic violence, dating violence, sexual assault, or stalking include written observation by the housing or service provider; a letter or other documentation from a victim service provider, social worker, legal assistance provider, pastoral counselor, mental health provider, or other professional from whom the victim has sought assistance; or medical or dental, court, or law enforcement records.

Documentation of reasonable belief of further domestic violence, dating violence, sexual assault, or stalking includes written observation by the housing or service provider; a letter or other written documentation from a victim service provider, social worker, legal assistance provider, pastoral counselor, mental health provider, or other professional from whom the victim has requested assistance; a current restraining order, recent court order, or other court records; or law enforcement reports or records. The housing or service provider may also consider other documentation such as emails, voicemails, text messages, social media posts, and other communication. Because of the particular safety concerns surrounding victims of domestic violence, the interim rule provides that acceptable evidence for both the original violence and the reasonable belief include an oral statement. This oral statement does not need to be verified, but it must be documented by a written certification by the individual or head of household.

This provision is specific to victims of domestic violence, dating violence, sexual assault, and stalking who are receiving tenant-based rental assistance in permanent housing. This interim rule contains other policies for moving program participants receiving any type of assistance under this interim rule, including tenant-based rental assistance within the Continuum of Care geographic area, or smaller geographic area required by the provider to coordinate service delivery. Moving program participants outside of the geographic area where providers can coordinate service-delivery is administratively difficult for providers and makes it difficult to monitor that program participants have access to, and are receiving, appropriate supportive

services; therefore, moves outside of the geographic area where the provider can effectively deliver and monitor service coordination are allowed only under exceptional circumstances. HUD has established these provisions to provide an exception and to address the challenges that are associated with such a move.

Based on HUD's experience in administering the Shelter Plus Care program, the interim rule includes provisions to clarify when rental payments may continue to be made to a landlord when the program participant no longer resides in the unit. For vacated units, the interim rule provides that assistance may continue for a maximum of 30 days from the end of the month in which the unit was vacated, unless the unit is occupied by another eligible person. A person staying in an institution for less than 90 days is not considered as having vacated the unit. Finally, the recipient may use grant funds, in an amount not to exceed one month's rent, to pay for any damage to housing due to the action of the program participant, one-time, per program participant, per unit. This assistance can be provided only at the time the program participant exits the housing unit.

Supportive services. Grant funds may be used to pay eligible costs of supportive services for the special needs of program participants. All eligible costs are eligible to the same extent for program participants who are unaccompanied homeless youth; persons living with Human Immunodeficiency Virus (HIV)/Acquired Immune Deficiency Syndrome (AIDS) (HIV/AIDS); and victims of domestic violence, dating violence, sexual assault, or stalking. Any cost that is not described as an eligible cost under this interim rule is not an eligible cost of providing supportive services. Eligible costs consist of assistance with moving costs, case management, child care, education services, employment assistance and job training, housing search and counseling services, legal services, life skills training, mental health services, outpatient health services, outreach services, substance abuse treatment services, transportation, and utility deposits.

The definition of "supportive services" in section 401(27) of the McKinney-Vento Act includes the provision of mental health services, trauma counseling, and victim services. HUD has determined that victim services are eligible as supportive services, and are included as eligible program costs in this interim rule. Providers are allowed to provide

services specifically to victims of domestic violence, dating violence, sexual assault, and stalking. The eligible costs for providing victim services are listed as eligible costs in the supportive services funding category. Rather than create a new eligible line item in the project budget, HUD has determined that these costs can be included in the funding categories already established.

Indirect costs. Indirect costs are allowed as part of eligible program costs. Programs using indirect cost allocations must be consistent with Office of Management and Budget (OMB) Circulars A-87 and A-122, as applicable. OMB Circular A-87 and the regulations at 2 CFR part 225 pertain to "Cost Principles for State, Local, and Indian Tribal Governments." OMB Circular A-122 and the regulations codified at 24 CFR part 230 pertain to "Cost Principles for Non-Profit Organizations."

Other costs. In addition to the eligible costs described in this preamble, the regulation addresses the following other eligible costs: acquisition, rehabilitation, new construction, operating costs, HMIS, project administrative costs, and relocation costs.

High-Performing Communities (Subpart E)

Section 424 of the McKinney-Vento Act establishes the authority for the establishment of and requirements for HPCs. Applications must be submitted by the collaborative applicant at such time and in such manner as HUD may require and contain such information as HUD determines necessary under § 578.17(b). Applications will be posted on the HUD Web site (www.hud.gov) for public comments. In addition to HUD's review of the applications, interested members of the public will be able to provide comment to HUD regarding the applications.

Requirements. The Continuum of Care must use HMIS data (HUD will publish data standards and measurement protocols) to determine that the standards for qualifying as a HPC are met. An applicant must submit a report showing how the Continuum of Care program funds were expended in the prior year, and provide information that the Continuum meets the standards for HPCs.

Standards. In order to qualify as an HPC, a Continuum of Care must demonstrate through reliable data that it meets all of the required standards. The interim rule clarifies which standards will be measured with reliable data from a Continuum's HMIS and which standards will be measured through reliable data from other sources and

presented in a narrative form or other format prescribed by HUD.

Continuums must use the HMIS to demonstrate the following measures: (1) That the mean length of homelessness must be less than 20 days for the Continuum's geographic area, or the Continuum's mean length of episodes for individuals and families in similar circumstances was reduced by at least 10 percent from the preceding year; (2) that less than 5 percent of individuals and families that leave homelessness become homeless again any time within the next 2 years, or the percentage of individuals and families in similar circumstances who became homeless again within 2 years after leaving homelessness was decreased by at least 20 percent from the preceding year; and (3) for Continuums of Care that served homeless families with youth defined as homeless under other federal statutes, that 95 percent of those families did not become homeless again within a 2-year period following termination of assistance and that 85 percent of those families achieved independent living in permanent housing for at least 2 years following the termination of assistance.

The McKinney-Vento Act requires that HUD set forth standards for preventing homelessness among the subset of those at the highest risk of becoming homeless among those homeless families and youth defined as homeless under other federal statutes, the third measure above, one of which includes achieving independent living in permanent housing among this population. HUD has set forth the standards of 95 percent and 85 percent. HUD recognizes that these standards are high, but standards are comparable to the other standards in the Act, which are high. It is HUD's position that HPCs should be addressing the needs of those homeless individuals within their communities prior to receiving designation of a HPC and being allowed to spend funds in accordance with § 578.71.

The final standard that the Continuum must use its HMIS data to demonstrate is provided under section 424(d)(4) of the Act. The statute requires each homeless individual or family who sought homeless assistance to be included in the data system used by that community. HUD has defined this as bed-coverage and service-volume coverage rates of at least 80 percent. The documentation that each homeless individual or family who sought homeless assistance be included in the HMIS is not measurable by HUD. This type of standard would be entirely reliant upon self-reporting. Additionally, individuals and families

have the right to decline having their data entered into the HMIS. HUD uses bed-coverage rates and service-volume coverage rates as a proxy for measuring the rate of inclusion of persons who are present for services or housing in the HMIS. This is a measurable standard, and HUD defines the calculation in the HMIS rule; therefore, the measurement will be consistent between Continuums.

Continuums must use reliable data from other sources and presented in a narrative form or other format prescribed by HUD to measure two standards: Community action and renewing HPC status. Section 424(d)(4) of the McKinney-Vento Act establishes another standard for HPCs, which is "community action." This statutory section provides that communities that compose the geographic area must have actively encouraged homeless individuals and families to participate in housing and services available in the geographic area and included each homeless individual or family who sought homeless assistance services in the data system used by that community for determining compliance. HUD has defined "communities that compose the geographic area" to mean the entire geographic area of the Continuum. This definition will also provide consistency of measurement since most of HUD's measurements are across the entire Continuum of Care geographic area. HUD has further defined "actively encourage" within this standard as a comprehensive outreach plan, including specific steps for identifying homeless persons and referring them to appropriate housing and services in that geographic area. The measurement of the last part of this standard, "each homeless individual or family who sought homeless assistance services in the data system used by that community," will be measured using reliable data from an HMIS and has been discussed earlier in this preamble. HUD has determined this will provide clarity and ensure consistent measurement across Continuums.

The interim rule provides that a Continuum of Care that was an HPC in the prior year and used Continuum funds for activities described under § 578.71 must demonstrate that these activities were effective at reducing the number of persons who became homeless in that community, to be renewed as a HPC.

Selection. HUD will select up to 10 Continuums of Care each year that best meet the application requirements and the standards set forth in § 578.65. Consistent with section 424 of the McKinney-Vento Act, the interim rule provides a HPC designation for the

grants awarded in the same competition in which the designation is applied for and made. The designation will be for a period of one year.

Eligible activities. Recipients and subrecipients in Continuums that have been designated an HPC may use grant funds to provide housing relocation and stabilization services and short- and/or medium-term rental assistance to individuals and families at risk of homelessness as set for in the Emergency Solutions Grants program. All eligible activities discussed in this section must be effective at stabilizing individuals and families in their current housing, or quickly moving such individuals and families to other permanent housing. This is the only time that Continuum of Care funds may be used to serve nonhomeless individuals and families. Recipients and subrecipients using grant funds on these eligible activities must follow the written standards established by the Continuum of Care in § 578.7(a)(9)(v), and the recordkeeping requirements set for the Emergency Solutions Grants program rule.

Program Requirements (Subpart F)

All recipients of Continuum of Care funding must comply with the program regulations and the requirements of the NOFA issued annually by HUD.

Matching. The HEARTH Act allows for a new, simplified match requirement. All eligible funding costs except leasing must be matched with no less than a 25 percent cash or in-kind match. The interim rule clarifies that the match must be provided for the entire grant, except that recipients that are UFAs or are the sole recipient for the Continuum may provide the match on a Continuum-wide basis.

For in-kind match, the governmentwide grant requirements of HUD's regulations in 24 CFR 84.23 (for private nonprofit organizations) and 85.24 (for governments) apply. The regulations in 24 CFR parts 84 and 85 establish uniform administrative requirements for HUD grants. The requirements of 24 CFR part 84 apply to subrecipients that are private nonprofit organizations. The requirements of 24 CFR part 85 apply to the recipient and subrecipients that are units of general purpose local government. The match requirement in 24 CFR 84.23 and in 24 CFR 85.24 applies to administration funds, as well as Continuum of Care planning costs and UFA's financial management costs. All match must be spent on eligible activities as required under subpart D of this interim rule, except that recipients and subrecipients

in HPCs may use match on eligible activities described under § 578.71.

General operations. Recipients of grant funds must provide housing or services that comply with all applicable State and local housing codes, licensing requirements, and any other requirements in the project's jurisdiction. In addition, this interim rule clarifies that recipients must abide by housing quality standards and suitable dwelling size. Recipients must also assess supportive services on an ongoing basis, have residential supervision, and provide for participation of homeless individuals as required under section 426(g) of the McKinney-Vento Act.

Specific request for comment. With respect to housing quality standards, HUD includes in this rule the longstanding requirement from the Shelter Plus Care program that recipients or subrecipients, prior to providing assistance on behalf of a program participant, must physically inspect each unit to assure that the unit meets housing quality standards. This requirement is designed to ensure that program participants are placed in housing that is suitable for living. Additionally, these requirements are consistent with HUD's physical inspection requirements in its other mainstream rental assistance programs. Notwithstanding that this is a longstanding requirement, HUD welcomes comment on alternatives to inspection of each unit that may be less burdensome but ensure that the housing provided to a program participant is decent, safe, and sanitary.

Under Section 578.75, General Operations, subsection (h), entitled "Supportive Service Agreements," states that recipients and subrecipients may require program participants to take part in supportive services so long as they are not disability-related services, provided through the project as a condition of continued participation in the program. Examples of disability-related services include, but are not limited to, mental health services, outpatient health services, and provision of medication, which are provided to a person with a disability to address a condition caused by the disability.

This provision further states that if the purpose of the project is to provide substance abuse treatment services, recipients and subrecipients may require program participants to take part in such services as a condition of continued participation in the program. For example, if a Continuum of Care recipient operates a transitional housing program with substance abuse treatment

services, the recipient may require program participants to participate in those services. By contrast, in a program that offers services but whose purpose is not substance abuse treatment, a recipient may not require a person who is an alcoholic, for example, to sign a supportive service agreement at initial occupancy stating that he or she will participate in substance abuse treatment services as a condition of occupancy. All program participants must, however, meet all terms and conditions of tenancy, including lease requirements. If, as a result of a person's behavior stemming from substance use, a person violates the terms of the lease, a recipient may consider requiring participation in services or any other action necessary in order for such a person to successfully meet the requirements of tenancy.

Finally, the interim rule clarifies that in units where the qualifying member of the household has died, or has been incarcerated or institutionalized for more than 90 days, assistance may continue until the expiration of the lease in effect at the time of the qualifying member's death, incarceration, or institutionalization.

Displacement, relocation, and acquisition. All recipients must ensure that they have taken all reasonable steps to minimize the displacement of persons as a result of projects assisted under this part. This section of the interim rule is substantially revised from the previous programs to increase clarity and comprehension of the directions to recipients and subrecipients in the use of grant funds.

Timeliness standards. Recipients must initiate approved activities and projects promptly. Recipients of funds for rehabilitation and new construction must begin construction activities within 9 months of the signing of the grant, and such activities must be completed within 24 months. HUD is providing these requirements to assist communities in meeting the obligation and expenditure deadline historically imposed by the annual HUD appropriations act. HUD may reduce a grant term to a term of one year if implementation delays reduce the amount of funds that can be used during the original grant term.

Limitation on use of funds. Recipients of funds provided under this part must abide by any limitations that apply to the use of such funds, such as use of funds for explicitly religious activities.

The limitation on use of funds also addresses limitation on uses where religious activities may be concerned. It is HUD's position that faith-based organizations are able to compete for

HUD funds and participate in HUD programs on an equal footing with other organizations; that no group of applicants competing for HUD funds should be subject, as a matter of discretion, to greater or fewer requirements than other organizations solely because of their religious character or affiliation, or, alternatively, the absence of religious character or affiliation. HUD's general principles regarding the equal participation of such organizations in its programs are codified at 24 CFR 5.109. Program-specific requirements governing faith-based activities are codified in the regulations for the individual HUD programs. (See, for example, 24 CFR 574.300(c), 24 CFR 582.115(c), and 24 CFR 583.150(b).)

HUD's equal participation regulations were prompted by Executive Order 13279, Equal Protection of the Laws for Faith-Based and Community Organizations, issued by President Bush on December 12, 2002, and published in the *Federal Register* on December 16, 2002 (67 FR 77141). Executive Order 13279 set forth principles and policymaking criteria to guide federal agencies in ensuring the equal protection of the laws for faith-based and community organizations. Executive Order 13279 was amended by Executive Order 13559 (Fundamental Principles and Policymaking Criteria for Partnerships With Faith-Based and Other Neighborhood Organizations), issued by President Obama on November 17, 2010, and published in the *Federal Register* on November 22, 2010 (75 FR 71319).

Executive Order 13559 expands on the equal participation principles provided in Executive Order 13279 to strengthen the capacity of faith-based and other neighborhood organizations to deliver services effectively and ensure the equal treatment of program beneficiaries. Executive Order 13559 reiterates a key principle underlying participation of faith-based organizations in federally funded activities and that is that faith-based organizations be eligible to compete for federal financial assistance used to support social service programs and to participate fully in social service programs supported with federal financial assistance without impairing their independence, autonomy, expression outside the programs in question, or religious character.

With respect to program beneficiaries, the Executive Order states that organizations, in providing services supported in whole or in part with federal financial assistance, and in their outreach activities related to such

services, should not be allowed to discriminate against current or prospective program beneficiaries on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice. The Executive Order directs that organizations that engage in explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization) must perform such activities and offer such services outside of programs that are supported with direct federal financial assistance (including through prime awards or subawards), separately in time or location from any such programs or services supported with direct federal financial assistance, and participation in any such explicitly religious activities must be voluntary for the beneficiaries of the social service program supported with such federal financial assistance. For purposes of greater clarity and comprehensibility, the Executive Order uses the term "explicitly religious" in lieu of "inherently religious." The Executive Order further directs that if a beneficiary or prospective beneficiary of a social service program supported by federal financial assistance objects to the religious character of an organization that provides services under the program, that organization shall, within a reasonable time after the date of the objection, refer the beneficiary to an alternative provider.

Executive Order 13559 provides for the establishment of an Interagency Working Group on Faith-Based and Other Neighborhood Partnerships (Working Group) to review and evaluate existing regulations, guidance documents, and policies, and directs the OMB to issue guidance to agencies on uniform implementation following receipt of the Working Group's report. On April 27, 2012, the Working Group issued its report, recommending a model set of regulations and guidance for agencies to adopt.¹

HUD intends to wait for OMB guidance before initiating any rulemaking directed to broader changes to HUD's existing faith-based regulations, to ensure consistency with faith-based regulations of other federal agencies. However, HUD has revised its regulatory provisions governing faith-based activities to incorporate the principles of Executive Order 13559 pertaining to equal treatment of program beneficiaries and to adopt terminology, such as "explicitly religious" and "overt

¹ The report is available at: <http://www.whitehouse.gov/sites/default/files/uploads/finalfaithbasedworkinggroupreport.pdf>.

religious content," that offers greater clarity to the limitations placed on faith-based organizations when using federal funds for their supportive services. Additionally, HUD is putting in place through this rulemaking the provision of Executive Order 13559 that directs the referral to alternative providers. Executive Order 13559 provides that if a beneficiary or prospective beneficiary of a social service program supported by federal financial assistance objects to the religious character of an organization that provides services under the program, that organization shall, within a reasonable time frame after the date of the objection, refer the beneficiary to an alternative provider. While HUD will benefit from OMB guidance on other provisions of the Executive Order, specifically those which the Working Group is charged to provide recommendations, the "referral" provision of the Executive Order is one that HUD believes it can immediately put in place. HUD may, following receipt of public comment and further consideration of this issue, revise how recipients and subrecipients document the referral to other providers when beneficiaries may assert objections to the original provider. For now, HUD is requiring that any objections and any referrals be documented in accordance with the recordkeeping provisions of § 578.013.

This section of the interim rule also contains limitations on the types of eligible assistance that may not be combined in a single structure or housing unit. As the Continuum of Care substantially increases the types of assistance that may be combined in a project from previous programs, HUD has established standards in this section to provide recipients with clarity about the types of activities that may not be carried out in a single structure or housing unit.

Termination of assistance. The interim rule provides that a recipient may terminate assistance to a participant who violates program requirements or conditions of occupancy. The recipient must provide a formal process that recognizes the due process of law. Recipients may resume assistance to a participant whose assistance has been terminated.

Recipients that are providing permanent supportive housing for hard-to-house populations of homeless persons must exercise judgment and examine all circumstances in determining whether termination is appropriate. Under this interim rule, HUD has determined that a participant's assistance should be terminated only in the most severe cases. HUD is carrying

over this requirement from the Shelter Plus Care program.

Fair Housing and Equal Opportunity requirements. The Continuum of Care, as well as its members and subrecipients, are required to comply with applicable civil rights laws. Section 578.93, addressing nondiscrimination and equal opportunity requirements, is provided to offer greater direction to recipients and subrecipients on the use of grant funds. Section 578.93(a) states that the nondiscrimination and equal opportunity requirements set forth in 24 CFR 5.105(a) apply. This includes, but is not limited to, the Fair Housing Act, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973 (Section 504), and title II of the Americans with Disabilities Act.

Section 578.93(b) explains when recipients and subrecipients may exclusively serve a particular subpopulation in transitional or permanent housing. As part of these requirements, recipients must also administer programs and activities receiving federal financial assistance in the most integrated setting appropriate to the needs of qualified individuals with disabilities. This "integration mandate" requires that HUD-funded programs or activities enable individuals with disabilities to interact with nondisabled persons to the fullest extent possible. In reviewing requests for funding through the Continuum of Care NOFA, HUD will be considering each recipient's proposals to provide integrated housing to individuals with disabilities.

There are certain situations in which a recipient or subrecipient may limit housing to a specific subpopulation, so long as admission does not discriminate against any protected class, as well as instances where recipients or subrecipients may limit admission or provide a preference to certain subpopulations of homeless persons and families who need the specialized services provided in the housing. For example, § 578.93(b)(2) states that the housing may be limited to homeless veterans, so long as admission is not denied based on any membership in a protected class; e.g., homeless veterans with families must be admitted. Similarly, housing may be limited to domestic violence victims and their families or persons who are at risk of institutionalization, so long as admission is not denied based on any membership in a protected class.

Section 578.93(b)(3) states that housing may be limited to families with children.

Section 578.93(b)(1) states that, in consideration of personal privacy, housing may only be limited to a single sex when such housing consists of a single structure with shared bedrooms or bathing facilities such that the considerations of personal privacy and the physical limitations of the configuration of the housing make it appropriate for the housing to be limited to one sex.

Further, §§ 578.93(b)(4) and (5) clearly outline instances when sex offenders or violent offenders may be excluded from housing, and when projects providing sober housing may exclude persons.

HUD's Section 504 regulations permit housing funded under a particular program to be reserved for persons with a specific disability when a federal statute or executive order specifically authorizes such a limitation. Section 578.93(b)(6) states that if the housing is assisted with funds under a federal program that is limited by federal statute or executive order to a specific subpopulation, the housing may be limited to that subpopulation.

Section 578.93(b)(7) provides clarification to recipients of funds under this part as to when a project can limit admission to a specific subpopulation of homeless individuals and families based on the service package offered in the project. To help recipients better understand these requirements, the following paragraphs provide a detailed explanation of the regulatory provision, along with a few examples.

Section 578.93(b)(7) states that recipients may limit admission to or provide a preference for the housing to subpopulations of homeless persons and families who need the specialized supportive services that are provided in the housing. The regulation contains the following examples: Substance abuse addiction treatment, domestic violence services, or a high-intensity package designed to meet the needs of hard-to-reach homeless persons. However, § 578.93(b)(7) further states that while the housing may offer services for a particular type of disability, no otherwise eligible individual with a disability, or family that includes an individual with a disability, who may benefit from the services provided may be excluded on the grounds that they do not have a particular disability. Below are general examples to offer guidance on this subsection. Please note that these examples are nonexhaustive, but emphasize that the proper focus is on the services available as part of the Continuum of Care project as opposed to a person's category or subcategory of disability. While these general principles are offered to help clarify this

section, a change in the factual scenario may change the analysis.

One clarifying example is as follows. A private, nonprofit organization or a local government applies for and receives a new grant under this part to provide project-based rental assistance and services, including case management, intensive therapy provided by a psychiatrist, and medication management. The recipient or subrecipient may establish a preference for individuals who are chronically homeless. When filling an opening in the housing, the recipient or subrecipient may target chronically homeless individuals or families, but if there are no such individuals or families either on a waiting list or applying for entrance to the program, the recipient or subrecipient cannot deny occupancy to individuals or families who apply for entrance into the program and who may benefit from the services provided. When filling a vacancy in the housing, the recipient or subrecipient, if presented with two otherwise eligible persons, one who is chronically homeless and one who is not, may give a preference to the chronically homeless individual.

By comparison, § 578.93(b)(6) addresses situations where Continuum of Care funds are combined with HUD funding for housing that may be restricted to a specific disability. For example, if Continuum of Care funds for a specific project are combined with construction or rehabilitation funding for housing from the Housing Opportunities for People With AIDS program, the program may limit eligibility for the project to persons with HIV/AIDS and their families. An individual or a family that includes an individual with a disability may be denied occupancy if the individual or at least one member of the family does not have HIV/AIDS.

In another example, a private, nonprofit organization applies for and receives Continuum of Care funds from a local governmental entity to rehabilitate a five-unit building, and provides services including assistance with daily living and mental health services. While the nonprofit organization intends to target and advertise the project as offering services for persons with developmental disabilities, an individual with a severe psychiatric disability who does not have a developmental disability but who can benefit from these services cannot be denied.

Section 578.93(e) incorporates the "preventing involuntary family separation" requirement set forth in Section 404 of the McKinney-Veto Act

into this interim rule. This provision clarifies, especially for projects where the current policy is to deny the admittance of a boy under the age of 18, that denying admittance to a project based on age and gender is no longer permissible. HUD encourages Continuums of Care to use their centralized or coordinated assessment systems to find appropriate shelter or housing for families with male children under the age of 18.

Specific request for comment. HUD specifically seeks comments from Continuum of Care-funded recipients on this requirement. HUD invites comments about the difficulty that recipients are going to experience, if any, in implementing this requirement. In addition to comments about the difficulties, HUD invites communities that have already implemented this requirement locally to describe their methods for use in HUD's technical assistance materials and for posting on the HUD Homeless Resource Exchange.

Other standards. In addition to the program requirements described in this preamble, the interim rule sets forth other program requirements by which all recipients of grant funds must abide. These include a limitation on the use of grant funds to serve persons defined as homeless under other federal laws, conflicts of interest standards, and standards for identifying uses of program income.

Additionally, recipients are required to follow other federal requirements contained in this interim rule under § 578.99. These include compliance with such federal requirements as the Coastal Barriers Resources Act, OMB Circulars, HUD's Lead-Based Paint regulations, and audit requirements. The wording of these requirements has been substantially revised from previous programs, with the objective being to increase clarity and comprehension of the directions to recipients and subrecipients in the use of grant funds.

Administration (Subpart G)

Technical assistance. The purpose of technical assistance under the Continuum of Care program is to increase the effectiveness with which Continuums of Care, eligible applicants, recipients, subrecipients, and UFAs implement and administer their Continuum of Care planning process. Technical assistance will also improve the capacity to prepare applications, and prevent the separation of families in projects funded under the Emergency Solutions Grants, Continuum of Care, and Rural Housing Stability Assistance programs. Under this interim rule, technical assistance means the transfer

of skills and knowledge to entities that may need, but do not possess, such skills and knowledge. The assistance may include written information, such as papers, manuals, guides, and brochures; person-to-person exchanges; and training and related costs.

Therefore, as needed, HUD may advertise and competitively select providers to deliver technical assistance. HUD may enter into contracts, grants, or cooperative agreements to implement the technical assistance. HUD may also enter into agreements with other federal agencies when awarding technical assistance funds.

Recordkeeping requirements. Grant recipients under the Supportive Housing Program and the Shelter Plus Care program have always been required to show compliance with regulations through appropriate records. However, the existing regulations are not specific about the records to be maintained. The interim rule for the Continuum of Care program elaborates upon the recordkeeping requirements to provide sufficient notice and clarify the documentation that HUD requires for assessing compliance with the program requirements. The recordkeeping requirements for documenting homeless status were published in the December 5, 2011, Defining Homeless final rule. Because these recordkeeping requirements already went through a 60-day comment period, HUD is not seeking further comment on these requirements. Additionally, recordkeeping requirements with similar levels of specificity apply to documentation of "at risk of homelessness" and these requirements can be found in § 576.500(c) of the Emergency Solutions Grants program interim rule published on December 5, 2011. Because the documentation requirements pertaining to "at risk of homelessness" were already subject to a 60-day public comment period, HUD is not seeking additional comment on these requirements. Further requirements are modeled after the recordkeeping requirements for the HOME Investment Partnerships Program (24 CFR 92.508) and other HUD regulations.

Included along with these changes are new or expanded requirements regarding confidentiality, rights of access to records, record retention periods, and reporting requirements. Most significantly, to protect the safety and privacy of all program participants, the Continuum of Care rule broadens the program's confidentiality requirements. The McKinney-Vento Act requires only procedures to ensure the

confidentiality of records pertaining to any individual provided family violence prevention or treatment services under this program. The interim rule requires written procedures to ensure the security and confidentiality of all records containing personally identifying information of any individual or family who applies for and/or receives Continuum of Care assistance.

Grant and project changes. The interim rule provides that recipients of grants may not make any significant changes to use of grant funds without prior HUD approval, evidenced by a grant amendment signed by HUD and the recipient. The interim rule provides separate standards for determining when a grant amendment is required for Continuums having only one recipient, including UFAs, and Continuums having more than one recipient. Additionally, the interim rule provides contingencies that must be met before HUD will approve the grant amendment. These contingencies are necessary to ensure that recipients meet the capacity requirements established in the NOFA and to ensure that eligible persons within the geographic area are better served and, since the Continuum of Care program is a competitive program, that the priorities established under the NOFA continue to be met. Any changes to an approved grant or project that do not require a grant amendment, as set forth in this section, must be fully documented in the recipient's or subrecipient's records.

Sanctions. The interim rule establishes sanctions based on existing regulations and strengthens the enforcement procedures and array of remedial actions and sanctions for recipients and subrecipients of Continuum of Care funds. These revisions draw from the requirements at 24 CFR 85.43 and other HUD program regulations.

Close-out. The interim rule provides that grants must be closed out at the end of their grant term if recipients are not seeking renewal. Section 578.109 of this interim rule specifies the actions that must be taken after the closeout, including grantee submission of financial, final performance, or other reports required by HUD within 90 days of the end of the grant term. Any unused funds must be deobligated and returned to HUD.

The interim rule stipulates, for grants seeking renewal, that failure to submit final performance reports, or other reports required by HUD within 90 days, may cause renewal funds to be withdrawn and grant funds expended on the renewal grant to be repaid.

III. Regulations for HUD Homeless Assistance Programs Existing Prior to Enactment of HEARTH Act

Because grants are still being administered under the Shelter Plus Care program and the Supportive Housing program, the regulations for these programs in 24 CFR parts 582, and 583, respectively, will remain in the Code of Federal Regulations for the time being. When no more, or very few, grants remain under these programs, HUD will remove the regulations in these parts by a separate rule (if no grants exist) or will replace them with a savings clause, which will continue to govern grant agreements executed prior to the effective date of the HEARTH Act regulations.

IV. Conforming Regulations

In addition to establishing the new regulations for the Continuum of Care program, HUD is amending the following regulations, which reference the Shelter Plus Care Program and the Supportive Housing Program, to include reference to the Continuum of Care program. These regulations are the regulations pertaining to: (1) Family Income and Family Payment; Occupancy Requirements for Section 8 and Public Housing, Other HUD-Assisted Housing Serving Persons with Disabilities, and Section 8 Project-Based Assistance, the regulations for which are in 24 CFR part 5, subpart F, specifically, § 5.601 (Purpose and Applicability), paragraphs (d) and (e) of this section; § 5.603 (Definitions), specifically the definition of "Responsible Entity;" § 5.617 (Self-Sufficiency Incentives for Persons with Disabilities—Disallowance of Increase in Annual Income), paragraph (a) of this section; (2) Environmental Review Responsibilities for Entities Assuming HUD Environmental Responsibilities, the regulations for which are in 24 CFR part 58, specifically § 58.1 (Purpose and Applicability), paragraph (b)(3) of this section; and (3) the Consolidated Submissions for Community Planning and Development Programs, the regulations for which are in 24 CFR part 91, specifically, § 91.2 (Applicability), paragraph (b) of this section.

V. Justification for Interim Rulemaking

In accordance with its regulations on rulemaking at 24 CFR part 10, HUD generally publishes its rules for advance public comment.² Notice and public

² The Administrative Procedure Act (5 U.S.C. Subchapter II) (APA), which governs federal rulemaking, provides in section 553(a) that matters involving a military or foreign affairs function of the United States or a matter relating to federal agency

procedures may be omitted, however, if HUD determines that, in a particular case or class of cases, notice and public comment procedure are "impracticable, unnecessary, or contrary to the public interest." (See 24 CFR 10.1.)

In this case, HUD has determined that it would be contrary to the public interest to delay promulgation of the regulations for the Continuum of Care program.³ Congress has provided funding for this new program in the Consolidated and Further Continuing Appropriations Act, 2012 (Pub. L. 112-55, approved November 18, 2011) (FY 2012 Appropriations Act). The FY 2012 Appropriations Act, under the account for Homeless Assistance Grants, appropriates not less than \$1.593 billion for the Continuum of Care and Rural Housing Stability programs. While many federal programs, including HUD programs, received a reduction in funding in the FY 2012 Appropriations Act, Congress increased funding for HUD's homeless assistance grants, including the Continuum of Care program. Additionally, the Conference Report accompanying the FY 2012 Appropriations Act (House Report 112-284) states in relevant part, as follows: "The conferees express concern that HUD continued to implement pre-HEARTH grant programs in FY 2011, due to a lack of regulations. The conferees direct HUD to publish at least interim guidelines for the Emergency Solutions Grants and Continuum of Care programs this fiscal year and to implement the new grant programs as soon as possible so that the updated policies and practices in HEARTH can begin to govern the delivery of homeless assistance funding." (See Conf. Rpt. at page 319. Emphasis added.) Given this congressional direction, HUD is issuing this rule providing for regulations for the Continuum of Care program as an interim rule. Having interim regulations in place will allow HUD to move forward in making FY 2012 funds available to grantees, and avoid a significant delay that would result from issuance, first, of a proposed rule. As

management or personnel or to public property, loans, grants, benefits, or contracts are exempt from the advance notice and public comment requirement of sections 553(b) and (c) of the APA. In its regulations in 24 CFR 10.1, HUD has waived the exemption for advance notice and public comment for matters that relate to public property, loans, grants, benefits, or contracts, and has committed to undertake notice and comment rulemaking for these matters.

³ Although HUD's regulation in 24 CFR 10.1 provide that HUD will involve public participation in its rulemaking, this regulation also provides that notice and public procedure will be omitted if HUD determines in a particular case or class of cases that notice and public procedure are impracticable, unnecessary, or contrary to the public interest.

has been discussed in this preamble, the foundation for the Continuum of Care regulations is the criteria and requirements provided in NOFAs for the Continuum of Care Homeless Assistance Grants Competition program, which HUD has funded for more than 10 years. Through the Continuum of Care Homeless Assistance Grants Competition program, HUD provided funding for the Supportive Housing program, the Shelter Plus Care program, and the Section 8 Moderate Rehabilitation Single Room Occupancy program. The HEARTH Act consolidated these three competitive programs into the statutorily established Continuum of Care program, which was established as a single grant program. Interim regulations will provide certainty with respect to funding requirements and eligible expenditures for FY 2012, and the public comment solicited through this interim rule will help inform the public procedures that HUD is contemplating in its regulations in 24 CFR part 10, and this public comment, in turn, will inform the final rule that will follow this interim rule and govern the funding years following FY 2012.

For the reasons stated above, HUD is issuing this rule to take immediate effect, but welcomes all comments on this interim rule and all comments will be taken into consideration in the development of the final rule.

VI. Findings and Certifications

Regulatory Review—Executive Orders 12866 and 13563

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and, therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are “outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.” Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. This rule was determined to be a “significant regulatory action,” as defined in section 3(f) of Executive Order 12866 (although not an economically significant

regulatory action, as provided under section 3(f)(1) of the Executive Order).

As has been discussed in this preamble, this interim rule establishes the regulations for the Continuum of Care program, which is the HEARTH Act’s codification of HUD’s long-standing Continuum of Care planning process. The HEARTH Act not only codified in law the planning system known as Continuum of Care, but consolidated the three existing competitive homeless assistance grant programs (Supportive Housing, Shelter Plus Care, and Single Room Occupancy) into the single grant program known as the Continuum of Care program. As discussed in the preceding section of the preamble, HUD funded these three programs for more than 10 years through a NOFA, which was titled the Continuum of Care Homeless Assistance Grants Competition Program. However, the funding of the three competitive grant programs, although done through a single NOFA, delineated the different statutes and regulations that governed each of the three programs (see, for example, HUD’s 2008 Continuum of Care NOFA at 73 FR 398450, specifically page 39845). In consolidating these three competitive programs into a single grant program, the HEARTH Act achieves the administrative efficiency that HUD strived to achieve to the extent possible, through its administrative establishment of the Continuum of Care planning process. To the extent permitted by the HEARTH Act and where feasible, the regulations build-in flexibility for grantees, based on experience in administering the Continuum of Care program to date. Given the transition from administrative operation of the Continuum of Care program to statutory operation of the Continuum of Care program, this interim rule would also have no discernible impact upon the economy.

The docket file is available for public inspection in the Regulations Division, Office of the General Counsel, Room 10276, 451 7th Street SW., Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at 800-877-8339.

Environmental Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in

accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Finding of No Significant Impact is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the FONSI by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at 800-877-8339.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and on the private sector. This interim rule does not impose a federal mandate on any State, local, or tribal government, or on the private sector, within the meaning of UMRA.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule solely addresses the allocation and use of grant funds under the new McKinney-Vento Act homeless assistance programs, as consolidated and amended by the HEARTH Act. As discussed in the preamble, the majority of the regulatory provisions proposed by this rule track the regulatory provisions of the Continuum of Care program, with which prospective recipients of the Supportive Housing program and the Shelter Plus Care program are familiar. Accordingly, the program requirements should raise minimal issues because applicants and grantees are familiar with these requirements, and in response to HUD’s solicitations to them on the burden of the requirements for the Supportive Housing program and the Shelter Plus Care program, grantees have not advised that such requirements are burdensome. Therefore, HUD has determined that this rule would not

have a significant economic impact on a substantial number of small entities.

Notwithstanding HUD's determination that this rule will not have a significant effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes

substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This final rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments nor preempts State law within the meaning of the Executive Order.

Paperwork Reduction Act

The information collection requirements contained in this interim

rule have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number.

The burden of the information collections in this interim rule is estimated as follows:

REPORTING AND RECORDKEEPING BURDEN

Information collection	Number of respondents	Response frequency (average)	Total annual responses	Burden hours per response	Total annual hours
§ 578.5(a) Establishing the CoC	450	1	450	8.0	3,600
§ 578.5(b) Establishing the Board	450	1	450	5.0	2,250
§ 578.7(a)(1) Hold CoC Meetings	450	2	900	4.0	3,600
§ 578.7(a)(2) Invitation for New Members	450	1	450	1.0	450
§ 578.7(a)(4) Appoint committees	450	2	900	0.5	450
§ 578.7(a)(5) Governance charter	450	1	450	7.0	3,150
§ 578.7(a)(6) and (7) Monitor performance and evaluation	450	4	450	9.0	4,050
§ 578.7(a)(8) Centralized or coordinated assessment system	450	1	450	8.0	3,600
§ 578.7(a)(9) Written standards	450	1	450	5.0	2,250
§ 578.7(b) Designate HMIS	450	1	450	10.0	4,500
§ 578.9 Application for funds	450	1	450	180.0	81,000
§ 578.11(c) Develop CoC plan	450	1	450	9.0	4,050
§ 578.21(c) Satisfying conditions	8,000	1	8,000	4.0	32,000
§ 578.23 Executing grant agreements	8,000	1	8,000	1.0	8,000
§ 578.35(b) Appeal—solo	10	1	10	4.0	40
§ 578.35(c) Appeal—denied or decreased funding	15	1	15	1.0	15
§ 578.35(d) Appeal—competing CoC	10	1	10	5.0	50
§ 578.35(e) Appeal—Consolidated Plan certification	5	1	5	2.0	10
§ 578.49(a)—Leasing exceptions	5	1	5	1.5	7.5
§ 578.65 HPC Standards	20	1	20	10.0	200
§ 578.75(a)(1) State and local requirements—appropriate service provision	7,000	1	7,000	0.5	3,500
§ 578.75(a)(1) State and local requirements—housing codes	20	1	20	3.0	60
§ 578.75(b) Housing quality standards	72,800	2	145,600	1.0	145,600
§ 578.75(b) Suitable dwelling size	72,800	2	145,600	0.08	11,648
§ 578.75(c) Meals	70,720	1	70,720	0.5	35,360
§ 578.75(e) Ongoing assessment of supportive services	8,000	1	8,000	1.5	12,000
§ 578.75(f) Residential supervision	6,600	3	19,800	0.75	14,850
§ 578.75(g) Participation of homeless individuals	11,500	1	11,500	1.0	11,500
§ 578.75(h) Supportive service agreements	3,000	100	30,000	0.5	15,000
§ 578.77(a) Signed leases/occupancy agreements	104,000	2	208,000	1.0	208,000
§ 578.77(b) Calculating occupancy charges	1,840	200	368,000	0.75	276,000
§ 578.77(c) Calculating rent	2,000	200	400,000	0.75	300,000
§ 578.81(a) Use restriction	20	1	20	0.5	10
§ 578.91(a) Termination of assistance	400	1	400	4.00	1,600
§ 578.91(b) Due process for termination of assistance	4,500	1	4,500	3.0	13,500
§ 578.95(d)—Conflict-of-Interest exceptions	10	1	10	3.0	30
§ 578.103(a)(3) Documenting homelessness	300,000	1	300,000	0.25	75,000
§ 578.103(a)(4) Documenting at risk of homelessness	10,000	1	10,000	0.25	2,500
§ 578.103(a)(5) Documenting imminent threat of harm	200	1	200	0.5	100
§ 578.103(a)(7) Documenting program participant records	350,000	6	2,100,000	0.25	525,000
§ 578.103(a)(7) Documenting case management	8,000	12	96,000	1.0	96,000
§ 578.103(a)(13) Documenting faith-based activities	8,000	1	8,000	1.0	8,000
§ 578.103(b) Confidentiality procedures	11,500	1	11,500	1.0	11,500
§ 578.105(a) Grant/project changes—UFAs	20	2	40	2.0	80
§ 578.105(b) Grant/project changes—multiple project applicants	800	1	800	2.0	1,600
Total					1,921,710.5

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning this collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions HUD, including whether the information will have practical utility;

(2) Evaluate the accuracy of HUD's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

Interested persons are invited to submit comments regarding the information collection requirements in this rule. Comments must refer to the proposal by name and docket number (FR-5476-I-01) and be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Fax: (202) 395-6947, and Reports Liaison Officer, Office of the Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7233, Washington, DC 20410-7000.

Interested persons may submit comments regarding the information collection requirements electronically through the Federal eRulemaking Portal at <http://www.regulations.gov>. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the <http://www.regulations.gov> Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

List of Subjects in 24 CFR Part 578

Community facilities, Continuum of Care, Emergency solutions grants, Grant programs—housing and community development, Grant program—social programs, Homeless, Rural housing, Reporting and recordkeeping requirements, Supportive housing

programs—housing and community development, Supportive services.

Accordingly, for the reasons described in the preamble, HUD adds part 578 to subchapter C of chapter V of subtitle B of 24 CFR to read as follows:

PART 578—CONTINUUM OF CARE PROGRAM

Subpart A—General Provisions

Sec.

- 578.1 Purpose and scope.
578.3 Definitions.

Subpart B—Establishing and Operating a Continuum of Care

- 578.5 Establishing the Continuum of Care.
578.7 Responsibilities of the Continuum of Care.
578.9 Preparing an application for funds.
578.11 Unified Funding Agency.
578.13 Remedial action.

Subpart C—Application and Grant Award Process

- 578.15 Eligible applicants.
578.17 Overview of application and grant award process.
578.19 Application process.
578.21 Awarding funds.
578.23 Executing grant agreements.
578.25 Site control.
578.27 Consolidated plan.
578.29 Subsidy tapering.
578.31 Environmental review.
578.33 Renewals.
578.35 Appeal.

Subpart D—Program Components and Eligible Costs

- 578.37 Program components and uses of assistance.
578.39 Continuum of Care planning activities.
578.41 Unified Funding Agency costs.
578.43 Acquisition.
578.45 Rehabilitation.
578.47 New construction.
578.49 Leasing.
578.51 Rental assistance.
578.53 Supportive services.
578.55 Operating costs.
578.57 Homeless Management Information System.
578.59 Project administrative costs.
578.61 Relocation costs.
578.63 Indirect costs.

Subpart E—High-Performing Communities

- 578.65 Standards.
578.67 Publication of application.
578.69 Cooperation among entities.
578.71 HPC-eligible activities.

Subpart F—Program Requirements

- 578.73 Matching requirements.
578.75 General operations.
578.77 Calculating occupancy charges and rent.
578.79 Limitation on transitional housing.
578.81 Term of commitment, repayment of grants, and prevention of undue benefits.
578.83 Displacement, relocation, and acquisition.
578.85 Timeliness standards.

- 578.87 Limitation on use of funds.
578.89 Limitation on use of grant funds to serve persons defined as homeless under other federal laws.
578.91 Termination of assistance to program participants.
578.93 Fair Housing and Equal Opportunity.
578.95 Conflicts of interest.
578.97 Program income.
578.99 Applicability of other federal requirements.

Subpart G—Grant Administration

- 578.101 Technical assistance.
578.103 Recordkeeping requirements.
578.105 Grant and project changes.
578.107 Sanctions.
578.109 Closeout.

Authority: 42 U.S.C. 11371 *et seq.*, 42 U.S.C. 3535(d).

Subpart A—General Provisions

§ 578.1 Purpose and scope.

(a) The Continuum of Care program is authorized by subtitle C of title IV of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11381–11389).

(b) The program is designed to:

(1) Promote communitywide commitment to the goal of ending homelessness;

(2) Provide funding for efforts by nonprofit providers, States, and local governments to quickly rehouse homeless individuals (including unaccompanied youth) and families, while minimizing the trauma and dislocation caused to homeless individuals, families, and communities by homelessness;

(3) Promote access to and effective utilization of mainstream programs by homeless individuals and families; and

(4) Optimize self-sufficiency among individuals and families experiencing homelessness.

§ 578.3 Definitions.

As used in this part:
Act means the McKinney-Vento Homeless Assistance Act as amended (42 U.S.C. 11371 *et seq.*).

Annual renewal amount means the amount that a grant can be awarded on an annual basis when renewed. It includes funds only for those eligible activities (operating, supportive services, leasing, rental assistance, HMIS, and administration) that were funded in the original grant (or the original grant as amended), less the nonrenewable activities (acquisition, new construction, rehabilitation, and any administrative costs related to these activities).

Applicant means an eligible applicant that has been designated by the Continuum of Care to apply for assistance under this part on behalf of that Continuum.

At risk of homelessness. (1) An individual or family who:

(i) Has an annual income below 30 percent of median family income for the area, as determined by HUD;

(ii) Does not have sufficient resources or support networks, e.g., family, friends, faith-based or other social networks, immediately available to prevent them from moving to an emergency shelter or another place described in paragraph (1) of the "Homeless" definition in this section; and

(iii) Meets one of the following conditions:

(A) Has moved because of economic reasons two or more times during the 60 days immediately preceding the application for homelessness prevention assistance;

(B) Is living in the home of another because of economic hardship;

(C) Has been notified in writing that their right to occupy their current housing or living situation will be terminated within 21 days of the date of application for assistance;

(D) Lives in a hotel or motel and the cost of the hotel or motel stay is not paid by charitable organizations or by federal, State, or local government programs for low-income individuals;

(E) Lives in a single-room occupancy or efficiency apartment unit in which there reside more than two persons, or lives in a larger housing unit in which there reside more than 1.5 people per room, as defined by the U.S. Census Bureau;

(F) Is exiting a publicly funded institution, or system of care (such as a health-care facility, a mental health facility, foster care or other youth facility, or correction program or institution); or

(G) Otherwise lives in housing that has characteristics associated with instability and an increased risk of homelessness, as identified in the recipient's approved consolidated plan;

(2) A child or youth who does not qualify as "homeless" under this section, but qualifies as "homeless" under section 387(3) of the Runaway and Homeless Youth Act (42 U.S.C. 5732a(3)), section 637(11) of the Head Start Act (42 U.S.C. 9832(11)), section 41403(6) of the Violence Against Women Act of 1994 (42 U.S.C. 14043e-2(6)), section 330(h)(5)(A) of the Public Health Service Act (42 U.S.C. 254b(h)(5)(A)), section 3(m) of the Food and Nutrition Act of 2008 (7 U.S.C. 2012(m)), or section 17(b)(15) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)(15)); or

(3) A child or youth who does not qualify as "homeless" under this

section, but qualifies as "homeless" under section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), and the parent(s) or guardian(s) of that child or youth if living with her or him.

Centralized or coordinated assessment system means a centralized or coordinated process designed to coordinate program participant intake assessment and provision of referrals. A centralized or coordinated assessment system covers the geographic area, is easily accessed by individuals and families seeking housing or services, is well advertised, and includes a comprehensive and standardized assessment tool.

Chronically homeless. (1) An individual who:

(i) Is homeless and lives in a place not meant for human habitation, a safe haven, or in an emergency shelter; and

(ii) Has been homeless and living or residing in a place not meant for human habitation, a safe haven, or in an emergency shelter continuously for at least one year or on at least four separate occasions in the last 3 years; and

(iii) Can be diagnosed with one or more of the following conditions: substance use disorder, serious mental illness, developmental disability (as defined in section 102 of the Developmental Disabilities Assistance Bill of Rights Act of 2000 (42 U.S.C. 15002)), post-traumatic stress disorder, cognitive impairments resulting from brain injury, or chronic physical illness or disability;

(2) An individual who has been residing in an institutional care facility, including a jail, substance abuse or mental health treatment facility, hospital, or other similar facility, for fewer than 90 days and met all of the criteria in paragraph (1) of this definition, before entering that facility; or

(3) A family with an adult head of household (or if there is no adult in the family, a minor head of household) who meets all of the criteria in paragraph (1) of this definition, including a family whose composition has fluctuated while the head of household has been homeless.

Collaborative applicant means the eligible applicant that has been designated by the Continuum of Care to apply for a grant for Continuum of Care planning funds under this part on behalf of the Continuum.

Consolidated plan means the HUD-approved plan developed in accordance with 24 CFR 91.

Continuum of Care and Continuum means the group organized to carry out the responsibilities required under this

part and that is composed of representatives of organizations, including nonprofit homeless providers, victim service providers, faith-based organizations, governments, businesses, advocates, public housing agencies, school districts, social service providers, mental health agencies, hospitals, universities, affordable housing developers, law enforcement, organizations that serve homeless and formerly homeless veterans, and homeless and formerly homeless persons to the extent these groups are represented within the geographic area and are available to participate.

Developmental disability means, as defined in section 102 of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15002):

(1) A severe, chronic disability of an individual that—

(i) Is attributable to a mental or physical impairment or combination of mental and physical impairments;

(ii) Is manifested before the individual attains age 22;

(iii) Is likely to continue indefinitely;

(iv) Results in substantial functional limitations in three or more of the following areas of major life activity:

(A) Self-care;

(B) Receptive and expressive language;

(C) Learning;

(D) Mobility;

(E) Self-direction;

(F) Capacity for independent living;

(G) Economic self-sufficiency.

(v) Reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic services, individualized supports, or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated.

(2) An individual from birth to age 9, inclusive, who has a substantial developmental delay or specific congenital or acquired condition, may be considered to have a developmental disability without meeting three or more of the criteria described in paragraphs (1)(i) through (v) of the definition of "developmental disability" in this section if the individual, without services and supports, has a high probability of meeting these criteria later in life.

Eligible applicant means a private nonprofit organization, State, local government, or instrumentality of State and local government.

Emergency shelter is defined in 24 CFR part 576.

Emergency Solutions Grants (ESG) means the grants provided under 24 CFR part 576.

Fair Market Rent (FMR) means the Fair Market Rents published in the Federal Register annually by HUD.

High-performing community (HPC) means a Continuum of Care that meets the standards in subpart E of this part and has been designated as a high-performing community by HUD.

Homeless means:

(1) An individual or family who lacks a fixed, regular, and adequate nighttime residence, meaning:

(i) An individual or family with a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings, including a car, park, abandoned building, bus or train station, airport, or camping ground;

(ii) An individual or family living in a supervised publicly or privately operated shelter designated to provide temporary living arrangements (including congregate shelters, transitional housing, and hotels and motels paid for by charitable organizations or by federal, State, or local government programs for low-income individuals); or

(iii) An individual who is exiting an institution where he or she resided for 90 days or less and who resided in an emergency shelter or place not meant for human habitation immediately before entering that institution;

(2) An individual or family who will imminently lose their primary nighttime residence, provided that:

(i) The primary nighttime residence will be lost within 14 days of the date of application for homeless assistance;

(ii) No subsequent residence has been identified; and

(iii) The individual or family lacks the resources or support networks, e.g., family, friends, faith-based or other social networks, needed to obtain other permanent housing;

(3) Unaccompanied youth under 25 years of age, or families with children and youth, who do not otherwise qualify as homeless under this definition, but who:

(i) Are defined as homeless under section 387 of the Runaway and Homeless Youth Act (42 U.S.C. 5732a), section 637 of the Head Start Act (42 U.S.C. 9832), section 41403 of the Violence Against Women Act of 1994 (42 U.S.C. 14043e-2), section 330(h) of the Public Health Service Act (42 U.S.C. 254b(h)), section 3 of the Food and Nutrition Act of 2008 (7 U.S.C. 2012), section 17(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)), or section 725 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a);

(ii) Have not had a lease, ownership interest, or occupancy agreement in permanent housing at any time during the 60 days immediately preceding the date of application for homeless assistance;

(iii) Have experienced persistent instability as measured by two moves or more during the 60-day period immediately preceding the date of applying for homeless assistance; and

(iv) Can be expected to continue in such status for an extended period of time because of chronic disabilities; chronic physical health or mental health conditions; substance addiction; histories of domestic violence or childhood abuse (including neglect); the presence of a child or youth with a disability; or two or more barriers to employment, which include the lack of a high school degree or General Education Development (GED), illiteracy, low English proficiency, a history of incarceration or detention for criminal activity, and a history of unstable employment; or

(4) Any individual or family who:

(i) Is fleeing, or is attempting to flee, domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions that relate to violence against the individual or a family member, including a child, that has either taken place within the individual's or family's primary nighttime residence or has made the individual or family afraid to return to their primary nighttime residence;

(ii) Has no other residence; and

(iii) Lacks the resources or support networks, e.g., family, friends, and faith-based or other social networks, to obtain other permanent housing.

Homeless Management Information System (HMIS) means the information system designated by the Continuum of Care to comply with the HMIS requirements prescribed by HUD.

HMIS Lead means the entity designated by the Continuum of Care in accordance with this part to operate the Continuum's HMIS on its behalf.

Permanent housing means community-based housing without a designated length of stay, and includes both permanent supportive housing and rapid rehousing. To be permanent housing, the program participant must be the tenant on a lease for a term of at least one year, which is renewable for terms that are a minimum of one month long, and is terminable only for cause.

Permanent supportive housing means permanent housing in which supportive services are provided to assist homeless persons with a disability to live independently.

Point-in-time count means a count of sheltered and unsheltered homeless persons carried out on one night in the last 10 calendar days of January or at such other time as required by HUD.

Private nonprofit organization means an organization:

(1) No part of the net earnings of which inure to the benefit of any member, founder, contributor, or individual;

(2) That has a voluntary board;

(3) That has a functioning accounting system that is operated in accordance with generally accepted accounting principles, or has designated a fiscal agent that will maintain a functioning accounting system for the organization in accordance with generally accepted accounting principles; and

(4) That practices nondiscrimination in the provision of assistance.

A private nonprofit organization does not include governmental organizations, such as public housing agencies.

Program participant means an individual (including an unaccompanied youth) or family who is assisted with Continuum of Care program funds.

Project means a group of eligible activities, such as HMIS costs, identified as a project in an application to HUD for Continuum of Care funds and includes a structure (or structures) that is (are) acquired, rehabilitated, constructed, or leased with assistance provided under this part or with respect to which HUD provides rental assistance or annual payments for operating costs, or supportive services under this subtitle.

Recipient means an applicant that signs a grant agreement with HUD.

Safe haven means, for the purpose of defining chronically homeless, supportive housing that meets the following:

(1) Serves hard to reach homeless persons with severe mental illness who came from the streets and have been unwilling or unable to participate in supportive services;

(2) Provides 24-hour residence for eligible persons for an unspecified period;

(3) Has an overnight capacity limited to 25 or fewer persons; and

(4) Provides low-demand services and referrals for the residents.

State means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands.

Subrecipient means a private nonprofit organization, State, local government, or instrumentality of State or local government that receives a

subgrant from the recipient to carry out a project.

Transitional housing means housing, where all program participants have signed a lease or occupancy agreement, the purpose of which is to facilitate the movement of homeless individuals and families into permanent housing within 24 months or such longer period as HUD determines necessary. The program participant must have a lease or occupancy agreement for a term of at least one month that ends in 24 months and cannot be extended.

Unified Funding Agency (UFA) means an eligible applicant selected by the Continuum of Care to apply for a grant for the entire Continuum, which has the capacity to carry out the duties in § 578.11(b), which is approved by HUD and to which HUD awards a grant.

Victim service provider means a private nonprofit organization whose primary mission is to provide services to victims of domestic violence, dating violence, sexual assault, or stalking. This term includes rape crisis centers, battered women's shelters, domestic violence transitional housing programs, and other programs.

Subpart B—Establishing and Operating a Continuum of Care

§ 578.5 Establishing the Continuum of Care.

(a) *The Continuum of Care.* Representatives from relevant organizations within a geographic area shall establish a Continuum of Care for the geographic area to carry out the duties of this part. Relevant organizations include nonprofit homeless assistance providers, victim service providers, faith-based organizations, governments, businesses, advocates, public housing agencies, school districts, social service providers, mental health agencies, hospitals, universities, affordable housing developers, law enforcement, and organizations that serve veterans and homeless and formerly homeless individuals.

(b) *The board.* The Continuum of Care must establish a board to act on behalf of the Continuum using the process established as a requirement by § 578.7(a)(3) and must comply with the conflict-of-interest requirements at § 578.95(b). The board must:

- (1) Be representative of the relevant organizations and of projects serving homeless subpopulations; and
- (2) Include at least one homeless or formerly homeless individual.

(c) *Transition.* Continuums of Care shall have 2 years after August 30, 2012

to comply with the requirements of paragraph (b) of this section.

§ 578.7 Responsibilities of the Continuum of Care.

(a) *Operate the Continuum of Care.*

The Continuum of Care must:

- (1) Hold meetings of the full membership, with published agendas, at least semi-annually;
- (2) Make an invitation for new members to join publicly available within the geographic area at least annually;
- (3) Adopt and follow a written process to select a board to act on behalf of the Continuum of Care. The process must be reviewed, updated, and approved by the Continuum at least once every 5 years;
- (4) Appoint additional committees, subcommittees, or workgroups;
- (5) In consultation with the collaborative applicant and the HMIS Lead, develop, follow, and update annually a governance charter, which will include all procedures and policies needed to comply with subpart B of this part and with HMIS requirements as prescribed by HUD; and a code of conduct and recusal process for the board, its chair(s), and any person acting on behalf of the board;
- (6) Consult with recipients and subrecipients to establish performance targets appropriate for population and program type, monitor recipient and subrecipient performance, evaluate outcomes, and take action against poor performers;
- (7) Evaluate outcomes of projects funded under the Emergency Solutions Grants program and the Continuum of Care program, and report to HUD;
- (8) In consultation with recipients of Emergency Solutions Grants program funds within the geographic area, establish and operate either a centralized or coordinated assessment system that provides an initial, comprehensive assessment of the needs of individuals and families for housing and services. The Continuum must develop a specific policy to guide the operation of the centralized or coordinated assessment system on how its system will address the needs of individuals and families who are fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, or stalking, but who are seeking shelter or services from nonvictim service providers. This system must comply with any requirements established by HUD by Notice.
- (9) In consultation with recipients of Emergency Solutions Grants program funds within the geographic area, establish and consistently follow written standards for providing

Continuum of Care assistance. At a minimum, these written standards must include:

- (i) Policies and procedures for evaluating individuals' and families' eligibility for assistance under this part;
- (ii) Policies and procedures for determining and prioritizing which eligible individuals and families will receive transitional housing assistance;
- (iii) Policies and procedures for determining and prioritizing which eligible individuals and families will receive rapid rehousing assistance;
- (iv) Standards for determining what percentage or amount of rent each program participant must pay while receiving rapid rehousing assistance;
- (v) Policies and procedures for determining and prioritizing which eligible individuals and families will receive permanent supportive housing assistance; and
- (vi) Where the Continuum is designated a high-performing community, as described in subpart G of this part, policies and procedures set forth in 24 CFR 576.400(e)(3)(vi), (e)(3)(vii), (e)(3)(viii), and (e)(3)(ix).

(b) *Designating and operating an HMIS.* The Continuum of Care must:

- (1) Designate a single Homeless Management Information System (HMIS) for the geographic area;
- (2) Designate an eligible applicant to manage the Continuum's HMIS, which will be known as the HMIS Lead;
- (3) Review, revise, and approve a privacy plan, security plan, and data quality plan for the HMIS.
- (4) Ensure consistent participation of recipients and subrecipients in the HMIS; and
- (5) Ensure the HMIS is administered in compliance with requirements prescribed by HUD.

(c) *Continuum of Care planning.* The Continuum must develop a plan that includes:

- (1) Coordinating the implementation of a housing and service system within its geographic area that meets the needs of the homeless individuals (including unaccompanied youth) and families. At a minimum, such system encompasses the following:

- (i) Outreach, engagement, and assessment;
- (ii) Shelter, housing, and supportive services;
- (iii) Prevention strategies.

(2) Planning for and conducting, at least biennially, a point-in-time count of homeless persons within the geographic area that meets the following requirements:

- (i) Homeless persons who are living in a place not designed or ordinarily used as a regular sleeping accommodation for

homeless persons must be counted as unsheltered homeless persons.

(ii) Persons living in emergency shelters and transitional housing projects must be counted as sheltered homeless persons.

(iii) Other requirements established by HUD by Notice.

(3) Conducting an annual gap analysis of the homeless needs and services available within the geographic area;

(4) Providing information required to complete the Consolidated Plan(s) within the Continuum's geographic area;

(5) Consulting with State and local government Emergency Solutions Grants program recipients within the Continuum's geographic area on the plan for allocating Emergency Solutions Grants program funds and reporting on and evaluating the performance of Emergency Solutions Grants program recipients and subrecipients.

§ 578.9 Preparing an application for funds.

(a) The Continuum must:

(1) Design, operate, and follow a collaborative process for the development of applications and approve the submission of applications in response to a NOFA published by HUD under § 578.19 of this subpart;

(2) Establish priorities for funding projects in the geographic area;

(3) Determine if one application for funding will be submitted for all projects within the geographic area or if more than one application will be submitted for the projects within the geographic area;

(i) If more than one application will be submitted, designate an eligible applicant to be the collaborative applicant that will collect and combine the required application information from all applicants and for all projects within the geographic area that the Continuum has selected funding. The collaborative applicant will also apply for Continuum of Care planning activities. If the Continuum is an eligible applicant, it may designate itself;

(ii) If only one application will be submitted, that applicant will be the collaborative applicant and will collect and combine the required application information from all projects within the geographic area that the Continuum has selected for funding and apply for Continuum of Care planning activities;

(b) The Continuum retains all of its responsibilities, even if it designates one or more eligible applicants other than itself to apply for funds on behalf of the Continuum. This includes approving the Continuum of Care application.

§ 578.11 Unified Funding Agency.

(a) *Becoming a Unified Funding Agency.* To become designated as the Unified Funding Agency (UFA) for a Continuum, a collaborative applicant must be selected by the Continuum to apply to HUD to be designated as the UFA for the Continuum.

(b) *Criteria for designating a UFA.* HUD will consider these criteria when deciding whether to designate a collaborative applicant a UFA:

(1) The Continuum of Care it represents meets the requirements in § 578.7;

(2) The collaborative applicant has financial management systems that meet the standards set forth in 24 CFR 84.21 (for nonprofit organizations) and 24 CFR 85.20 (for States);

(3) The collaborative applicant demonstrates the ability to monitor subrecipients; and

(4) Such other criteria as HUD may establish by NOFA.

(c) *Requirements.* HUD-designated UFAs shall:

(1) Apply to HUD for funding for all of the projects within the geographic area and enter into a grant agreement with HUD for the entire geographic area.

(2) Enter into legally binding agreements with subrecipients, and receive and distribute funds to subrecipients for all projects within the geographic area.

(3) Require subrecipients to establish fiscal control and accounting procedures as necessary to assure the proper disbursement and accounting for federal funds in accordance with the requirements of 24 CFR parts 84 and 85 and corresponding OMB circulars.

(4) Obtain approval of any proposed grant agreement amendments by the Continuum of Care before submitting a request for an amendment to HUD.

§ 578.13 Remedial action.

(a) If HUD finds that the Continuum of Care for a geographic area does not meet the requirements of the Act or its implementing regulations, or that there is no Continuum for a geographic area, HUD may take remedial action to ensure fair distribution of grant funds within the geographic area. Such measures may include:

(1) Designating a replacement Continuum of Care for the geographic area;

(2) Designating a replacement collaborative applicant for the Continuum's geographic area; and

(3) Accepting applications from other eligible applicants within the Continuum's geographic area.

(b) HUD must provide a 30-day prior written notice to the Continuum and its

collaborative applicant and give them an opportunity to respond.

Subpart C—Application and Grant Award Process

§ 578.15 Eligible applicants.

(a) *Who may apply.* Nonprofit organizations, States, local governments, and instrumentalities of State or local governments are eligible to apply for grants.

(b) *Designation by the Continuum of Care.* Eligible applicant(s) must have been designated by the Continuum of Care to submit an application for grant funds under this part. The designation must state whether the Continuum is designating more than one applicant to apply for funds and, if it is, which applicant is being designated as the collaborative applicant. If the Continuum is designating only one applicant to apply for funds, the Continuum must designate that applicant to be the collaborative applicant.

(c) *Exclusion.* For-profit entities are not eligible to apply for grants or to be subrecipients of grant funds.

§ 578.17 Overview of application and grant award process.

(a) *Formula.* (1) After enactment of the annual appropriations act for each fiscal year, and issuance of the NOFA, HUD will publish, on its Web site, the Preliminary Pro Rata Need (PPRN) assigned to metropolitan cities, urban counties, and all other counties.

(2) HUD will apply the formula used to determine PPRN established in paragraph (a)(3) of this section, to the amount of funds being made available under the NOFA. That amount is calculated by:

(i) Determining the total amount for the Continuum of Care competition in accordance with section 413 of the Act or as otherwise directed by the annual appropriations act;

(ii) From the amount in paragraph (a)(2)(i) of this section, deducting the amount published in the NOFA as being set aside to provide a bonus to geographic areas for activities that have proven to be effective in reducing homelessness generally or for specific subpopulations listed in the NOFA or achieving homeless prevention and independent living goals established in the NOFA and to meet policy priorities set in the NOFA; and

(iii) Deducting the amount of funding necessary for Continuum of Care planning activities and UFA costs.

(3) PPRN is calculated on the amount determined under paragraph (a)(2) of this section by using the following formula:

(i) Two percent will be allocated among the four insular areas (American Samoa, Guam, the Commonwealth of the Northern Marianas, and the Virgin Islands) on the basis of the ratio of the population of each insular area to the population of all insular areas.

(ii) Seventy-five percent of the remaining amount will be allocated, using the Community Development Block Grant (CDBG) formula, to metropolitan cities and urban counties that have been funded under either the Emergency Shelter Grants or Emergency Solutions Grants programs in any one year since 2004.

(iii) The amount remaining after the allocation under paragraphs (a)(1) and (2) of this section will be allocated, using the CDBG formula, to metropolitan cities and urban counties that have not been funded under the Emergency Solutions Grants program in any year since 2004 and all other counties in the United States and Puerto Rico.

(4) If the calculation in paragraph (a)(2) of this section results in an amount less than the amount required to renew all projects eligible for renewal in that year for at least one year, after making adjustments proportional to increases in fair market rents for the geographic area for leasing, operating, and rental assistance for permanent housing, HUD will reduce, proportionately, the total amount required to renew all projects eligible for renewal in that year for at least one year, for each Continuum of Care. HUD will publish, via the NOFA, the total dollar amount that every Continuum will be required to deduct from renewal projects Continuum-wide.

(b) *Calculating a Continuum of Care's maximum award amount.* (1) *Establish the PPRN amount.* First, HUD will total the PPRN amounts for each metropolitan city, urban county, other county, and insular area claimed by the Continuum as part of its geographic area, excluding any counties applying for or receiving funding from the Rural Housing Stability Assistance program under 24 CFR part 579.

(2) *Establishing renewal demand.* Next, HUD will determine the renewal demand within the Continuum's geographic area. Renewal demand is the sum of the annual renewal amounts of all projects within the Continuum eligible to apply for renewal in that fiscal year's competition, before any adjustments to rental assistance, leasing, and operating line items based on FMR changes.

(3) *Establishing FPRN.* The higher of PPRN or renewal demand for the Continuum of Care is the FPRN, which

is the base for the maximum award amount for the Continuum.

(4) *Establishing the maximum award amount.* The maximum award amount for the Continuum is the FPRN amount plus any additional eligible amounts for Continuum planning; UFA costs; adjustments to leasing, operating and rental assistance line items based on changes to FMR; and available bonuses.

§ 578.19 Application process.

(a) *Notice of Funding Availability.* After enactment of the annual appropriations act for the fiscal year, HUD will issue a NOFA in accordance with the requirements of 24 CFR part 4.

(b) *Applications.* All applications to HUD, including applications for grant funds and requests for designation as a UFA or HPC, must be submitted at such time and in such manner as HUD may require, and contain such information as HUD determines necessary. At a minimum, an application for grant funds must contain a list of the projects for which it is applying for funds; a description of the projects; a list of the projects that will be carried out by subrecipients and the names of the subrecipients; a description of the subpopulations of homeless or at risk of homelessness to be served by projects; the number of units to be provided and/or the number of persons to be served by each project; a budget request by project; and reasonable assurances that the applicant, or the subrecipient, will own or have control of a site for the proposed project not later than the expiration of the 12-month period beginning upon notification of an award for grant assistance.

§ 578.21 Awarding funds.

(a) *Selection.* HUD will review applications in accordance with the guidelines and procedures provided in the NOFA and will award funds to recipients through a national competition based on selection criteria as defined in section 427 of the Act.

(b) *Announcement of awards.* HUD will announce awards and notify selected applicants of any conditions imposed on awards. Conditions must be satisfied before HUD will execute a grant agreement with the applicant.

(c) *Satisfying conditions.* HUD will withdraw an award if the applicant does not satisfy all conditions imposed on it. Correcting all issues and conditions attached to an award must be completed within the time frame established in the NOFA. Proof of site control, match, environmental review, and the documentation of financial feasibility must be completed within 12 months of the announcement of the award, or 24

months in the case of funds for acquisition, rehabilitation, or new construction. The 12-month deadline may be extended by HUD for up to 12 additional months upon a showing of compelling reasons for delay due to factors beyond the control of the recipient or subrecipient.

§ 578.23 Executing grant agreements.

(a) *Deadline.* No later than 45 days from the date when all conditions are satisfied, the recipient and HUD must execute the grant agreement.

(b) *Grant agreements.* (1) *Multiple applicants for one Continuum.* If a Continuum designates more than one applicant for the geographic area, HUD will enter into a grant agreement with each designated applicant for which an award is announced.

(2) *One applicant for a Continuum.* If a Continuum designates only one applicant for the geographic area, after awarding funds, HUD may enter into a grant agreement with that applicant for new awards, if any, and one grant agreement for renewals, Continuum of Care planning, and UFA costs, if any. These two grants will cover the entire geographic area. A default by the recipient under one of those grant agreements will also be a default under the other.

(3) *Unified Funding Agencies.* If a Continuum is a UFA that HUD has approved, then HUD will enter into one grant agreement with the UFA for new awards, if any, and one grant agreement for renewals, Continuum of Care planning and UFA costs, if any. These two grants will cover the entire geographic area. A default by the UFA under one of those grant agreements will also be a default under the other.

(c) *Required agreements.* Recipients will be required to sign a grant agreement in which the recipient agrees:

(1) To ensure the operation of the project(s) in accordance with the provisions of the McKinney-Veto Act and all requirements under 24 CFR part 578;

(2) To monitor and report the progress of the project(s) to the Continuum of Care and HUD;

(3) To ensure, to the maximum extent practicable, that individuals and families experiencing homelessness are involved, through employment, provision of volunteer services, or otherwise, in constructing, rehabilitating, maintaining, and operating facilities for the project and in providing supportive services for the project;

(4) To require certification from all subrecipients that:

(i) Subrecipients will maintain the confidentiality of records pertaining to any individual or family that was provided family violence prevention or treatment services through the project;

(ii) The address or location of any family violence project assisted under this part will not be made public, except with written authorization of the person responsible for the operation of such project;

(iii) Subrecipients will establish policies and practices that are consistent with, and do not restrict, the exercise of rights provided by subtitle B of title VII of the Act and other laws relating to the provision of educational and related services to individuals and families experiencing homelessness;

(iv) In the case of projects that provide housing or services to families, that subrecipients will designate a staff person to be responsible for ensuring that children being served in the program are enrolled in school and connected to appropriate services in the community, including early childhood programs such as Head Start, part C of the Individuals with Disabilities Education Act, and programs authorized under subtitle B of title VII of the Act;

(v) The subrecipient, its officers, and employees are not debarred or suspended from doing business with the Federal Government; and

(vi) Subrecipients will provide information, such as data and reports, as required by HUD; and

(5) To establish such fiscal control and accounting procedures as may be necessary to assure the proper disbursement of, and accounting for grant funds in order to ensure that all financial transactions are conducted, and records maintained in accordance with generally accepted accounting principles, if the recipient is a UFA;

(6) To monitor subrecipient match and report on match to HUD;

(7) To take the educational needs of children into account when families are placed in housing and will, to the maximum extent practicable, place families with children as close as possible to their school of origin so as not to disrupt such children's education;

(8) To monitor subrecipients at least annually;

(9) To use the centralized or coordinated assessment system established by the Continuum of Care as set forth in § 578.7(a)(8). A victim service provider may choose not to use the Continuum of Care's centralized or coordinated assessment system, provided that victim service providers in the area use a centralized or coordinated assessment system that

meets HUD's minimum requirements and the victim service provider uses that system instead;

(10) To follow the written standards for providing Continuum of Care assistance developed by the Continuum of Care, including the minimum requirements set forth in § 578.7(a)(9);

(11) Enter into subrecipient agreements requiring subrecipients to operate the project(s) in accordance with the provisions of this Act and all requirements under 24 CFR part 578; and

(12) To comply with such other terms and conditions as HUD may establish by NOFA.

§ 578.25 Site control.

(a) *In general.* When grant funds will be used for acquisition, rehabilitation, new construction, operating costs, or to provide supportive services, the recipient or subrecipient must demonstrate that it has site control within the time frame established in section § 578.21 before HUD will execute a grant agreement. This requirement does not apply to funds used for housing that will eventually be owned or controlled by the individuals or families served or for supportive services provided at sites not operated by the recipient or subrecipient.

(b) *Evidence.* Acceptable evidence of site control is a deed or lease. If grant funds will be used for acquisition, acceptable evidence of site control will be a purchase agreement. The owner, lessee, and purchaser shown on these documents must be the selected applicant or intended subrecipient identified in the application for assistance.

(c) *Tax credit projects.* (1) Applicants that plan to use the low-income housing tax credit authorized under 26 U.S.C. 42 to finance a project must prove to HUD's satisfaction that the applicant or subrecipient identified in the application is in control of the limited partnership or limited liability corporation that has a deed or lease for the project site.

(i) To have control of the limited partnership, the applicant or subrecipient must be the general partner of the limited partnership or have a 51 percent controlling interest in that general partner.

(ii) To have control of the limited liability company, the applicant or subrecipient must be the sole managing member.

(2) If grant funds are to be used for acquisition, rehabilitation, or new construction, the recipient or subrecipient must maintain control of the partnership or corporation and must

ensure that the project is operated in compliance with law and regulation for 15 years from the date of initial occupancy or initial service provision. The partnership or corporation must own the project site throughout the 15-year period. If grant funds were not used for acquisition, rehabilitation, or new construction, then the recipient or subrecipient must maintain control for the term of the grant agreement and any renewals thereof.

§ 578.27 Consolidated plan.

(a) *States or units of general local government.* An applicant that is a State or a unit of general local government must have a HUD-approved, complete or abbreviated, consolidated plan in accordance with 24 CFR part 91. The applicant must submit a certification that the application for funding is consistent with the HUD-approved consolidated plan(s) for the jurisdiction(s) in which the proposed project will be located. Funded applicants must certify in a grant agreement that they are following the HUD-approved consolidated plan.

(b) *Other applicants.* Applicants that are not States or units of general local government must submit a certification by the jurisdiction(s) in which the proposed project will be located that the applicant's application for funding is consistent with the jurisdiction's HUD-approved consolidated plan. The certification must be made by the unit of general local government or the State, in accordance with the consistency certification provisions under 24 CFR part 91, subpart F. If the jurisdiction refuses to provide a certification of consistency, the applicant may appeal to HUD under § 578.35.

(c) *Timing of consolidated plan certification submissions.* The required certification that the application for funding is consistent with the HUD-approved consolidated plan must be submitted by the funding application submission deadline announced in the NOFA.

§ 578.29 Subsidy layering.

HUD may provide assistance under this program only in accordance with HUD subsidy layering requirements in section 102 of the Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545) and 24 CFR part 4, subpart A. An applicant must submit information in its application on other sources of governmental assistance that the applicant has received, or reasonably expects to receive, for a proposed project or activities. HUD's review of this information is intended to prevent excessive public assistance for

proposed project or activities by combining (layering) assistance under this program with other governmental housing assistance from federal, State, or local agencies, including assistance such as tax concessions or tax credits.

§ 578.31 Environmental review.

(a) Activities under this part are subject to environmental review by HUD under 24 CFR part 50. The recipient or subrecipient shall supply all available, relevant information necessary for HUD to perform, for each property, any environmental review required by 24 CFR part 50. The recipient or subrecipient must carry out mitigating measures required by HUD or select an alternate eligible property. HUD may eliminate from consideration any application that would require an Environmental Impact Statement.

(b) The recipient or subrecipient, its project partners, and their contractors may not acquire, rehabilitate, convert, lease, repair, dispose of, demolish, or construct property for a project under this part, or commit or expend HUD or local funds for such eligible activities under this part, until HUD has performed an environmental review under 24 CFR part 50 and the recipient or subrecipient has received HUD approval of the property.

§ 578.33 Renewals.

(a) *In general.* Awards made under this part and title IV of the Act, as in effect before August 30, 2012 (the Supportive Housing Program and the Shelter Plus Care program), may be renewed to continue ongoing leasing, operations, supportive services, rental assistance, HMIS, and administration beyond the initial funding period. To be considered for funding, recipients must submit a request in a form specified by HUD, must meet the requirements of this part, and must submit the request within the time frame established by HUD.

(b) *Length of renewal.* HUD may award up to 3 years of funds for supportive services, leasing, HMIS, and operating costs. Renewals of tenant-based and sponsor-based rental assistance may be for up to one year of rental assistance. Renewals of project-based rental assistance may be for up to 15 years of rental assistance, subject to availability of annual appropriations.

(c) *Assistance available.* (1) Assistance during each year of a renewal period may be for:

(i) Up to 100 percent of the amount for supportive services and HMIS costs in the final year of the prior funding period;

(ii) Up to 100 percent of the amount for leasing and operating in the final year of the prior funding period adjusted in proportion to changes in the FMR for the geographic area; and

(iii) For rental assistance, up to 100 percent of the result of multiplying the number and unit size(s) in the grant agreement by the number of months in the renewal grant term and the applicable FMR.

(d) *Review criteria.* (1) Awards made under title IV of the Act, as in effect before August 30, 2012 are eligible for renewal in the Continuum of Care program even if the awardees would not be eligible for a new grant under the program, so long as they continue to serve the same population and the same number of persons or units in the same type of housing as identified in their most recently amended grant agreement signed before August 30, 2012. Grants will be renewed if HUD receives a certification from the Continuum that there is a demonstrated need for the project, and HUD finds that the project complied with program requirements applicable before August 30, 2012. For purposes of meeting the requirements of this part, a project will continue to be administered in accordance with 24 CFR 582.330, if the project received funding under the Shelter Plus Care program, or 24 CFR 583.325, if the project received funding under the Supportive Housing Program.

(2) *Renewal of awards made after August 30, 2012.* Review criteria for competitively awarded renewals made after August 30, 2012 will be described in the NOFA.

(e) *Unsuccessful projects.* HUD may renew a project that was eligible for renewal in the competition and was part of an application that was not funded despite having been submitted on time, in the manner required by HUD, and containing the information required by HUD, upon a finding that the project meets the purposes of the Continuum of Care program. The renewal will not exceed more than one year and will be under such conditions as HUD deems appropriate.

(f) *Annual Performance Report condition.* HUD may terminate the renewal of any grant and require the recipient to repay the renewal grant if:

(1) The recipient fails to timely submit a HUD Annual Performance Report (APR) for the grant year immediately prior to renewal; or

(2) The recipient submits an APR that HUD deems unacceptable or shows noncompliance with the requirements of the grant and this part.

§ 578.35 Appeal.

(a) *In general.* Failure to follow the procedures or meet the deadlines established in this section will result in denial of the appeal.

(b) *Solo applicants.* (1) *Who may appeal.* Nonprofits, States, and local governments, and instrumentalities of State or local governments that attempted to participate in the Continuum of Care planning process in the geographic area in which they operate, that believe they were denied the right to participate in a reasonable manner, and that submitted a solo application for funding by the application deadline established in the NOFA, may appeal the decision of the Continuum to HUD.

(2) *Notice of intent to appeal.* The solo applicant must submit a written notice of intent to appeal, with a copy to the Continuum, with their funding application.

(3) *Deadline for submitting proof.* No later than 30 days after the date that HUD announces the awards, the solo applicant shall submit in writing, with a copy to the Continuum, all relevant evidence supporting its claim, in such manner as HUD may require by Notice.

(4) *Response from the Continuum of Care.* The Continuum shall have 30 days from the date of its receipt of the solo applicant's evidence to respond to HUD in writing and in such manner as HUD may require, with a copy to the solo applicant.

(5) *Decision.* HUD will notify the solo applicant and the Continuum of its decision within 60 days of receipt of the Continuum's response.

(6) *Funding.* If HUD finds that the solo applicant was not permitted to participate in the Continuum of Care planning process in a reasonable manner, then HUD may award a grant to the solo applicant when funds next become available and may direct the Continuum of Care to take remedial steps to ensure reasonable participation in the future. HUD may also reduce the award to the Continuum's applicant(s).

(c) *Denied or decreased funding.* (1) *Who may appeal.* Eligible applicants that are denied funds by HUD, or that requested more funds than HUD awarded to them, may appeal the award by filing a written appeal, in such form and manner as HUD may require by Notice, within 45 days of the date of HUD's announcement of the award.

(2) *Decision.* HUD will notify the applicant of its decision on the appeal within 60 days of HUD's receipt of the written appeal. HUD will reverse a decision only when the applicant can show that HUD error caused the denial or decrease.

(3) *Funding.* Awards and increases to awards made upon appeal will be made from next available funds.

(d) *Competing Continuums of Care.*
(1) *In general.* If more than one Continuum of Care claims the same geographic area, HUD will award funds to the Continuum applicant(s) whose application(s) has the highest total score. No projects will be funded from the lower scoring Continuum. No projects that are submitted in two or more competing Continuum of Care applications will be funded.

(2) *Who may appeal.* The designated applicant(s) for the lower scoring Continuum may appeal HUD's decision to fund the application(s) from the competing Continuum by filing a written appeal, in such form and manner as HUD may require by Notice, within 45 days of the date of HUD's announcement of the award.

(3) *Decision.* HUD will notify the applicant(s) of its decision on the appeal within 60 days of the date of HUD's receipt of the written appeal. HUD will reverse a decision only upon a showing by the applicant that HUD error caused the denial.

(e) *Consolidated plan certification.* (1) *In general.* An applicant may appeal to HUD a jurisdiction's refusal to provide a certification of consistency with the Consolidated Plan.

(2) *Procedure.* The applicant must submit a written appeal with its application to HUD and send a copy of the appeal to the jurisdiction that denied the certification of consistency. The appeal must include, at a minimum:

(i) A copy of the applicant's request to the jurisdiction for the certification of consistency with the Consolidated Plan;

(ii) A copy of the jurisdiction's response stating the reasons for denial, including the reasons the proposed project is not consistent with the jurisdiction's Consolidated Plan in accordance with 24 CFR 91.500(c); and

(iii) A statement of the reasons why the applicant believes its project is consistent with the jurisdiction's Consolidated Plan.

(3) *Jurisdiction response.* The jurisdiction that refused to provide the certification of consistency with the jurisdiction's Consolidated Plan shall have 10 days after receipt of a copy of the appeal to submit a written explanation of the reasons originally given for refusing to provide the certification and a written rebuttal to any claims made by the applicant in the appeal.

(4) *HUD review.* (i) HUD will issue its decision within 45 days of the date of HUD's receipt of the jurisdiction's

response. As part of its review, HUD will consider:

(A) Whether the applicant submitted the request to the appropriate political jurisdiction; and

(B) The reasonableness of the jurisdiction's refusal to provide the certificate.

(ii) If the jurisdiction did not provide written reasons for refusal, including the reasons why the project is not consistent with the jurisdiction's Consolidated Plan in its initial response to the applicant's request for a certification, HUD will find for the applicant without further inquiry or response from the political jurisdiction.

Subpart D—Program Components and Eligible Costs

§ 578.37 Program components and uses of assistance.

(a) Continuum of Care funds may be used to pay for the eligible costs listed in § 578.39 through § 578.63 when used to establish and operate projects under five program components: permanent housing; transitional housing; supportive services only; HMIS; and, in some cases, homelessness prevention. Although grant funds may be used by recipients and subrecipients in all components for the eligible costs of contributing data to the HMIS designated by the Continuum of Care, only HMIS Leads may use grant funds for an HMIS component. Administrative costs are eligible for all components. All components are subject to the restrictions on combining funds for certain eligible activities in a single project found in § 578.87(c). The eligible program components are:

(1) *Permanent housing (PH).* Permanent housing is community-based housing, the purpose of which is to provide housing without a designated length of stay. Grant funds may be used for acquisition, rehabilitation, new construction, leasing, rental assistance, operating costs, and supportive services. PH includes:

(i) *Permanent supportive housing for persons with disabilities (PSH).* PSH can only provide assistance to individuals with disabilities and families in which one adult or child has a disability. Supportive services designed to meet the needs of the program participants must be made available to the program participants.

(ii) *Rapid rehousing.* Continuum of Care funds may provide supportive services, as set forth in § 578.53, and/or short-term (up to 3 months) and/or medium-term (for 3 to 24 months) tenant-based rental assistance, as set forth in § 578.51(c), as necessary to help

a homeless individual or family, with or without disabilities, move as quickly as possible into permanent housing and achieve stability in that housing. When providing short-term and/or medium-term rental assistance to program participants, the rental assistance is subject to § 578.51(a)(1), but not § 578.51(a)(1)(i) and (ii); (a)(2); (c) and (f) through (i); and (l)(1). These projects:

(A) Must follow the written policies and procedures established by the Continuum of Care for determining and prioritizing which eligible families and individuals will receive rapid rehousing assistance, as well as the amount or percentage of rent that each program participant must pay.

(B) May set a maximum amount or percentage of rental assistance that a program participant may receive, a maximum number of months that a program participant may receive rental assistance, and/or a maximum number of times that a program participant may receive rental assistance. The recipient or subrecipient may also require program participants to share in the costs of rent. For the purposes of calculating rent for rapid rehousing, the rent shall equal the sum of the total monthly rent for the unit and, if the tenant pays separately for utilities, the monthly allowance for utilities (excluding telephone) established by the public housing authority for the area in which the housing is located.

(C) Limit rental assistance to no more than 24 months to a household.

(D) May provide supportive services for no longer than 6 months after rental assistance stops.

(E) Must re-evaluate, not less than once annually, that the program participant lacks sufficient resources and support networks necessary to retain housing without Continuum of Care assistance and the types and amounts of assistance that the program participant needs to retain housing. The recipient or subrecipient may require each program participant receiving assistance to notify the recipient or subrecipient of changes in the program participant's income or other circumstances (e.g., changes in household composition) that affect the program participant's need for assistance. When notified of a relevant change, the recipient or subrecipient must reevaluate the program participant's eligibility and the amount and types of assistance that the program participant needs.

(F) Require the program participant to meet with a case manager not less than once per month to assist the program participant in ensuring long-term housing stability. The project is exempt

from this requirement if the Violence Against Women Act of 1994 (42 U.S.C. 13925 *et seq.*) or the Family Violence Prevention and Services Act (42 U.S.C. 10401 *et seq.*) prohibits the recipient carrying out the project from making its housing conditional on the participant's acceptance of services.

(2) *Transitional Housing (TH)*. Transitional housing facilitates the movement of homeless individuals and families to PH within 24 months of entering TH. Grant funds may be used for acquisition, rehabilitation, new construction, leasing, rental assistance, operating costs, and supportive services.

(3) *Supportive Service Only (SSO)*. Funds may be used for acquisition, rehabilitation, relocation costs, or leasing of a facility from which supportive services will be provided, and supportive services in order to provide supportive services to unsheltered and sheltered homeless persons for whom the recipient or subrecipient is not providing housing or housing assistance. SSO includes street outreach.

(4) *HMIS*. Funds may be used by HMIS Leads to lease a structure in which the HMIS is operated or as operating funds to operate a structure in which the HMIS is operated, and for other costs eligible in § 578.57.

(5) *Homelessness prevention*. Funds may be used by recipients in Continuums of Care-designated high-performing communities for housing relocation and stabilization services, and short- and/or medium-term rental assistance, as described in 24 CFR 576.105 and 24 CFR 576.106, that are necessary to prevent an individual or family from becoming homeless.

(b) *Uses of assistance*. Funds are available to pay for the eligible costs listed in § 578.39 through § 578.63 when used to:

- (1) Establish new housing or new facilities to provide supportive services;
- (2) Expand existing housing and facilities in order to increase the number of homeless persons served;
- (3) Bring existing housing and facilities into compliance with State and local government health and safety standards, as described in § 578.87;
- (4) Preserve existing permanent housing and facilities that provide supportive services;
- (5) Provide supportive services for residents of supportive housing or for homeless persons not residing in supportive housing;
- (6) Continue funding permanent housing when the recipient has received funding under this part for leasing, supportive services, operating costs, or rental assistance;

(7) Establish and operate an HMIS or comparable database; and

(8) Establish and carry out a Continuum of Care planning process and operate a Continuum of Care.

(c) *Multiple purposes*. Structures used to provide housing, supportive housing, supportive services, or as a facility for HMIS activities may also be used for other purposes. However, assistance under this part will be available only in proportion to the use of the structure for supportive housing or supportive services. If eligible and ineligible activities are carried out in separate portions of the same structure or in separate structures, grant funds may not be used to pay for more than the actual cost of acquisition, construction, or rehabilitation of the portion of the structure or structures used for eligible activities. If eligible and ineligible activities are carried out in the same structure, the costs will be prorated based on the amount of time that the space is used for eligible versus ineligible activities.

§ 578.39 Continuum of Care planning activities.

(a) *In general*. Collaborative applicants may use up to 3 percent of their FPRN, or a maximum amount to be established by the NOFA, for costs of:

- (1) Designing and carrying out a collaborative process for the development of an application to HUD;
- (2) Evaluating the outcomes of projects for which funds are awarded in the geographic area under the Continuum of Care and the Emergency Solutions Grants programs; and
- (3) Participating in the consolidated plan(s) for the geographic area(s).

(b) *Continuum of Care planning activities*. Eligible planning costs include the costs of:

- (1) Developing a communitywide or regionwide process involving the coordination of nonprofit homeless providers, victim service providers, faith-based organizations, governments, businesses, advocates, public housing agencies, school districts, social service providers, mental health agencies, hospitals, universities, affordable housing developers, law enforcement, organizations that serve veterans, and homeless and formerly homeless individuals;
- (2) Determining the geographic area that the Continuum of Care will serve;
- (3) Developing a Continuum of Care system;
- (4) Evaluating the outcomes of projects for which funds are awarded in the geographic area, including the Emergency Solutions Grants program;

(5) Participating in the consolidated plan(s) of the jurisdiction(s) in the geographic area; and

(6) Preparing and submitting an application to HUD on behalf of the entire Continuum of Care membership, including conducting a sheltered and unsheltered point-in-time count and other data collection as required by HUD.

(c) *Monitoring costs*. The costs of monitoring recipients and subrecipients and enforcing compliance with program requirements are eligible.

§ 578.41 Unified Funding Agency costs.

(a) *In general*. UFAs may use up to 3 percent of their FPRN, or a maximum amount to be established by the NOFA, whichever is less, for fiscal control and accounting costs necessary to assure the proper disbursement of, and accounting for, federal funds awarded to subrecipients under the Continuum of Care program.

(b) *UFA costs*. UFA costs include costs of ensuring that all financial transactions carried out under the Continuum of Care program are conducted and records are maintained in accordance with generally accepted accounting principles, including arranging for an annual survey, audit, or evaluation of the financial records of each project carried out by a subrecipient funded by a grant received through the Continuum of Care program.

(c) *Monitoring costs*. The costs of monitoring subrecipients and enforcing compliance with program requirements are eligible for costs.

§ 578.43 Acquisition.

Grant funds may be used to pay up to 100 percent of the cost of acquisition of real property selected by the recipient or subrecipient for use in the provision of housing or supportive services for homeless persons.

§ 578.45 Rehabilitation.

(a) *Use*. Grant funds may be used to pay up to 100 percent of the cost of rehabilitation of structures to provide housing or supportive services to homeless persons.

(b) *Eligible costs*. Eligible rehabilitation costs include installing cost-effective energy measures, and bringing an existing structure to State and local government health and safety standards.

(c) *Ineligible costs*. Grant funds may not be used for rehabilitation of leased property.

§ 578.47 New construction.

(a) *Use*. Grant funds may be used to:

- (1) Pay up to 100 percent of the cost of new construction, including the

building of a new structure or building an addition to an existing structure that increases the floor area by 100 percent or more, and the cost of land associated with that construction, for use as housing.

(2) If grant funds are used for new construction, the applicant must demonstrate that the costs of new construction are substantially less than the costs of rehabilitation or that there is a lack of available appropriate units that could be rehabilitated at a cost less than new construction. For purposes of this cost comparison, costs of rehabilitation or new construction may include the cost of real property acquisition.

(b) *Ineligible costs.* Grant funds may not be used for new construction on leased property.

§ 578.49 Leasing.

(a) *Use.* (1) Where the recipient or subrecipient is leasing the structure, or portions thereof, grant funds may be used to pay for 100 percent of the costs of leasing a structure or structures, or portions thereof, to provide housing or supportive services to homeless persons for up to 3 years. Leasing funds may not be used to lease units or structures owned by the recipient, subrecipient, their parent organization(s), any other related organization(s), or organizations that are members of a partnership, where the partnership owns the structure, unless HUD authorized an exception for good cause.

(2) Any request for an exception must include the following:

(i) A description of how leasing these structures is in the best interest of the program;

(ii) Supporting documentation showing that the leasing charges paid with grant funds are reasonable for the market; and

(iii) A copy of the written policy for resolving disputes between the landlord and tenant, including a recusal for officers, agents, and staff who work for both the landlord and tenant.

(b) *Requirements.* (1) *Leasing structures.* When grants are used to pay rent for all or part of a structure or structures, the rent paid must be reasonable in relation to rents being charged in the area for comparable space. In addition, the rent paid may not exceed rents currently being charged by the same owner for comparable unassisted space.

(2) *Leasing individual units.* When grants are used to pay rent for individual housing units, the rent paid must be reasonable in relation to rents being charged for comparable units, taking into account the location, size,

type, quality, amenities, facilities, and management services. In addition, the rents may not exceed rents currently being charged for comparable units, and the rent paid may not exceed HUD-determined fair market rents.

(3) *Utilities.* If electricity, gas, and water are included in the rent, these utilities may be paid from leasing funds. If utilities are not provided by the landlord, these utility costs are an operating cost, except for supportive service facilities. If the structure is being used as a supportive service facility, then these utility costs are a supportive service cost.

(4) *Security deposits and first and last month's rent.* Recipients and subrecipients may use grant funds to pay security deposits, in an amount not to exceed 2 months of actual rent. An advance payment of the last month's rent may be provided to the landlord in addition to the security deposit and payment of the first month's rent.

(5) *Occupancy agreements and subleases.* Occupancy agreements and subleases are required as specified in § 578.77(a).

(6) *Calculation of occupancy charges and rent.* Occupancy charges and rent from program participants must be calculated as provided in § 578.77.

(7) *Program income.* Occupancy charges and rent collected from program participants are program income and may be used as provided under § 578.97.

(8) *Transition.* Beginning in the first year awards are made under the Continuum of Care program, renewals of grants for leasing funds entered into under the authority of title IV, subtitle D of the Act as it existed before May 20, 2009, will be renewed either as grants for leasing or as rental assistance, depending on the characteristics of the project. Leasing funds will be renewed as rental assistance if the funds are used to pay rent on units where the lease is between the program participant and the landowner or sublessor. Projects requesting leasing funds will be renewed as leasing if the funds were used to lease a unit or structure and the lease is between the recipient or subrecipient and the landowner.

§ 578.51 Rental assistance.

(a) *Use.* (1) Grant funds may be used for rental assistance for homeless individuals and families. Rental assistance cannot be provided to a program participant who is already receiving rental assistance, or living in a housing unit receiving rental assistance or operating assistance through other federal, State, or local sources.

(i) The rental assistance may be short-term, up to 3 months of rent; medium-term, for 3 to 24 months of rent; or long-term, for longer than 24 months of rent and must be administered in accordance with the policies and procedures established by the Continuum as set forth in § 578.7(a)(9) and this section.

(ii) The rental assistance may be tenant-based, project-based, or sponsor-based, and may be for transitional or permanent housing.

(2) Grant funds may be used for security deposits in an amount not to exceed 2 months of rent. An advance payment of the last month's rent may be provided to the landlord, in addition to the security deposit and payment of first month's rent.

(b) *Rental assistance administrator.* Rental assistance must be administered by a State, unit of general local government, or a public housing agency.

(c) *Tenant-based rental assistance.* Tenant-based rental assistance is rental assistance in which program participants choose housing of an appropriate size in which to reside. When necessary to facilitate the coordination of supportive services, recipients and subrecipients may require program participants to live in a specific area for their entire period of participation, or in a specific structure for the first year and in a specific area for the remainder of their period of participation. Program participants who are receiving rental assistance in transitional housing may be required to live in a specific structure for their entire period of participation in transitional housing.

(1) Up to 5 years worth of rental assistance may be awarded to a project in one competition.

(2) Program participants who have complied with all program requirements during their residence retain the rental assistance if they move within the Continuum of Care geographic area.

(3) Program participants who have complied with all program requirements during their residence and who have been a victim of domestic violence, dating violence, sexual assault, or stalking, and who reasonably believe they are imminently threatened by harm from further domestic violence, dating violence, sexual assault, or stalking (which would include threats from a third party, such as a friend or family member of the perpetrator of the violence), if they remain in the assisted unit, and are able to document the violence and basis for their belief, may retain the rental assistance and move to a different Continuum of Care geographic area if they move out of the

assisted unit to protect their health and safety.

(d) *Sponsor-based rental assistance.* Sponsor-based rental assistance is provided through contracts between the recipient and sponsor organization. A sponsor may be a private, nonprofit organization, or a community mental health agency established as a public nonprofit organization. Program participants must reside in housing owned or leased by the sponsor. Up to 5 years worth of rental assistance may be awarded to a project in one competition.

(e) *Project-based rental assistance.* Project-based rental assistance is provided through a contract with the owner of an existing structure, where the owner agrees to lease the subsidized units to program participants. Program participants will not retain rental assistance if they move. Up to 15 years of rental assistance may be awarded in one competition.

(f) *Grant amount.* The amount of rental assistance in each project will be based on the number and size of units proposed by the applicant to be assisted over the grant period. The amount of rental assistance in each project will be calculated by multiplying the number and size of units proposed by the FMR of each unit on the date the application is submitted to HUD, by the term of the grant.

(g) *Rent reasonableness.* HUD will only provide rental assistance for a unit if the rent is reasonable. The recipient or subrecipient must determine whether the rent charged for the unit receiving rental assistance is reasonable in relation to rents being charged for comparable unassisted units, taking into account the location, size, type, quality, amenities, facilities, and management and maintenance of each unit. Reasonable rent must not exceed rents currently being charged by the same owner for comparable unassisted units.

(h) *Payment of grant.* (1) The amount of rental assistance in each project will be reserved for rental assistance over the grant period. An applicant's request for rental assistance in each grant is an estimate of the amount needed for rental assistance. Recipients will make draws from the grant funds to pay the actual costs of rental assistance for program participants.

(2) For tenant-based rental assistance, on demonstration of need:

(i) Up to 25 percent of the total rental assistance awarded may be spent in any year of a 5-year grant term; or

(ii) A higher percentage if approved in advance by HUD, if the recipient provides evidence satisfactory to HUD that it is financially committed to

providing the housing assistance described in the application for the full 5-year period.

(3) A recipient must serve at least as many program participants as shown in its application for assistance.

(4) If the amount in each grant reserved for rental assistance over the grant period exceeds the amount that will be needed to pay the actual costs of rental assistance, due to such factors as contract rents being lower than FMRs and program participants being able to pay a portion of the rent, recipients or subrecipients may use the excess funds for covering the costs of rent increases, or for serving a greater number of program participants.

(i) *Vacancies.* If a unit assisted under this section is vacated before the expiration of the lease, the assistance for the unit may continue for a maximum of 30 days from the end of the month in which the unit was vacated, unless occupied by another eligible person. No additional assistance will be paid until the unit is occupied by another eligible person. Brief periods of stays in institutions, not to exceed 90 days for each occurrence, are not considered vacancies.

(j) *Property damage.* Recipients and subrecipients may use grant funds in an amount not to exceed one month's rent to pay for any damage to housing due to the action of a program participant. This shall be a one-time cost per participant, incurred at the time a participant exits a housing unit.

(k) *Resident rent.* Rent must be calculated as provided in § 578.77. Rents collected from program participants are program income and may be used as provided under § 578.97.

(l) *Leases.* (1) *Initial lease.* For project-based, sponsor-based, or tenant-based rental assistance, program participants must enter into a lease agreement for a term of at least one year, which is terminable for cause. The leases must be automatically renewable upon expiration for terms that are a minimum of one month long, except on prior notice by either party.

(2) *Initial lease for transitional housing.* Program participants in transitional housing must enter into a lease agreement for a term of at least one month. The lease must be automatically renewable upon expiration, except on prior notice by either party, up to a maximum term of 24 months.

§ 578.53 Supportive services.

(a) *In general.* Grant funds may be used to pay the eligible costs of supportive services that address the special needs of the program

participants. If the supportive services are provided in a supportive service facility not contained in a housing structure, the costs of day-to-day operation of the supportive service facility, including maintenance, repair, building security, furniture, utilities, and equipment are eligible as a supportive service.

(1) Supportive services must be necessary to assist program participants obtain and maintain housing.

(2) Recipients and subrecipients shall conduct an annual assessment of the service needs of the program participants and should adjust services accordingly.

(b) *Duration.* (1) For a transitional housing project, supportive services must be made available to residents throughout the duration of their residence in the project.

(2) Permanent supportive housing projects must provide supportive services for the residents to enable them to live as independently as is practicable throughout the duration of their residence in the project.

(3) Services may also be provided to former residents of transitional housing and current residents of permanent housing who were homeless in the prior 6 months, for no more than 6 months after leaving transitional housing or homelessness, respectively, to assist their adjustment to independent living.

(4) Rapid rehousing projects must require the program participant to meet with a case manager not less than once per month as set forth in § 578.37(a)(1)(ii)(F), to assist the program participant in maintaining long-term housing stability.

(c) *Special populations.* All eligible costs are eligible to the same extent for program participants who are unaccompanied homeless youth; persons living with HIV/AIDS; and victims of domestic violence, dating violence, sexual assault, or stalking.

(d) *Ineligible costs.* Any cost that is not described as an eligible cost under this section is not an eligible cost of providing supportive services using Continuum of Care program funds. Staff training and the costs of obtaining professional licenses or certifications needed to provide supportive services are not eligible costs.

(e) *Eligible costs.*

(1) *Annual Assessment of Service Needs.* The costs of the assessment required by § 578.53(a)(2) are eligible costs.

(2) *Assistance with moving costs.* Reasonable one-time moving costs are eligible and include truck rental and hiring a moving company.

(3) *Case management.* The costs of assessing, arranging, coordinating, and monitoring the delivery of individualized services to meet the needs of the program participant(s) are eligible costs. Component services and activities consist of:

- (i) Counseling;
- (ii) Developing, securing, and coordinating services;
- (iii) Using the centralized or coordinated assessment system as required under § 578.23(c)(9).
- (iv) Obtaining federal, State, and local benefits;
- (v) Monitoring and evaluating program participant progress;
- (vi) Providing information and referrals to other providers;
- (vii) Providing ongoing risk assessment and safety planning with victims of domestic violence, dating violence, sexual assault, and stalking; and
- (viii) Developing an individualized housing and service plan, including planning a path to permanent housing stability.

(4) *Child care.* The costs of establishing and operating child care, and providing child-care vouchers, for children from families experiencing homelessness, including providing meals and snacks, and comprehensive and coordinated developmental activities, are eligible.

(i) The children must be under the age of 13, unless they are disabled children.

(ii) Disabled children must be under the age of 18.

(iii) The child-care center must be licensed by the jurisdiction in which it operates in order for its costs to be eligible.

(5) *Education services.* The costs of improving knowledge and basic educational skills are eligible.

(i) Services include instruction or training in consumer education, health education, substance abuse prevention, literacy, English as a Second Language, and General Educational Development (GED).

(ii) *Component services or activities* are screening, assessment and testing; individual or group instruction; tutoring; provision of books, supplies, and instructional material; counseling; and referral to community resources.

(6) *Employment assistance and job training.* The costs of establishing and operating employment assistance and job training programs are eligible, including classroom, online and/or computer instruction, on-the-job instruction, services that assist individuals in securing employment, acquiring learning skills, and/or increasing earning potential. The cost of

providing reasonable stipends to program participants in employment assistance and job training programs is also an eligible cost.

(i) Learning skills include those skills that can be used to secure and retain a job, including the acquisition of vocational licenses and/or certificates.

(ii) Services that assist individuals in securing employment consist of:

- (A) Employment screening, assessment, or testing;
 - (B) Structured job skills and job-seeking skills;
 - (C) Special training and tutoring, including literacy training and pre-vocational training;
 - (D) Books and instructional material;
 - (E) Counseling or job coaching; and
 - (F) Referral to community resources.
- (7) *Food.* The cost of providing meals or groceries to program participants is eligible.

(8) *Housing search and counseling services.* Costs of assisting eligible program participants to locate, obtain, and retain suitable housing are eligible.

(i) Component services or activities are tenant counseling; assisting individuals and families to understand leases; securing utilities; and making moving arrangements.

(ii) Other eligible costs are:

- (A) Mediation with property owners and landlords on behalf of eligible program participants;
- (B) Credit counseling, accessing a free personal credit report, and resolving personal credit issues; and
- (C) The payment of rental application fees.

(9) *Legal services.* Eligible costs are the fees charged by licensed attorneys and by person(s) under the supervision of licensed attorneys, for advice and representation in matters that interfere with the homeless individual or family's ability to obtain and retain housing.

(i) Eligible subject matters are child support; guardianship; paternity; emancipation; legal separation; orders of protection and other civil remedies for victims of domestic violence, dating violence, sexual assault, and stalking; appeal of veterans and public benefit claim denials; landlord tenant disputes; and the resolution of outstanding criminal warrants.

(ii) Component services or activities may include receiving and preparing cases for trial, provision of legal advice, representation at hearings, and counseling.

(iii) Fees based on the actual service performed (i.e., fee for service) are also eligible, but only if the cost would be less than the cost of hourly fees. Filing fees and other necessary court costs are also eligible. If the subrecipient is a

legal services provider and performs the services itself, the eligible costs are the subrecipient's employees' salaries and other costs necessary to perform the services.

(iv) Legal services for immigration and citizenship matters and issues related to mortgages and homeownership are ineligible. Retainer fee arrangements and contingency fee arrangements are ineligible.

(10) *Life skills training.* The costs of teaching critical life management skills that may never have been learned or have been lost during the course of physical or mental illness, domestic violence, substance abuse, and homelessness are eligible. These services must be necessary to assist the program participant to function independently in the community. Component life skills training are the budgeting of resources and money management, household management, conflict management, shopping for food and other needed items, nutrition, the use of public transportation, and parent training.

(11) *Mental health services.* Eligible costs are the direct outpatient treatment of mental health conditions that are provided by licensed professionals. Component services are crisis interventions; counseling; individual, family, or group therapy sessions; the prescription of psychotropic medications or explanations about the use and management of medications; and combinations of therapeutic approaches to address multiple problems.

(12) *Outpatient health services.* Eligible costs are the direct outpatient treatment of medical conditions when provided by licensed medical professionals including:

(i) Providing an analysis or assessment of an individual's health problems and the development of a treatment plan;

(ii) Assisting individuals to understand their health needs;

(iii) Providing directly or assisting individuals to obtain and utilize appropriate medical treatment;

(iv) Preventive medical care and health maintenance services, including in-home health services and emergency medical services;

(v) Provision of appropriate medication;

(vi) Providing follow-up services; and

(vii) Preventive and noncosmetic dental care.

(13) *Outreach services.* The costs of activities to engage persons for the purpose of providing immediate support and intervention, as well as identifying

potential program participants, are eligible.

(i) Eligible costs include the outreach worker's transportation costs and a cell phone to be used by the individual performing the outreach.

(ii) Component activities and services consist of: initial assessment; crisis counseling; addressing urgent physical needs, such as providing meals, blankets, clothes, or toiletries; actively connecting and providing people with information and referrals to homeless and mainstream programs; and publicizing the availability of the housing and/or services provided within the geographic area covered by the Continuum of Care.

(14) *Substance abuse treatment services.* The costs of program participant intake and assessment, outpatient treatment, group and individual counseling, and drug testing are eligible. Inpatient detoxification and other inpatient drug or alcohol treatment are ineligible.

(15) *Transportation.* Eligible costs are:

(i) The costs of program participant's travel on public transportation or in a vehicle provided by the recipient or subrecipient to and from medical care, employment, child care, or other services eligible under this section.

(ii) Mileage allowance for service workers to visit program participants and to carry out housing quality inspections;

(iii) The cost of purchasing or leasing a vehicle in which staff transports program participants and/or staff serving program participants;

(iv) The cost of gas, insurance, taxes, and maintenance for the vehicle;

(v) The costs of recipient or subrecipient staff to accompany or assist program participants to utilize public transportation; and

(vi) If public transportation options are not sufficient within the area, the recipient may make a one-time payment on behalf of a program participant needing car repairs or maintenance required to operate a personal vehicle, subject to the following:

(A) Payments for car repairs or maintenance on behalf of the program participant may not exceed 10 percent of the Blue Book value of the vehicle (Blue Book refers to the guidebook that compiles and quotes prices for new and used automobiles and other vehicles of all makes, models, and types);

(B) Payments for car repairs or maintenance must be paid by the recipient or subrecipient directly to the third party that repairs or maintains the car; and

(C) The recipients or subrecipients may require program participants to

share in the cost of car repairs or maintenance as a condition of receiving assistance with car repairs or maintenance.

(16) *Utility deposits.* This form of assistance consists of paying for utility deposits. Utility deposits must be a one-time fee, paid to utility companies.

(17) *Direct provision of services.* If the service described in paragraphs (e)(1) through (e)(16) of this section is being directly delivered by the recipient or subrecipient, eligible costs for those services also include:

(i) The costs of labor or supplies, and materials incurred by the recipient or subrecipient in directly providing supportive services to program participants; and

(ii) The salary and benefit packages of the recipient and subrecipient staff who directly deliver the services.

§ 578.55 Operating costs.

(a) *Use.* Grant funds may be used to pay the costs of the day-to-day operation of transitional and permanent housing in a single structure or individual housing units.

(b) *Eligible costs.* (1) The maintenance and repair of housing;

(2) Property taxes and insurance;

(3) Scheduled payments to a reserve for replacement of major systems of the housing (provided that the payments must be based on the useful life of the system and expected replacement cost);

(4) Building security for a structure where more than 50 percent of the units or area is paid for with grant funds;

(5) Electricity, gas, and water;

(6) Furniture; and

(7) Equipment.

(c) *Ineligible costs.* Program funds may not be used for rental assistance and operating costs in the same project. Program funds may not be used for the operating costs of emergency shelter and supportive service-only facilities. Program funds may not be used for the maintenance and repair of housing where the costs of maintaining and repairing the housing are included in the lease.

§ 578.57 Homeless Management Information System.

(a) *Eligible costs.* (1) The recipient or subrecipient may use Continuum of Care program funds to pay the costs of contributing data to the HMIS designated by the Continuum of Care, including the costs of:

(i) Purchasing or leasing computer hardware;

(ii) Purchasing software or software licenses;

(iii) Purchasing or leasing equipment, including telephones, fax machines, and furniture;

(iv) Obtaining technical support;

(v) Leasing office space;

(vi) Paying charges for electricity, gas, water, phone service, and high-speed data transmission necessary to operate or contribute data to the HMIS;

(vii) Paying salaries for operating HMIS, including:

(A) Completing data entry;

(B) Monitoring and reviewing data quality;

(C) Completing data analysis;

(D) Reporting to the HMIS Lead;

(E) Training staff on using the HMIS;

and

(F) Implementing and complying with HMIS requirements;

(viii) Paying costs of staff to travel to and attend HUD-sponsored and HUD-approved training on HMIS and programs authorized by Title IV of the McKinney-Vento Homeless Assistance Act;

(ix) Paying staff travel costs to conduct intake; and

(x) Paying participation fees charged by the HMIS Lead, as authorized by HUD, if the recipient or subrecipient is not the HMIS Lead.

(2) If the recipient or subrecipient is the HMIS Lead, it may also use Continuum of Care funds to pay the costs of:

(i) Hosting and maintaining HMIS software or data;

(ii) Backing up, recovering, or repairing HMIS software or data;

(iii) Upgrading, customizing, and enhancing the HMIS;

(iv) Integrating and warehousing data, including development of a data warehouse for use in aggregating data from subrecipients using multiple software systems;

(v) Administering the system;

(vi) Reporting to providers, the Continuum of Care, and HUD; and

(vii) Conducting training on using the system, including traveling to the training.

(3) If the recipient or subrecipient is a victim services provider, or a legal services provider, it may use Continuum of Care funds to establish and operate a comparable database that complies with HUD's HMIS requirements.

(b) *General restrictions.* Activities funded under this section must comply with the HMIS requirements.

§ 578.59 Project administrative costs.

(a) *Eligible costs.* The recipient or subrecipient may use up to 10 percent of any grant awarded under this part, excluding the amount for Continuum of Care Planning Activities and UFA costs, for the payment of project administrative costs related to the planning and execution of Continuum

of Care activities. This does not include staff and overhead costs directly related to carrying out activities eligible under § 578.43 through § 578.57, because those costs are eligible as part of those activities. Eligible administrative costs include:

(1) *General management, oversight, and coordination.* Costs of overall program management, coordination, monitoring, and evaluation. These costs include, but are not limited to, necessary expenditures for the following:

(i) Salaries, wages, and related costs of the recipient's staff, the staff of subrecipients, or other staff engaged in program administration. In charging costs to this category, the recipient may include the entire salary, wages, and related costs allocable to the program of each person whose primary responsibilities with regard to the program involve program administration assignments, or the pro rata share of the salary, wages, and related costs of each person whose job includes any program administration assignments. The recipient may use only one of these methods for each fiscal year grant. Program administration assignments include the following:

(A) Preparing program budgets and schedules, and amendments to those budgets and schedules;

(B) Developing systems for assuring compliance with program requirements;

(C) Developing agreements with subrecipients and contractors to carry out program activities;

(D) Monitoring program activities for progress and compliance with program requirements;

(E) Preparing reports and other documents directly related to the program for submission to HUD;

(F) Coordinating the resolution of audit and monitoring findings;

(G) Evaluating program results against stated objectives; and

(H) Managing or supervising persons whose primary responsibilities with regard to the program include such assignments as those described in paragraph (a)(1)(i)(A) through (G) of this section.

(ii) Travel costs incurred for monitoring of subrecipients;

(iii) Administrative services performed under third-party contracts or agreements, including general legal services, accounting services, and audit services; and

(iv) Other costs for goods and services required for administration of the program, including rental or purchase of equipment, insurance, utilities, office

supplies, and rental and maintenance (but not purchase) of office space.

(2) *Training on Continuum of Care requirements.* Costs of providing training on Continuum of Care requirements and attending HUD-sponsored Continuum of Care trainings.

(3) *Environmental review.* Costs of carrying out the environmental review responsibilities under § 578.31.

(b) *Sharing requirement.* (1) *UFAs.* If the recipient is a UFA that carries out a project, it may use up to 10 percent of the grant amount awarded for the project on project administrative costs. The UFA must share the remaining project administrative funds with its subrecipients.

(2) *Recipients that are not UFAs.* If the recipient is not a UFA, it must share at least 50 percent of project administrative funds with its subrecipients.

§ 578.61 Relocation costs.

(a) *In general.* Relocation costs under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 are eligible.

(b) *Eligible relocation costs.* Eligible costs are costs to provide relocation payments and other assistance to persons displaced by a project assisted with grant funds in accordance with § 578.83.

§ 578.63 Indirect costs.

(a) *In general.* Continuum of Care funds may be used to pay indirect costs in accordance with OMB Circulars A-87 or A-122, as applicable.

(b) *Allocation.* Indirect costs may be allocated to each eligible activity as provided in subpart D, so long as that allocation is consistent with an indirect cost rate proposal developed in accordance with OMB Circulars A-87 or A-122, as applicable.

(c) *Expenditure limits.* The indirect costs charged to an activity subject to an expenditure limit under §§ 578.39, 578.41, and 578.59 must be added to the direct costs charged for that activity when determining the total costs subject to the expenditure limits.

Subpart E—High-Performing Communities

§ 578.65 Standards.

(a) *In general.* The collaborative applicant for a Continuum may apply to HUD to have the Continuum be designated a high-performing community (HPC). The designation shall be for grants awarded in the same competition in which the designation is applied for and made.

(b) *Applying for HPC designation.* The application must be submitted at such

time and in such manner as HUD may require, must use HMIS data where required to show the standards for qualifying are met, and must contain such information as HUD requires, including at a minimum:

(1) A report showing how the Continuum of Care program funds received in the preceding year were expended;

(2) A specific plan for how grant funds will be expended; and

(3) Information establishing that the Continuum of Care meets the standards for HPCs.

(c) *Standards for qualifying as an HPC.* To qualify as an HPC, a Continuum must demonstrate through:

(1) Reliable data generated by the Continuum of Care's HMIS that it meets all of the following standards:

(i) *Mean length of homelessness.*

Either the mean length of episode of homelessness within the Continuum's geographic area is fewer than 20 days, or the mean length of episodes of homelessness for individuals or families in similar circumstances was reduced by at least 10 percent from the preceding federal fiscal year.

(ii) *Reduced recidivism.* Of individuals and families who leave homelessness, less than 5 percent become homeless again at any time within the next 2 years; or the percentage of individuals and families in similar circumstances who become homeless again within 2 years after leaving homelessness was decreased by at least 20 percent from the preceding federal fiscal year.

(iii) *HMIS coverage.* The Continuum's HMIS must have a bed coverage rate of 80 percent and a service volume coverage rate of 80 percent as calculated in accordance with HUD's HMIS requirements.

(iv) *Serving families and youth.* With respect to Continuums that served homeless families and youth defined as homeless under other federal statutes in paragraph (3) of the definition of *homeless* in § 576.2:

(A) 95 percent of those families and youth did not become homeless again within a 2-year period following termination of assistance; or

(B) 85 percent of those families achieved independent living in permanent housing for at least 2 years following termination of assistance.

(2) Reliable data generated from sources other than the Continuum's HMIS that is provided in a narrative or other form prescribed by HUD that it meets both of the following standards:

(i) *Community action.* All the metropolitan cities and counties within the Continuum's geographic area have a

comprehensive outreach plan, including specific steps for identifying homeless persons and referring them to appropriate housing and services in that geographic area.

(i) *Renewing HPC status.* If the Continuum was designated an HPC in the previous federal fiscal year and used Continuum of Care grant funds for activities described under § 578.71, that such activities were effective at reducing the number of individuals and families who became homeless in that community.

§ 578.67 Publication of application.

HUD will publish the application to be designated an HPC through the HUD Web site, for public comment as to whether the Continuum seeking designation as an HPC meets the standards for being one.

§ 578.69 Cooperation among entities.

An HPC must cooperate with HUD in distributing information about its successful efforts to reduce homelessness.

§ 578.71 HPC-eligible activities.

In addition to using grant funds for the eligible costs described in subpart D of this part, recipients and subrecipients in Continuums of Care designated as HPCs may also use grant funds to provide housing relocation and stabilization services and short- and/or medium-term rental assistance to individuals and families at risk of homelessness as set forth in 24 CFR 576.103 and 24 CFR 576.104, if necessary to prevent the individual or family from becoming homeless. Activities must be carried out in accordance with the plan submitted in the application. When carrying out housing relocation and stabilization services and short- and/or medium-term rental assistance, the written standards set forth in § 578.7(a)(9)(v) and recordkeeping requirements of 24 CFR 576.500 apply.

Subpart F—Program Requirements

§ 578.73 Matching requirements.

(a) *In general.* The recipient or subrecipient must match all grant funds, except for leasing funds, with no less than 25 percent of funds or in-kind contributions from other sources. For Continuum of Care geographic areas in which there is more than one grant agreement, the 25 percent match must be provided on a grant-by-grant basis. Recipients that are UFAs or are the sole recipient for their Continuum, may provide match on a Continuum-wide basis. Cash match must be used for the costs of activities that are eligible under

subpart D of this part, except that HPCs may use such match for the costs of activities that are eligible under § 578.71.

(b) *Cash sources.* A recipient or subrecipient may use funds from any source, including any other federal sources (excluding Continuum of Care program funds), as well as State, local, and private sources, provided that funds from the source are not statutorily prohibited to be used as a match. The recipient must ensure that any funds used to satisfy the matching requirements of this section are eligible under the laws governing the funds in order to be used as matching funds for a grant awarded under this program.

(c) *In-kind contributions.* (1) The recipient or subrecipient may use the value of any real property, equipment, goods, or services contributed to the project as match, provided that if the recipient or subrecipient had to pay for them with grant funds, the costs would have been eligible under Subpart D, or, in the case of HPCs, eligible under § 578.71.

(2) The requirements of 24 CFR 84.23 and 85.24 apply.

(3) Before grant execution, services to be provided by a third party must be documented by a memorandum of understanding (MOU) between the recipient or subrecipient and the third party that will provide the services. Services provided by individuals must be valued at rates consistent with those ordinarily paid for similar work in the recipient's or subrecipient's organization. If the recipient or subrecipient does not have employees performing similar work, the rates must be consistent with those ordinarily paid by other employers for similar work in the same labor market.

(i) The MOU must establish the unconditional commitment, except for selection to receive a grant, by the third party to provide the services, the specific service to be provided, the profession of the persons providing the service, and the hourly cost of the service to be provided.

(ii) During the term of the grant, the recipient or subrecipient must keep and make available, for inspection, records documenting the service hours provided.

§ 578.75 General operations.

(a) *State and local requirements.* (1) Housing and facilities constructed or rehabilitated with assistance under this part must meet State or local building codes, and in the absence of State or local building codes, the International Residential Code or International Building Code (as applicable to the type

of structure) of the International Code Council.

(2) Services provided with assistance under this part must be provided in compliance with all applicable State and local requirements, including licensing requirements.

(b) *Housing quality standards.* Housing leased with Continuum of Care program funds, or for which rental assistance payments are made with Continuum of Care program funds, must meet the applicable housing quality standards (HQS) under 24 CFR 982.401 of this title, except that 24 CFR 982.401(j) applies only to housing occupied by program participants receiving tenant-based rental assistance. For housing rehabilitated with funds under this part, the lead-based paint requirements in 24 CFR part 35, subparts A, B, J, and R apply. For housing that receives project-based or sponsor-based rental assistance, 24 CFR part 35, subparts A, B, H, and R apply. For residential property for which funds under this part are used for acquisition, leasing, services, or operating costs, 24 CFR part 35, subparts A, B, K, and R apply.

(1) Before any assistance will be provided on behalf of a program participant, the recipient, or subrecipient, must physically inspect each unit to assure that the unit meets HQS. Assistance will not be provided for units that fail to meet HQS, unless the owner corrects any deficiencies within 30 days from the date of the initial inspection and the recipient or subrecipient verifies that all deficiencies have been corrected.

(2) Recipients or subrecipients must inspect all units at least annually during the grant period to ensure that the units continue to meet HQS.

(c) *Suitable dwelling size.* The dwelling unit must have at least one bedroom or living/sleeping room for each two persons.

(1) Children of opposite sex, other than very young children, may not be required to occupy the same bedroom or living/sleeping room.

(2) If household composition changes during the term of assistance, recipients and subrecipients may relocate the household to a more appropriately sized unit. The household must still have access to appropriate supportive services.

(d) *Meals.* Each recipient and subrecipient of assistance under this part who provides supportive housing for homeless persons with disabilities must provide meals or meal preparation facilities for residents.

(e) *Ongoing assessment of supportive services.* To the extent practicable, each

project must provide supportive services for residents of the project and homeless persons using the project, which may be designed by the recipient or participants. Each recipient and subrecipient of assistance under this part must conduct an ongoing assessment of the supportive services needed by the residents of the project, the availability of such services, and the coordination of services needed to ensure long-term housing stability and must make adjustments, as appropriate.

(f) *Residential supervision.* Each recipient and subrecipient of assistance under this part must provide residential supervision as necessary to facilitate the adequate provision of supportive services to the residents of the housing throughout the term of the commitment to operate supportive housing. Residential supervision may include the employment of a full- or part-time residential supervisor with sufficient knowledge to provide or to supervise the provision of supportive services to the residents.

(g) *Participation of homeless individuals.* (1) Each recipient and subrecipient must provide for the participation of not less than one homeless individual or formerly homeless individual on the board of directors or other equivalent policymaking entity of the recipient or subrecipient, to the extent that such entity considers and makes policies and decisions regarding any project, supportive services, or assistance provided under this part. This requirement is waived if a recipient or subrecipient is unable to meet such requirement and obtains HUD approval for a plan to otherwise consult with homeless or formerly homeless persons when considering and making policies and decisions.

(2) Each recipient and subrecipient of assistance under this part must, to the maximum extent practicable, involve homeless individuals and families through employment; volunteer services; or otherwise in constructing, rehabilitating, maintaining, and operating the project, and in providing supportive services for the project.

(h) *Supportive service agreement.* Recipients and subrecipients may require the program participants to take part in supportive services that are not disability-related services provided through the project as a condition of continued participation in the program. Examples of disability-related services include, but are not limited to, mental health services, outpatient health services, and provision of medication, which are provided to a person with a disability to address a condition caused

by the disability. Notwithstanding this provision, if the purpose of the project is to provide substance abuse treatment services, recipients and subrecipients may require program participants to take part in such services as a condition of continued participation in the program.

(i) *Retention of assistance after death, incarceration, or institutionalization for more than 90 days of qualifying member.* For permanent supportive housing projects surviving, members of any household who were living in a unit assisted under this part at the time of the qualifying member's death, long-term incarceration, or long-term institutionalization, have the right to rental assistance under this section until the expiration of the lease in effect at the time of the qualifying member's death, long-term incarceration, or long-term institutionalization.

§ 578.77 Calculating occupancy charges and rent.

(a) *Occupancy agreements and leases.* Recipients and subrecipients must have signed occupancy agreements or leases (or subleases) with program participants residing in housing.

(b) *Calculation of occupancy charges.* Recipients and subrecipients are not required to impose occupancy charges on program participants as a condition of residing in the housing. However, if occupancy charges are imposed, they may not exceed the highest of:

(1) 30 percent of the family's monthly adjusted income (adjustment factors include the number of people in the family, age of family members, medical expenses, and child-care expenses);

(2) 10 percent of the family's monthly 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 for housing costs.

(4) *Income.* Income must be calculated in accordance with 24 CFR 5.609 and 24 CFR 5.611(a). Recipients and subrecipients must examine a program participant's income initially, and if there is a change in family composition (e.g., birth of a child) or a decrease in the resident's income during the year, the resident may request an interim reexamination, and the occupancy charge will be adjusted accordingly.

(c) *Resident rent.* (1) *Amount of rent.*

(i) Each program participant on whose behalf rental assistance payments are

made must pay a contribution toward rent in accordance with section 3(a)(1) of the U.S. Housing Act of 1937 (42 U.S.C. 1437a(a)(1)).

(ii) Income of program participants must be calculated in accordance with 24 CFR 5.609 and 24 CFR 5.611(a).

(2) *Review.* Recipients or subrecipients must examine a program participant's income initially, and at least annually thereafter, to determine the amount of the contribution toward rent payable by the program participant. Adjustments to a program participant's contribution toward the rental payment must be made as changes in income are identified.

(3) *Verification.* As a condition of participation in the program, each program participant must agree to supply the information or documentation necessary to verify the program participant's income. Program participants must provide the recipient or subrecipient with information at any time regarding changes in income or other circumstances that may result in changes to a program participant's contribution toward the rental payment.

§ 578.79 Limitation on transitional housing.

A homeless individual or family may remain in transitional housing for a period longer than 24 months, if permanent housing for the individual or family has not been located or if the individual or family requires additional time to prepare for independent living. However, HUD may discontinue assistance for a transitional housing project if more than half of the homeless individuals or families remain in that project longer than 24 months.

§ 578.81 Term of commitment, repayment of grants, and prevention of undue benefits.

(a) *In general.* All recipients and subrecipients receiving grant funds for acquisition, rehabilitation, or new construction must operate the housing or provide supportive services in accordance with this part, for at least 15 years from the date of initial occupancy or date of initial service provision.

Recipient and subrecipients must execute and record a HUD-approved Declaration of Restrictive Covenants before receiving payment of grant funds.

(b) *Conversion.* Recipients and subrecipients carrying out a project that provides transitional or permanent housing or supportive services in a structure may submit a request to HUD to convert a project for the direct benefit of very low-income persons. The request must be made while the project is operating as homeless housing or supportive services for homeless

individuals and families, must be in writing, and must include an explanation of why the project is no longer needed to provide transitional or permanent housing or supportive services. The primary factor in HUD's decision on the proposed conversion is the unmet need for transitional or permanent housing or supportive services in the Continuum of Care's geographic area.

(c) *Repayment of grant funds.* If a project is not operated as transitional or permanent housing for 10 years following the date of initial occupancy, HUD will require repayment of the entire amount of the grant used for acquisition, rehabilitation, or new construction, unless conversion of the project has been authorized under paragraph (b) of this section. If the housing is used for such purposes for more than 10 years, the payment amount will be reduced by 20 percentage points for each year, beyond the 10-year period in which the project is used for transitional or permanent housing.

(d) *Prevention of undue benefits.* Except as provided under paragraph (e) of this section, upon any sale or other disposition of a project site that received grant funds for acquisition, rehabilitation, or new construction, occurring before the 15-year period, the recipient must comply with such terms and conditions as HUD may prescribe to prevent the recipient or subrecipient from unduly benefiting from such sale or disposition.

(e) *Exception.* A recipient or subrecipient will not be required to comply with the terms and conditions prescribed under paragraphs (c) and (d) of this section if:

(1) The sale or disposition of the property used for the project results in the use of the property for the direct benefit of very low-income persons;

(2) All the proceeds are used to provide transitional or permanent housing that meet the requirements of this part;

(3) Project-based rental assistance or operating cost assistance from any federal program or an equivalent State or local program is no longer made available and the project is meeting applicable performance standards, provided that the portion of the project that had benefitted from such assistance continues to meet the tenant income and rent restrictions for low-income units under section 42(g) of the Internal Revenue Code of 1986; or

(4) There are no individuals and families in the Continuum of Care geographic area who are homeless, in which case the project may serve

individuals and families at risk of homelessness.

§ 578.83 Displacement, relocation, and acquisition.

(a) *Minimizing displacement.* Consistent with the other goals and objectives of this part, recipients and subrecipients must ensure that they have taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of projects assisted under this part. "Project," as used in this section, means any activity or series of activities assisted with Continuum of Care funds received or anticipated in any phase of an undertaking.

(b) *Temporary relocation.* (1) *Existing Building Not Assisted under Title IV of the McKinney-Vento Act.* No tenant may be required to relocate temporarily for a project if the building in which the project is being undertaken or will be undertaken is not currently assisted under Title IV of the McKinney-Vento Act. The absence of such assistance to the building means the tenants are not homeless and the tenants are therefore not eligible to receive assistance under the Continuum of Care program. When a tenant moves for such a project under conditions that cause the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA), 42 U.S.C. 4601-4655, to apply, the tenant must be treated as permanently displaced and offered relocation assistance and payments consistent with paragraph (c) of this section.

(2) *Existing Transitional Housing or Permanent Housing Projects Assisted Under Title IV of the McKinney-Vento Act.* Consistent with paragraph (c)(2)(ii) of this section, no program participant may be required to relocate temporarily for a project if the person cannot be offered a decent, safe, and sanitary unit in the same building or complex upon project completion under reasonable terms and conditions. The length of occupancy requirements in § 578.79 may prevent a program participant from returning to the property upon completion (See paragraph (c)(2)(iii)(D) of this section). Any program participant who has been temporarily relocated for a period beyond one year must be treated as permanently displaced and offered relocation assistance and payments consistent with paragraph (c) of this section. Program participants temporarily relocated in accordance with the policies described in this paragraph must be provided:

(i) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary

relocation, including the cost of moving to and from the temporarily occupied housing and any increase in monthly rent/occupancy charges and utility costs; and

(ii) Appropriate advisory services, including reasonable advance written notice of:

(A) The date and approximate duration of the temporary relocation;

(B) The location of the suitable, decent, safe, and sanitary dwelling to be made available for the temporary period;

(C) The reasonable terms and conditions under which the program participant will be able to occupy a suitable, decent, safe, and sanitary dwelling in the building or complex upon completion of the project; and

(D) The provisions of paragraph (b)(2)(i) of this section.

(c) *Relocation assistance for displaced persons.* (1) *In general.* A displaced person (defined in paragraph (c)(2) of this section) must be provided relocation assistance in accordance with the requirements of the URA and implementing regulations at 49 CFR part 24. A displaced person must be advised of his or her rights under the Fair Housing Act. Whenever possible, minority persons must be given reasonable opportunities to relocate to decent, safe, and sanitary replacement dwellings, not located in an area of minority concentration, that are within their financial means. This policy, however, does not require providing a person a larger payment than is necessary to enable a person to relocate to a comparable replacement dwelling. See 49 CFR 24.205(c)(2)(ii)(D).

(2) *Displaced person.* (i) For the purposes of paragraph (c) of this section, the term "displaced person" means any 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. This includes any permanent, involuntary move for a project, including any permanent move from the real property that is made:

(A) After the owner (or person in control of the site) issues a notice to move permanently from the property, or refuses to renew an expiring lease, if the move occurs after the date of the submission by the recipient or subrecipient of an application for assistance to HUD (or the recipient, as applicable) that is later approved and funded and the recipient or subrecipient has site control as evidenced in accordance with § 578.25(b); or

(B) After the owner (or person in control of the site) issues a notice to move permanently from the property, or refuses to renew an expiring lease, if the move occurs after the date the recipient or subrecipient obtains site control, as evidenced in accordance with § 578.25(b), if that occurs after the application for assistance; or

(C) Before the date described under paragraph (c)(2)(i)(A) or (B) of this section, if the recipient or HUD determines that the displacement resulted directly from acquisition, rehabilitation, or demolition for the project; or

(D) By a tenant of a building that is not assisted under Title IV of the McKinney-Vento Act, if the tenant moves after execution of the agreement covering the acquisition, rehabilitation, or demolition of the property for the project; or

(ii) For the purposes of paragraph (c) of this section, the term "displaced person" means any 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. This includes any permanent, involuntary move for a project that is made by a program participant occupying transitional housing or permanent housing assisted under Title IV of the McKinney-Vento Act, if any one of the following three situations occurs:

(A) The program participant moves after execution of the agreement covering the acquisition, rehabilitation, or demolition of the property for the project and is either not eligible to return upon project completion or the move occurs before the program participant is provided written notice offering the program participant an opportunity to occupy a suitable, decent, safe, and sanitary dwelling in the same building or complex upon project completion under reasonable terms and conditions. Such reasonable terms and conditions must include a lease (or occupancy agreement, as applicable) consistent with Continuum of Care program requirements, including a monthly rent or occupancy charge and monthly utility costs that does not exceed the maximum amounts established in § 578.77; or

(B) The program participant is required to relocate temporarily, does not return to the building or complex, and any one of the following situations occurs:

(1) The program participant is not offered payment for all reasonable out-

of-pocket expenses incurred in connection with the temporary relocation;

(2) The program participant is not eligible to return to the building or complex upon project completion; or

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

(C) The program participant is required to move to another unit in the same building or complex, and any one of the following situations occurs:

(1) The program participant is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move;

(2) The program participant is not eligible to remain in the building or complex upon project completion; or

(3) Other conditions of the move are not reasonable.

(iii) Notwithstanding the provisions of paragraph (c)(2)(i) or (ii) of this section, a person does not qualify as a "displaced person" if:

(A) The person has been evicted for serious or repeated violation of the terms and conditions of the lease or occupancy agreement; the eviction complied with applicable federal, State, or local requirements (see § 578.91); and the recipient or subrecipient determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance;

(B) The person moved into the property after the submission of the application but, before signing a lease or occupancy agreement and commencing occupancy, was provided written notice of the project's possible impact on the person (e.g., the person may be displaced, temporarily relocated, or incur a rent increase) and the fact that the person would not qualify as a "displaced person" (or for any relocation assistance provided under this section), as a result of the project;

(C) The person is ineligible under 49 CFR 24.2(a)(9)(ii);

(D) The person is a program participant occupying transitional housing or permanent housing assisted under Title IV of the Act who must move as a direct result of the length-of-occupancy restriction under § 578.79; or

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

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

(3) *Initiation of negotiations.* For purposes of determining the formula for computing replacement housing payment assistance to be provided to a displaced person pursuant to this

section, if the displacement is a direct result of privately undertaken rehabilitation, demolition, or acquisition of the real property, "initiation of negotiations" means the execution of the agreement between the recipient and the subrecipient, or between the recipient (or subrecipient, as applicable) and the person owning or controlling the property. In the case of an option contract to acquire property, the initiation of negotiations does not become effective until execution of a written agreement that creates a legally enforceable commitment to proceed with the purchase, such as a purchase agreement.

(d) *Real property acquisition requirements.* Except for acquisitions described in 49 CFR 24.101(b)(1) through (5), the URA and the requirements of 49 CFR part 24, subpart B apply to any acquisition of real property for a project where there are Continuum of Care funds in any part of the project costs.

(e) *Appeals.* A person who disagrees with the recipient's (or subrecipient's, if applicable) 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 recipient (see 49 CFR 24.10). A low-income person who is dissatisfied with the recipient's determination on his or her appeal may submit a written request for review of that determination to the local HUD field office.

§ 578.85 Timeliness standards.

(a) *In general.* Recipients must initiate approved activities and projects promptly.

(b) *Construction activities.* Recipients of funds for rehabilitation or new construction must meet the following standards:

(1) Construction activities must begin within 9 months of the later of signing of the grant agreement or of signing an addendum to the grant agreement authorizing use of grant funds for the project.

(2) Construction activities must be completed within 24 months of signing the grant agreement.

(3) Activities that cannot begin until after construction activities are completed must begin within 3 months of the date that construction activities are completed.

(c) *Distribution.* A recipient that receives funds through this part must:

(1) Distribute the funds to subrecipients (in advance of expenditures by the subrecipients);

(2) Distribute the appropriate portion of the funds to a subrecipient no later than 45 days after receiving an approvable request for such distribution from the subrecipient; and

(3) Draw down funds at least once per quarter of the program year, after eligible activities commence.

§ 578.87 Limitation on use of funds.

(a) *Maintenance of effort.* No assistance provided under this part (or any State or local government funds used to supplement this assistance) may be used to replace State or local funds previously used, or designated for use, to assist homeless persons.

(b) *Faith-based activities.* (1) *Equal treatment of program participants and program beneficiaries.* (i) *Program participants.* Organizations that are religious or faith-based are eligible, on the same basis as any other organization, to participate in the Continuum of Care program. Neither the Federal Government nor a State or local government receiving funds under the Continuum of Care program shall discriminate against an organization on the basis of the organization's religious character or affiliation. Recipients and subrecipients of program funds shall not, in providing program assistance, discriminate against a program participant or prospective program participant on the basis of religion or religious belief.

(ii) *Beneficiaries.* In providing services supported in whole or in part with federal financial assistance, and in their outreach activities related to such services, program participants shall not discriminate against current or prospective program beneficiaries on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.

(2) *Separation of explicitly religious activities.* Recipients and subrecipients of Continuum of Care funds that engage in explicitly religious activities, including activities that involve overt religious content such as worship, religious instruction, or proselytization, must perform such activities and offer such services outside of programs that are supported with federal financial assistance separately, in time or location, from the programs or services funded under this part, and participation in any such explicitly religious activities must be voluntary for the program beneficiaries of the HUD-funded programs or services.

(3) *Religious identity.* A faith-based organization that is a recipient or subrecipient of Continuum of Care program funds is eligible to use such

funds as provided under the regulations of this part without impairing its independence, autonomy, expression of religious beliefs, or religious character. Such organization will retain its independence from federal, State, and local government, and may continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs, provided that it does not use direct program funds to support or engage in any explicitly religious activities, including activities that involve overt religious content, such as worship, religious instruction, or proselytization, or any manner prohibited by law. Among other things, faith-based organizations may use space in their facilities to provide program-funded services, without removing or altering religious art, icons, scriptures, or other religious symbols. In addition, a Continuum of Care program-funded religious organization retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

(4) *Alternative provider.* If a program participant or prospective program participant of the Continuum of Care program supported by HUD objects to the religious character of an organization that provides services under the program, that organization shall, within a reasonably prompt time after the objection, undertake reasonable efforts to identify and refer the program participant to an alternative provider to which the prospective program participant has no objection. Except for services provided by telephone, the Internet, or similar means, the referral must be to an alternate provider in reasonable geographic proximity to the organization making the referral. In making the referral, the organization shall comply with applicable privacy laws and regulations. Recipients and subrecipients shall document any objections from program participants and prospective program participants and any efforts to refer such participants to alternative providers in accordance with the requirements of § 578.103(a)(13). Recipients shall ensure that all subrecipient agreements make organizations receiving program funds aware of these requirements.

(5) *Structures.* Program funds may not be used for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used for explicitly religious activities. Program funds may

be used for the acquisition, construction, or rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under this part. When a structure is used for both eligible and explicitly religious activities, program funds may not exceed the cost of those portions of the acquisition, new construction, or rehabilitation that are attributable to eligible activities in accordance with the cost accounting requirements applicable to the Continuum of Care program. Sanctuaries, chapels, or other rooms that a Continuum of Care program-funded religious congregation uses as its principal place of worship, however, are ineligible for Continuum of Care program-funded improvements. Disposition of real property after the term of the grant, or any change in the use of the property during the term of the grant, is subject to governmentwide regulations governing real property disposition (see 24 CFR parts 84 and 85).

(6) *Supplemental funds.* If a State or local government voluntarily contributes its own funds to supplement federally funded activities, the State or local government has the option to segregate the federal funds or commingle them. However, if the funds are commingled, this section applies to all of the commingled funds.

(c) *Restriction on combining funds.* In a single structure or housing unit, the following types of assistance may not be combined:

- (1) Leasing and acquisition, rehabilitation, or new construction;
- (2) Tenant-based rental assistance and acquisition, rehabilitation, or new construction;
- (3) Short- or medium-term rental assistance and acquisition, rehabilitation, or new construction;
- (4) Rental assistance and leasing; or
- (5) Rental assistance and operating.

(d) *Program fees.* Recipients and subrecipients may not charge program participants program fees.

§ 578.89 Limitation on use of grant funds to serve persons defined as homeless under other federal laws.

(a) *Application requirement.* Applicants that intend to serve unaccompanied youth and families with children and youth defined as homeless under other federal laws in paragraph (3) of the homeless definition in § 578.2 must demonstrate in their application, to HUD's satisfaction, that the use of grant funds to serve such persons is an equal or greater priority than serving persons defined as homeless under paragraphs (1), (2), and (4) of the

definition of homeless in § 576.2. To demonstrate that it is of equal or greater priority, applicants must show that it is equally or more cost effective in meeting the overall goals and objectives of the plan submitted under section 427(b)(1)(B) of the Act, especially with respect to children and unaccompanied youth.

(b) *Limit.* No more than 10 percent of the funds awarded to recipients within a single Continuum of Care's geographic area may be used to serve such persons.

(c) *Exception.* The 10 percent limitation does not apply to Continuums in which the rate of homelessness, as calculated in the most recent point-in-time count, is less than one-tenth of one percent of the total population.

§ 578.91 Termination of assistance to program participants.

(a) *Termination of assistance.* The recipient or subrecipient may terminate assistance to a program participant who violates program requirements or conditions of occupancy. Termination under this section does not bar the recipient or subrecipient from providing further assistance at a later date to the same individual or family.

(b) *Due process.* In terminating assistance to a program participant, the recipient or subrecipient must provide a formal process that recognizes the rights of individuals receiving assistance under the due process of law. This process, at a minimum, must consist of:

(1) Providing the program participant with a written copy of the program rules and the termination process before the participant begins to receive assistance;

(2) Written notice to the program participant containing a clear statement of the reasons for termination;

(3) A review of the decision, in which the program participant is given the opportunity to present written or oral objections before a person other than the person (or a subordinate of that person) who made or approved the termination decision; and

(4) Prompt written notice of the final decision to the program participant.

(c) *Hard-to-house populations.* Recipients and subrecipients that are providing permanent supportive housing for hard-to-house populations of homeless persons must exercise judgment and examine all extenuating circumstances in determining when violations are serious enough to warrant termination so that a program participant's assistance is terminated only in the most severe cases.

§ 578.93 Fair Housing and Equal Opportunity.

(a) *Nondiscrimination and equal opportunity requirements.* The nondiscrimination and equal opportunity requirements set forth in 24 CFR 5.105(a) are applicable.

(b) *Housing for specific subpopulations.* Recipients and subrecipients may exclusively serve a particular homeless subpopulation in transitional or permanent housing if the housing addresses a need identified by the Continuum of Care for the geographic area and meets one of the following:

(1) The housing may be limited to one sex where such housing consists of a single structure with shared bedrooms or bathing facilities such that the considerations of personal privacy and the physical limitations of the configuration of the housing make it appropriate for the housing to be limited to one sex;

(2) The housing may be limited to a specific subpopulation, so long as admission does not discriminate against any protected class under federal nondiscrimination laws in 24 CFR 5.105 (e.g., the housing may be limited to homeless veterans, victims of domestic violence and their children, or chronically homeless persons and families).

(3) The housing may be limited to families with children.

(4) If the housing has in residence at least one family with a child under the age of 18, the housing may exclude registered sex offenders and persons with a criminal record that includes a violent crime from the project so long as the child resides in the housing.

(5) Sober housing may exclude persons who refuse to sign an occupancy agreement or lease that prohibits program participants from possessing, using, or being under the influence of illegal substances and/or alcohol on the premises.

(6) If the housing is assisted with funds under a federal program that is limited by federal statute or Executive Order to a specific subpopulation, the housing may be limited to that subpopulation (e.g., housing also assisted with funding from the Housing Opportunities for Persons with AIDS program under 24 CFR part 574 may be limited to persons with acquired immunodeficiency syndrome or related diseases).

(7) Recipients may limit admission to or provide a preference for the housing to subpopulations of homeless persons and families who need the specialized supportive services that are provided in the housing (e.g., substance abuse

addiction treatment, domestic violence services, or a high intensity package designed to meet the needs of hard-to-reach homeless persons). While the housing may offer services for a particular type of disability, no otherwise eligible individuals with disabilities or families including an individual with a disability, who may benefit from the services provided may be excluded on the grounds that they do not have a particular disability.

(c) *Affirmatively furthering fair housing.* A recipient must implement its programs in a manner that affirmatively furthers fair housing, which means that the recipient must:

(1) Affirmatively market their housing and supportive services to eligible persons regardless of race, color, national origin, religion, sex, age, familial status, or handicap who are least likely to apply in the absence of special outreach, and maintain records of those marketing activities;

(2) Where a recipient encounters a condition or action that impedes fair housing choice for current or prospective program participants, provide such information to the jurisdiction that provided the certification of consistency with the Consolidated Plan; and

(3) Provide program participants with information on rights and remedies available under applicable federal, State and local fair housing and civil rights laws.

(d) *Accessibility and integrative housing and services for persons with disabilities.* Recipients and subrecipients must comply with the accessibility requirements of the Fair Housing Act (24 CFR part 100), Section 504 of the Rehabilitation Act of 1973 (24 CFR part 8), and Titles II and III of the Americans with Disabilities Act, as applicable (28 CFR parts 35 and 36). In accordance with the requirements of 24 CFR 8.4(d), recipients must ensure that their program's housing and supportive services are provided in the most integrated setting appropriate to the needs of persons with disabilities.

(e) *Prohibition against involuntary family separation.* The age and gender of a child under age 18 must not be used as a basis for denying any family's admission to a project that receives funds under this part.

§ 578.95 Conflicts of interest.

(a) *Procurement.* For the procurement of property (goods, supplies, or equipment) and services, the recipient and its subrecipients must comply with the codes of conduct and conflict-of-interest requirements under 24 CFR 85.36 (for governments) and 24 CFR

84.42 (for private nonprofit organizations).

(b) *Continuum of Care board members.* No Continuum of Care board member may participate in or influence discussions or resulting decisions concerning the award of a grant or other financial benefits to the organization that the member represents.

(c) *Organizational conflict.* An organizational conflict of interest arises when, because of activities or relationships with other persons or organizations, the recipient or subrecipient is unable or potentially unable to render impartial assistance in the provision of any type or amount of assistance under this part, or when a covered person's, as in paragraph (d)(1) of this section, objectivity in performing work with respect to any activity assisted under this part is or might be otherwise impaired. Such an organizational conflict would arise when a board member of an applicant participates in decision of the applicant concerning the award of a grant, or provision of other financial benefits, to the organization that such member represents. It would also arise when an employee of a recipient or subrecipient participates in making rent reasonableness determinations under § 578.49(b)(2) and § 578.51(g) and housing quality inspections of property under § 578.75(b) that the recipient, subrecipient, or related entity owns.

(d) *Other conflicts.* For all other transactions and activities, the following restrictions apply:

(1) No covered person, meaning a person who is an employee, agent, consultant, officer, or elected or appointed official of the recipient or its subrecipients and who exercises or has exercised any functions or responsibilities with respect to activities assisted under this part, or who is in a position to participate in a decision-making process or gain inside information with regard to activities assisted under this part, may obtain a financial interest or benefit from an assisted activity, have a financial interest in any contract, subcontract, or agreement with respect to an assisted activity, or have a financial interest in the proceeds derived from an assisted activity, either for him or herself or for those with whom he or she has immediate family or business ties, during his or her tenure or during the one-year period following his or her tenure.

(2) *Exceptions.* Upon the written request of the recipient, HUD may grant an exception to the provisions of this section on a case-by-case basis, taking into account the cumulative effects of

the criteria in paragraph (d)(2)(ii) of this section, provided that the recipient has satisfactorily met the threshold requirements of paragraph (d)(2)(ii) of this section.

(i) *Threshold requirements.* HUD will consider an exception only after the recipient has provided the following documentation:

(A) Disclosure of the nature of the conflict, accompanied by a written assurance, if the recipient is a government, that there has been public disclosure of the conflict and a description of how the public disclosure was made; and if the recipient is a private nonprofit organization, that the conflict has been disclosed in accordance with their written code of conduct or other conflict-of-interest policy; and

(B) An opinion of the recipient's attorney that the interest for which the exception is sought would not violate State or local law, or if the subrecipient is a private nonprofit organization, the exception would not violate the organization's internal policies.

(ii) *Factors to be considered for exceptions.* In determining whether to grant a requested exception after the recipient has satisfactorily met the threshold requirements under paragraph (c)(3)(i) of this section, HUD must conclude that the exception will serve to further the purposes of the Continuum of Care program and the effective and efficient administration of the recipient's or subrecipient's project, taking into account the cumulative effect of the following factors, as applicable:

(A) 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;

(B) Whether an opportunity was provided for open competitive bidding or negotiation;

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

(D) Whether the interest or benefit was present before the affected person was in the position described in paragraph (c)(1) of this section;

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

(F) Whether the person affected is a member of a group or class of persons intended to be the beneficiaries of the assisted activity, 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; and

(G) Any other relevant considerations.

§ 578.97 Program Income.

(a) *Defined.* Program income is the income received by the recipient or subrecipient directly generated by a grant-supported activity.

(b) *Use.* Program income earned during the grant term shall be retained by the recipient, and added to funds committed to the project by HUD and the recipient, used for eligible activities in accordance with the requirements of this part. Costs incident to the generation of program income may be deducted from gross income to calculate program income, provided that the costs have not been charged to grant funds.

(c) *Rent and occupancy charges.* Rents and occupancy charges collected from program participants are program income. In addition, rents and occupancy charges collected from residents of transitional housing may be reserved, in whole or in part, to assist the residents from whom they are collected to move to permanent housing.

§ 578.99 Applicability of other federal requirements.

In addition to the requirements set forth in 24 CFR part 5, use of assistance provided under this part must comply with the following federal requirements:

(a) *Environmental review.* Activities under this part are subject to environmental review by HUD under 24 CFR part 50 as noted in § 578.31.

(b) *Section 6002 of the Solid Waste Disposal Act.* State agencies and agencies of a political subdivision of a state that are using assistance under this part for procurement, and any person contracting with such an agency with respect to work performed under an assisted contract, must comply with the requirements of Section 6003 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. In accordance with Section 6002, these agencies and persons must:

(1) Procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired in the preceding fiscal year exceeded \$10,000;

(2) Procure solid waste management services in a manner that maximizes energy and resource recovery; and

(3) Must have established an affirmative procurement program for the procurement of recovered materials identified in the EPA guidelines.

(c) *Transparency Act Reporting.* Section 872 of the Duncan Hunter Defense Appropriations Act of 2009, and additional requirements published by the Office of Management and Budget (OMB), requires recipients to report subawards made either as pass-through awards, subrecipient awards, or vendor awards in the Federal Government Web site www.fgfrs.gov or its successor system. The reporting of award and subaward information is in accordance with the requirements of the Federal Financial Assistance Accountability and Transparency Act of 2006, as amended by section 6202 of Public Law 110-252 and in OMB Policy Guidance issued to the federal agencies on September 14, 2010 (75 FR 55669).

(d) *The Coastal Barrier Resources Act of 1982* (16 U.S.C. 3501 *et seq.*) may apply to proposals under this part, depending on the assistance requested.

(e) *Applicability of OMB Circulars.* The requirements of 24 CFR part 85—Administrative Requirements for Grants and Cooperative Agreements to State, Local, and Federally Recognized Indian Tribal Governments and 2 CFR part 225—Cost Principles for State, Local and Indian Tribal Governments (OMB Circular A-87)—apply to governmental recipients and subrecipients except where inconsistent with the provisions of this part. The requirements of 24 CFR part 84—Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations; 2 CFR part 230—Cost Principles for Non-Profit Organizations (OMB Circular A-122); and 2 CFR part 220—Cost Principles for Education Institutions apply to the nonprofit recipients and subrecipients, except where inconsistent with the provisions of the McKinney-Vento Act or this part.

(f) *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 24 CFR part 35, subparts A, B, H, J, K, M, and R apply to activities under this program.

(g) *Audit.* Recipients and subrecipients must comply with the audit requirements of OMB Circular A-133, "Audits of States, Local Governments, and Non-profit Organizations."

(h) *Davis-Bacon Act.* The provisions of the Davis-Bacon Act do not apply to this program.

(i) *Section 3 of the Housing and Urban Development Act.* Recipients and subrecipients must, as applicable, comply with Section 3 of the Housing and Urban Development Act of 1968 and its implementing regulations at 24 CFR part 135, as applicable.

Subpart G—Grant Administration

§ 578.101 Technical assistance.

(a) *Purpose.* The purpose of Continuum of Care technical assistance is to increase the effectiveness with which Continuums of Care, eligible applicants, recipients, subrecipients, and UFAs implement and administer their Continuum of Care planning process; improve their capacity to prepare applications; prevent the separation of families in projects funded under the Emergency Solutions Grants, Continuum of Care, and Rural Housing Stability Assistance programs; and adopt and provide best practices in housing and services for persons experiencing homelessness.

(b) *Defined.* Technical assistance means the transfer of skills and knowledge to entities that may need, but do not possess, such skills and knowledge. The assistance may include, but is not limited to, written information such as papers, manuals, guides, and brochures; person-to-person exchanges; web-based curriculums, training and Webinars, and their costs.

(c) *Set-aside.* HUD may set aside funds annually to provide technical assistance, either directly by HUD staff or indirectly through third-party providers.

(d) *Awards.* From time to time, as HUD determines the need, HUD may advertise and competitively select providers to deliver technical assistance. HUD may enter into contracts, grants, or cooperative agreements, when necessary, to implement the technical assistance. HUD may also enter into agreements with other federal agencies for awarding the technical assistance funds.

§ 578.103 Recordkeeping requirements.

(a) *In general.* The recipient and its subrecipients must establish and maintain standard operating procedures for ensuring that Continuum of Care program funds are used in accordance with the requirements of this part and must establish and maintain sufficient records to enable HUD to determine whether the recipient and its subrecipients are meeting the requirements of this part, including:

(1) *Continuum of Care records.* Each collaborative applicant must keep the following documentation related to

establishing and operating a Continuum of Care:

(i) Evidence that the Board selected by the Continuum of Care meets the requirements of § 578.5(b);

(ii) Evidence that the Continuum has been established and operated as set forth in subpart B of this part, including published agendas and meeting minutes, an approved Governance Charter that is reviewed and updated annually, a written process for selecting a board that is reviewed and updated at least once every 5 years, evidence required for designating a single HMIS for the Continuum, and monitoring reports of recipients and subrecipients;

(iii) Evidence that the Continuum has prepared the application for funds as set forth in § 578.9, including the designation of the eligible applicant to be the collaborative applicant.

(2) *Unified funding agency records.* UFAs that requested grant amendments from HUD, as set forth in § 578.105, must keep evidence that the grant amendment was approved by the Continuum. This evidence may include minutes of meetings at which the grant amendment was discussed and approved.

(3) *Homeless status.* Acceptable evidence of the homeless as status is set forth in 24 CFR 576.500(b).

(4) *At risk of homelessness status.* For those recipients and subrecipients that serve persons at risk of homelessness, the recipient or subrecipient must keep records that establish "at risk of homelessness" status of each individual or family who receives Continuum of Care homelessness prevention assistance. Acceptable evidence is found in 24 CFR 576.500(c).

(5) *Records of reasonable belief of imminent threat of harm.* For each program participant who moved to a different Continuum of Care due to imminent threat of further domestic violence, dating violence, sexual assault, or stalking under § 578.51(c)(3), each recipient or subrecipient of assistance under this part must retain:

(i) Documentation of the original incidence of domestic violence, dating violence, sexual assault, or stalking, only if the original violence is not already documented in the program participant's case file. This may be written observation of the housing or service provider; a letter or other documentation from a victim service provider, social worker, legal assistance provider, pastoral counselor, mental health provider, or other professional from whom the victim has sought assistance; medical or dental records; court records or law enforcement records; or written certification by the

program participant to whom the violence occurred or by the head of household.

(ii) Documentation of the reasonable belief of imminent threat of further domestic violence, dating violence, or sexual assault or stalking, which would include threats from a third-party, such as a friend or family member of the perpetrator of the violence. This may be written observation by the housing or service provider; a letter or other documentation from a victim service provider, social worker, legal assistance provider, pastoral counselor, mental health provider, or other professional from whom the victim has sought assistance; current restraining order; recent court order or other court records; law enforcement report or records; communication records from the perpetrator of the violence or family members or friends of the perpetrator of the violence, including emails, voicemails, text messages, and social media posts; or a written certification by the program participant to whom the violence occurred or the head of household.

(6) *Annual income.* For each program participant who receives housing assistance where rent or an occupancy charge is paid by the program participant, the recipient or subrecipient must keep the following documentation of annual income:

(i) Income evaluation form specified by HUD and completed by the recipient or subrecipient; and

(ii) Source documents (e.g., most recent wage statement, unemployment compensation statement, public benefits statement, bank statement) for the assets held by the program participant and income received before the date of the evaluation;

(iii) To the extent that source documents are unobtainable, a written statement by the relevant third party (e.g., employer, government benefits administrator) or the written certification by the recipient's or subrecipient's intake staff of the oral verification by the relevant third party of the income the program participant received over the most recent period; or

(iv) To the extent that source documents and third-party verification are unobtainable, the written certification by the program participant of the amount of income that the program participant is reasonably expected to receive over the 3-month period following the evaluation.

(7) *Program participant records.* In addition to evidence of "homeless" status or "at-risk-of-homelessness" status, as applicable, the recipient or

subrecipient must keep records for each program participant that document:

(i) The services and assistance provided to that program participant, including evidence that the recipient or subrecipient has conducted an annual assessment of services for those program participants that remain in the program for more than a year and adjusted the service package accordingly, and including case management services as provided in § 578.37(a)(1)(ii)(F); and

(ii) Where applicable, compliance with the termination of assistance requirement in § 578.91.

(8) *Housing standards.* The recipient or subrecipient must retain documentation of compliance with the housing standards in § 578.75(b), including inspection reports.

(9) *Services provided.* The recipient or subrecipient must document the types of supportive services provided under the recipient's program and the amounts spent on those services. The recipient or subrecipient must keep record that these records were reviewed at least annually and that the service package offered to program participants was adjusted as necessary.

(10) *Match.* The recipient must keep records of the source and use of contributions made to satisfy the match requirement in § 578.73. The records must indicate the grant and fiscal year for which each matching contribution is counted. The records must show how the value placed on third party in-kind contributions was derived. To the extent feasible, volunteer services must be supported by the same methods that the organization uses to support the allocation of regular personnel costs.

(11) *Conflicts of interest.* The recipient and its subrecipients must keep records to show compliance with the organizational conflict-of-interest requirements in § 578.95(c), the Continuum of Care board conflict-of-interest requirements in § 578.95(b), the other conflict requirements in § 578.95(d), a copy of the personal conflict-of-interest policy developed and implemented to comply with the requirements in § 578.95, and records supporting exceptions to the personal conflict-of-interest prohibitions.

(12) *Homeless participation.* The recipient or subrecipient must document its compliance with the homeless participation requirements under § 578.75(g).

(13) *Faith-based activities.* The recipient and its subrecipients must document their compliance with the faith-based activities requirements under § 578.87(b).

(14) *Affirmatively Furthering Fair Housing.* Recipients and subrecipients

must maintain copies of their marketing outreach, and other materials used to inform eligible persons of the program to document compliance with the requirements in § 578.93(c).

(15) *Other federal requirements.* The recipient and its subrecipients must document their compliance with the federal requirements in § 578.99, as applicable.

(16) *Subrecipients and contractors.* (i) The recipient must retain copies of all solicitations of and agreements with subrecipients, records of all payment requests by and dates of payments made to subrecipients, and documentation of all monitoring and sanctions of subrecipients, as applicable.

(ii) The recipient must retain documentation of monitoring subrecipients, including any monitoring findings and corrective actions required.

(iii) The recipient and its subrecipients must retain copies of all procurement contracts and documentation of compliance with the procurement requirements in 24 CFR 85.36 and 24 CFR part 84.

(17) *Other records specified by HUD.* The recipient and subrecipients must keep other records specified by HUD.

(b) *Confidentiality.* In addition to meeting the specific confidentiality and security requirements for HMIS data, the recipient and its subrecipients must develop and implement written procedures to ensure:

(1) All records containing protected identifying information of any individual or family who applies for and/or receives Continuum of Care assistance will be kept secure and confidential;

(2) The address or location of any family violence project assisted with Continuum of Care funds will not be made public, except with written authorization of the person responsible for the operation of the project; and

(3) The address or location of any housing of a program participant will not be made public, except as provided under a preexisting privacy policy of the recipient or subrecipient and consistent with State and local laws regarding privacy and obligations of confidentiality;

(c) *Period of record retention.* All records pertaining to Continuum of Care funds must be retained for the greater of 5 years or the period specified below. Copies made by microfilming, photocopying, or similar methods may be substituted for the original records.

(1) Documentation of each program participant's qualification as a family or individual at risk of homelessness or as a homeless family or individual and other program participant records must

be retained for 5 years after the expenditure of all funds from the grant under which the program participant was served; and

(2) Where Continuum of Care funds are used for the acquisition, new construction, or rehabilitation of a project site, records must be retained until 15 years after the date that the project site is first occupied, or used, by program participants.

(d) *Access to records.* (1) *Federal Government rights.* Notwithstanding the confidentiality procedures established under paragraph (b) of this section, HUD, the HUD Office of the Inspector General, and the Comptroller General of the United States, or any of their authorized representatives, must have the right of access to all books, documents, papers, or other records of the recipient and its subrecipients that are pertinent to the Continuum of Care grant, in order to make audits, examinations, excerpts, and transcripts. These rights of access are not limited to the required retention period, but last as long as the records are retained.

(2) *Public rights.* The recipient must provide citizens, public agencies, and other interested parties with reasonable access to records regarding any uses of Continuum of Care funds the recipient received during the preceding 5 years, consistent with State and local laws regarding privacy and obligations of confidentiality and confidentiality requirements in this part.

(e) *Reports.* In addition to the reporting requirements in 24 CFR parts 84 and 85, the recipient must collect and report data on its use of Continuum of Care funds in an Annual Performance Report (APR), as well as in any additional reports as and when required by HUD. Projects receiving grant funds only for acquisition, rehabilitation, or new construction must submit APRs for 15 years from the date of initial occupancy or the date of initial service provision, unless HUD provides an exception under § 578.81(e).

§ 578.105 Grant and project changes.

(a) *For Unified Funding Agencies and Continuums having only one recipient.*

(1) The recipient may not make any significant changes without prior HUD approval, evidenced by a grant amendment signed by HUD and the recipient. Significant grant changes include a change of recipient, a shift in a single year of more than 10 percent of the total amount awarded under the grant for one approved eligible activity category to another activity and a permanent change in the subpopulation served by any one project funded under the grant, as well as a permanent

proposed reduction in the total number of units funded under the grant.

(2) Approval of substitution of the recipient is contingent on the new recipient meeting the capacity criteria in the NOFA under which the grant was awarded, or the most recent NOFA. Approval of shifting funds between activities and changing subpopulations is contingent on the change being necessary to better serve eligible persons within the geographic area and ensuring that the priorities established under the NOFA in which the grant was originally awarded, or the most recent NOFA, are met.

(b) *For Continuums having more than one recipient.* (1) The recipients or subrecipients may not make any significant changes to a project without prior HUD approval, evidenced by a grant amendment signed by HUD and the recipient. Significant changes include a change of recipient, a change of project site, additions or deletions in the types of eligible activities approved for a project, a shift of more than 10 percent from one approved eligible activity to another, a reduction in the number of units, and a change in the subpopulation served.

(2) Approval of substitution of the recipient is contingent on the new recipient meeting the capacity criteria in the NOFA under which the grant was awarded, or the most recent NOFA. Approval of shifting funds between activities and changing subpopulations is contingent on the change being necessary to better serve eligible persons within the geographic area and ensuring that the priorities established under the NOFA in which the grant was originally awarded, or the most recent NOFA, are met.

(c) *Documentation of changes not requiring a grant amendment.* Any other changes to an approved grant or project must be fully documented in the recipient's or subrecipient's records.

§ 578.107 Sanctions.

(a) *Performance reviews.* (1) HUD will review the performance of each recipient in carrying out its responsibilities under this part, with or without prior notice to the recipient. In conducting performance reviews, HUD will rely primarily on information obtained from the records and reports from the recipient and subrecipients, as well as information from on-site monitoring, audit reports, and information generated from HUD's financial and reporting systems (e.g., LOCCS and e-snaps) and HMIS. Where applicable, HUD may also consider relevant information pertaining to the recipient's performance gained from

other sources, including citizen comments, complaint determinations, and litigation.

(2) If HUD determines preliminarily that the recipient or one of its subrecipients has not complied with a program requirement, HUD will give the recipient notice of this determination and an opportunity to demonstrate, within the time prescribed by HUD and on the basis of substantial facts and data that the recipient has complied with the requirements. HUD may change the method of payment to require the recipient to submit documentation before payment and obtain HUD's prior approval each time the recipient draws down funds. To obtain prior approval, the recipient may be required to manually submit its payment requests and supporting documentation to HUD in order to show that the funds to be drawn down will be expended on eligible activities in accordance with all program requirements.

(3) If the recipient fails to demonstrate to HUD's satisfaction that the activities were carried out in compliance with program requirements, HUD may take one or more of the remedial actions or sanctions specified in paragraph (b) of this section.

(b) *Remedial actions and sanctions.* Remedial actions and sanctions for a failure to meet a program requirement will be designed to prevent a continuation of the deficiency; to mitigate, to the extent possible, its adverse effects or consequences; and to prevent its recurrence.

(1) HUD may instruct the recipient to submit and comply with proposals for action to correct, mitigate, and prevent noncompliance with program requirements, including:

(i) Preparing and following a schedule of actions for carrying out activities and projects affected by the noncompliance, including schedules, timetables, and milestones necessary to implement the affected activities and projects;

(ii) Establishing and following a management plan that assigns responsibilities for carrying out the remedial actions;

(iii) Canceling or revising activities or projects likely to be affected by the noncompliance, before expending grant funds for them;

(iv) Reprogramming grant funds that have not yet been expended from affected activities or projects to other eligible activities or projects;

(v) Suspending disbursement of grant funds for some or all activities or projects;

(vi) Reducing or terminating the remaining grant of a subrecipient and either reallocating those funds to other

subrecipients or returning funds to HUD; and

(vii) Making matching contributions before or as draws are made from the recipient's grant.

(2) HUD may change the method of payment to a reimbursement basis.

(3) HUD may suspend payments to the extent HUD determines necessary to preclude the further expenditure of funds for affected activities or projects.

(4) HUD may continue the grant with a substitute recipient of HUD's choosing.

(5) HUD may deny matching credit for all or part of the cost of the affected activities and require the recipient to make further matching contributions to make up for the contribution determined to be ineligible.

(6) HUD may require the recipient to reimburse the recipient's line of credit in an amount equal to the funds used for the affected activities.

(7) HUD may reduce or terminate the remaining grant of a recipient.

(8) HUD may condition a future grant.

(9) HUD may take other remedies that are legally available.

(c) *Recipient sanctions.* If the recipient determines that a subrecipient is not complying with a program requirement or its subrecipient agreement, the recipient must take one of the actions listed in paragraphs (a) and (b) of this section.

(d) *Deobligation.* HUD may deobligate funds for the following reasons:

(1) If the timeliness standards in § 578.85 are not met;

(2) If HUD determines that delays completing construction activities for a project will mean that the funds for

other funded activities cannot reasonably be expected to be expended for eligible costs during the remaining term of the grant;

(3) If the actual total cost of acquisition, rehabilitation, or new construction for a project is less than the total cost agreed to in the grant agreement;

(4) If the actual annual leasing costs, operating costs, supportive services costs, rental assistance costs, or HMIS costs are less than the total cost agreed to in the grant agreement for a one-year period;

(5) Program participants have not moved into units within 3 months of the time that the units are available for occupancy; and

(6) The grant agreement may set forth in detail other circumstances under which funds may be deobligated and other sanctions may be imposed.

§ 578.109 Closeout.

(a) *In general.* Grants will be closed out in accordance with the requirements of 24 CFR parts 84 and 85, and closeout procedures established by HUD.

(b) *Reports.* Applicants must submit all reports required by HUD no later than 90 days from the date of the end of the project's grant term.

(c) *Closeout agreement.* Any obligations remaining as of the date of the closeout must be covered by the terms of a closeout agreement. The agreement will be prepared by HUD in consultation with the recipient. The agreement must identify the grant being closed out, and include provisions with respect to the following:

(1) Identification of any closeout costs or contingent liabilities subject to payment with Continuum of Care program funds after the closeout agreement is signed;

(2) Identification of any unused grant funds to be deobligated by HUD;

(3) Identification of any program income on deposit in financial institutions at the time the closeout agreement is signed;

(4) Description of the recipient's responsibility after closeout for:

(i) Compliance with all program requirements in using program income on deposit at the time the closeout agreement is signed and in using any other remaining Continuum of Care program funds available for closeout costs and contingent liabilities;

(ii) Use of real property assisted with Continuum of Care program funds in accordance with the terms of commitment and principles;

(iii) Use of personal property purchased with Continuum of Care program funds; and

(iv) Compliance with requirements governing program income received subsequent to grant closeout.

(5) Other provisions appropriate to any special circumstances of the grant closeout, in modification of or in addition to the obligations in paragraphs (c)(1) through (4) of this section.

Dated: June 28, 2012.

Mark Johnston,

Assistant Secretary for Community Planning and Development (Acting).

[FR Doc. 2012-17546 Filed 7-30-12; 8:45 am]

BILLING CODE 4210-67-P

July 18, 2013

Board of Commissioners
 Clackamas County

Members of the Board:

Approval of an Intergovernmental Agreement with the State of Oregon, Department of Housing and Community Services to Administer Community Resource Division Funds which Funds a Variety of Social Services Programs

Propose/ Outcomes	Approval of an Intergovernmental Agreement with the State of Oregon, Department of Housing and Community Services (OHCS) to administer OHCS Community Resources Division (CRD) funds
Dollar Amount and Fiscal Impact	The grant funds available to County through OHCS are subject to approval of the State's budget. However, it is anticipated that this grant will result in an award equal to the previous award, which was slightly more than \$5.6 million dollars in revenues for the one-year grant period.
Funding Source	State of Oregon, Department of Housing and Community Services (OHCS), OHCS Community Resources Division (CRD) funds
Safety Impact	None
Duration	July 1, 2013 to June 30, 2014
Previous Board Action	022813-A1. Approval to Apply for this grant was approved on February 28, 2013
Contact Person	Brenda Durbin, Director, Social Services Division - 503-655-8641
Contract No.	6296

Background

The Social Services Division of the Health, Housing & Human Services Department requests the approval of an Intergovernmental Agreement with OHCS, to administer CRD funds which support a variety of social services programs. The agreement, better known as the "Master Grant Agreement" (MGA), between OHCS and Clackamas County for Fiscal Year 2013/2014, covers all funding sources (both federal and state) from the State of Oregon, Department of Housing & Community Services. As in previous agreements, this agreement outlines the obligations of the County for receiving these funds. The program and funding pieces included in this agreement are as follows:

Community Services Block Grant (CSBG): Federal funds designed to provide services to low-income individuals, including frail elderly, disabled citizens.

State Homeless Assistance Program (SHAP): State of Oregon general funds designed to provide support to emergency shelter programs. In Clackamas County these funds purchase shelter space at two emergency shelters; the shelter for survivors of domestic violence and their children operated by

Clackamas Women's Services; and the shelter for families with children, the Annie Ross House emergency shelter, operated by Northwest Housing Alternatives, Inc.

Emergency Housing Account Program (EHA): State of Oregon general funds that provide an array of housing and shelter related activities which have as their primary focus the permanent solution of a household's housing needs. Programs funded by this source include support to the Clackamas County emergency shelters, housing related information and referral services, case management services to low-income households, and shelter services to homeless youth.

Housing Stabilization Program (HSP): State of Oregon general funds that assist programs which secure stable housing for chronically homeless clients served, by the State of Oregon, Department of Human Resources, Adult and Family Services Division. Program activities will focus on establishing clean credit histories, facilitating client understanding of resident and landlord rights and obligations, and money management skills.

Low Income Rental Housing Fund (LIHRF): State of Oregon general funds that provide short-term rental assistance to very-low-income households who are in danger of losing their rental units because of involuntary hardship or homelessness. Program supported by this source includes Bridges to Housing (B2H) permanent housing program.

Low-Income Home Energy Assistance Program (LIHEAP): Federal funds designed to assist low-income households, with emphasis on elderly and disabled persons, with unpaid winter utility bills.

Oregon Energy Assistance Program (OEAP): Portland General Electric (PGE) generated funds that assist low-income households with assistance payments directed toward their PGE bills.

Low-Income Energy Assistance Weatherization Program and Department of Energy Weatherization Program (WX): These programs will be operated directly by the County's Weatherization program.

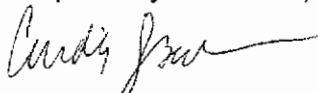
Issues

The MGA is late due to OHCS not being able to release the MGA until the application process was completed and all CRD Work Plans under this grant were approved by OHCS. The MGA was received from the OHCS on June 19, 2013 and required further review by Division, County Counsel and Risk Management. The MGA was approved by County Counsel on June 20, 2013. No County General Funds are involved.

Recommendation

We recommend the approval of this agreement and that Cindy Becker, Director of Health, Housing & Human Services is authorized to sign all documents necessary to accomplish this action on behalf of the Board of County Commissioners.

Respectfully submitted,



Cindy Becker, Director

MASTER GRANT AGREEMENT 13-14 # 3046

INTRODUCTION

This **2013 - 2014 Master Grant Agreement** (this "Agreement") is entered into by and between the State of Oregon, acting by and through its **Housing and Community Services Department**, together with its successors and assigns hereinafter referred to collectively as "OHCS" or "Department" and **Clackamas County Social Services**, an Oregon County Government, hereinafter referred to as "Subgrantee".

RECITALS

- A. Oregon Revised Statute ("ORS") chapters 456 and 458 authorize the Department to collaborate and cooperate with the community action agency network in providing community services programs in the state as a delivery system for federal and state antipoverty programs to promote outreach, communication, advancement, and related community services with respect to Department programs.
- B. ORS chapters 456 and 458 authorize the Department to receive and disburse funds made available for these purposes;
- C. Subgrantee has established and proposes, during the term of this Agreement, to operate or contract for the operation of the Departments programs in accordance with the federal and state regulations, rules, policies and procedures of the Department;
- D. OHCS has determined Subgrantee's Work Plan application request to provide community service programs and the activities, as hereinafter defined, are feasible and merit funding;

AGREEMENT

NOW THEREFORE, for good and sufficiency consideration, including the terms and conditions herein, it is agreed by and between the parties hereto as follows:

1. **Incorporation of Recitals.** The foregoing Recitals are incorporated herein by reference, provided, however, that the Recitals shall not be deemed to modify the express provisions hereinafter set forth.
2. **Effective Date and Duration.** This Agreement shall become effective **July 1, 2013**. Unless terminated earlier in accordance with its terms, or extended for time with a written amendment, this Agreement shall terminate on **June 30, 2014**.
3. **Consideration.** There is no guarantee of funding under this Agreement. The Grant funds available to Subgrantee through OHCS are contingent on OHCS receiving federal awards, state funds, and limitation. These Grant funds may be allocated by OHCS to Subgrantee upon availability to OHCS through the Notice of Allocation process, as later defined in this Agreement. Allocations will be made by OHCS in accordance with applicable Grant Program periods, funding formulas, or otherwise as applicable.
4. **Agreement Documents, Order of Precedence.** This Agreement consists of the following documents that are listed in descending order of precedence:
 - This Agreement less all Exhibits and Attachments;
 - Exhibit A - Definitions;
 - Work Plan Attachments (as applicable)
 - Exhibit B - Standard Terms and Conditions;
 - Exhibit C - Special Provisions;
 - Exhibit D - Federal Assurances;
 - Exhibit E - Oregon State Historic Preservation Office Agreement.

MASTER GRANT AGREEMENT 13-14 # 3046

All of the foregoing Exhibits are attached hereto and incorporated herein by this reference

5. CERTIFICATIONS AND SIGNATURE OF SUBGRANTEE'S AUTHORIZED REPRESENTATIVE.

THIS AGREEMENT MUST BE SIGNED IN INK BY AN AUTHORIZED REPRESENTATIVE OF SUBGRANTEE.

The undersigned certifies under penalty of perjury both individually and on behalf of Subgrantee that:

A. The undersigned is a duly authorized representative of Subgrantee, has been authorized by Subgrantee to make all representations, attestations, and certifications contained in this Agreement and to execute this Agreement on behalf of Subgrantee;

B. By signature on this Agreement for Subgrantee, the undersigned hereby certifies under penalty of perjury that the undersigned is authorized to act on behalf of Subgrantee and that Subgrantee is, to the best of the undersigned's knowledge, not in violation of any Oregon Tax Laws. For purposes of this certification, "Oregon Tax Laws" means a state tax imposed by ORS 320.005 to 320.150 and 403.200 to 403.250 and ORS chapters 118, 314, 316, 317, 318, 321 and 323 and the elderly rental assistance program under ORS 310.630 to 310.706 and local taxes administered by the Department of Revenue under ORS 305.620.

C. To the best of the undersigned's knowledge, Subgrantee has not discriminated against and will not discriminate against minority, women or emerging small business enterprises certified under ORS 200.055 in obtaining any required subcontracts.

D. Subgrantee and Subgrantee's employees and agents are not included on the list titled "Specially Designated Nationals and Blocked Persons" maintained by the Office of Foreign Assets Control of the United States Department of the Treasury and currently found at <http://www.treas.gov/offices/enforcement/ofac/sdn/t11sdn.pdf>; and

E. Subgrantee is bound by and will comply with all requirements, terms and conditions contained in this Agreement.

Subgrantee (print Subgrantee's name): Clackamas County

Authorized Signature: _____ Date: _____

By (print name): Cindy Becker Title: Director, Health, Housing & Human Services

Contact Telephone Number: 503-650-5696 Contact Fax Number: 503-655-8677

Contact E-Mail Address: CBecker@clackamas.us

Subgrantee Address: P.O. Box 2950

Contact Person (Type or Print): Brenda Durbin

Contact Telephone Number: 503-655-8641 Contact Fax Number: 503-655-8889

Contact E-Mail Address: BrendaDur@clackamas.us

Hours of Operation: Monday-Thursday 7:00 a.m. - 6:00 p.m.

DUNS #: 096992656 Secretary of State Business Registry #: _____

Fiscal Contact Name: Jennifer Snook Title: Administrative Analyst

Phone #: 503-655-8760

MASTER GRANT AGREEMENT 13-14 # 3046

6. SIGNATURE OF STATE'S AUTHORIZED REPRESENTATIVE.

State of Oregon acting by and through its
Housing and Community Services Department
725 Summer Street NE Suite B, Salem, OR 97301

Authorized Signature: _____
Margaret Van Vliet, Director or designee Date

Agency Contact Person: Julie Cody

Contact Telephone Number: 503-986-2106

Fax Number: 503-986-2006

E-Mail Address: Julie.cody@hcs.state.or.us

DEPARTMENT OF JUSTICE

Approved for Legal Sufficiency by: D. Kevin Carlson, Senior Assistant Attorney General (via email)

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MASTER GRANT AGREEMENT 2013-2014

EXHIBIT A

DEFINITIONS

As used in this Agreement, the following words and phrases shall have the indicated meanings. Certain additional words and phrases are defined in the Program Element descriptions. When a word or phrase is defined in a particular Program Element description, the word or phrase shall not necessarily have the ascribed meaning in any part of the Agreement other than the particular Program Element description in which it is defined.

1. **“Agreement”** means this 2013-2014 Master Grant Agreement for the delivery of federal and state antipoverty programs.
2. **“Allowable Costs”** means the cost described in the OMB Circulars except to the extent such costs are limited or excluded by other provisions of the Agreement, whether in the applicable NOAs, Program Elements, or otherwise.
3. **“Client”** means, with respect to a particular Program Element, any individual who is receiving those program services for or through the Subgrantee.
4. **“DBRA”** means the Davis-Bacon and Related Acts.
5. **“Department”** means Oregon Housing and Community Services Department or “OHCS”.
6. **“Disallowance of Costs”** means money disbursed to Subgrantee by Department under this Agreement and expended by Subgrantee that:
 - a. Is identified by the Federal Government as expended contrary to applicable statutes, rules, OMB Circulars or any other authority that governs the permissible expenditure of such money, for which the Federal Government has requested reimbursement by the Department and whether in the form of federal determination of improper use of federal funds, a federal notice of disallowance, or otherwise; or
 - b. Is identified by the Department as expended in a manner other than that permitted by this Agreement, including without limitation, any money expended by Subgrantee, contrary to applicable statutes, rules, OMB Circulars or any other authority that governs the permissible expenditure of such money; or
 - c. Is identified by the Department as expended on the delivery of a Program Element service that did not meet the standards and requirements of this Agreement with respect to that service.
7. **“Federal Funds”** means all funds paid to Subgrantee under this Agreement that Department receives from an agency, instrumentally or program of the Federal Government of the United States.
8. **“NOA”** means Notice of Allocation which is issued by the Department to Subgrantee to award, distribute, or recapture Grant funds under this Agreement as they are requested, come available, or are revoked under a program.
9. **“PWR”** means the prevailing wage rates as set forth by US Department of Labor or the Oregon Bureau of Labor and Industry.
10. **“Remedies”** has the meaning set forth in Exhibit B, section 15.

14. **“RFF” or “Request for Funds”** means the Subgrantee’s request for reimbursement of allowable expenses incurred and costs to carry out the delivery of the grant programs and services.
15. **“Subaward”** means an award of financial assistance made under an award by the Subgrantee to an eligible subrecipient or by a subrecipient to a lower tier subrecipient.
16. **“Subcontract”** means a contractual agreement between the Subgrantee and a vendor for the purpose of providing goods or services for a program under this Agreement.
17. **The Program Element Descriptions define Subgrantee** as *the public or private nonprofit organization which has entered into this Agreement with OHCS to administer (here we name the specific program element so for this one we might want to say) program elements at the local level within the designated service area. Not sure what to do with this and if the DOJ is aware that they are currently described differently in the separate parts of the MGA.*
18. **“Subrecipient”** means an entity that is a state or local government, nonprofit organization, or for-profit organization that expends awards received by Subgrantee from the Department under this Agreement to carry out a program(s).
19. **“Vendor”** means a dealer, distributor, merchant or other provider or contractor of goods or services that are needed to administer a federal program. The goods or services may be for an entity’s own use or for the use of beneficiaries of the federal program.
20. **“Program Element”** means any one of the following programs or group of related programs as described in the Attachments, whose costs are covered in whole or in part with financial assistance that Department pays to Subgrantee pursuant to this Agreement:

Program Element Name	Attachment #
Community Services Block Grant (CSBG)	PE 01
Emergency Solutions Grant (ESG)	PE 02
Emergency Housing Account (EHA)	PE 03
State Homeless Assistance Program (SHAP)	PE 04
Housing Stabilization Program (HSP)	PE 05
HOME Tenant Based Assistance (HTBA)	PE 06
Low Income Rental Housing Fund (LIRHF)	PE 07
Commodity Supplemental Food Program (CSFP)	PE 08
Food Distribution Program on Indian Reservations (FDPIR)	PE 09
Oregon Hunger Response Fund	PE 10
The Emergency Food Assistance Program (TEFAP)	PE 11
Low Income Home Energy Assistance Program (LIHEAP)	PE 12
LIHEAP Weatherization Assistance Program (LIHEAP WX)	PE 13
Oregon Energy Assistance Program (OEAP)	PE 14
Bonneville Power Administration Weatherization Program (BPA)	PE 15
Department of Energy Weatherization Assistance Program (DOE WAP)	PE 16
Low Income Weatherization Assistance Program (DOE WAP)	PE 17
Energy Conservation Helping Oregonians (ECHO)	PE 18

MASTER GRANT AGREEMENT 2013-2014

EXHIBIT B

STANDARD TERMS AND CONDITIONS

1. Notice of Allocation; Work Plan Approval.

There is no guarantee of funding under this Agreement. Grant funding for applicable Grant Program Work Plans will be allocated to Subgrantee by OHCS through a Notice(s) of Allocation ("NOA") issued in accordance with federal awards and pursuant to the terms of this Agreement.

Funding for applicable Work related to specific Work Plans is contingent, without limitation, upon Subgrantee's submission to OHCS of corresponding Work Plans satisfactory to OHCS and upon OHCS' review and approval, at its sole discretion, of such Work Plans. Approvals by OHCS of Work Plans will be provided to Subgrantee in the form of one or more NOA to Subgrantee. Subgrantee shall be subject to, and comply with, all NOA terms regarding related approved Work Plans.

Grant funds may derive from federal, state, and private sources, are subject to the terms under which they are received and shall be provided by OHCS only for reimbursement of allowable costs incurred by Subgrantee within the terms and conditions of this Agreement, specific program requirements (including OHCS directives), and applicable law.

2. Funding Appropriation.

Funds specified in the Consideration section of this Agreement or otherwise may include funds which have not yet been appropriated, but which OHCS anticipates receiving for use in funding this Agreement and is not a guarantee that Subgrantee will receive all of such funds. Any and all disbursements of funds hereunder are contingent upon them being lawfully and fully appropriated, allocated, and available to OHCS. Subgrantee's obligation to perform the Work related to a particular NOA is conditioned upon OHCS receiving corresponding Grant funds or other funds available for reimbursement of such Work expenditures.

3. Notices of Allocation (NOA).

OHCS will issue one or more NOA, as appropriate, in form satisfactory to OHCS, detailing the amount of funds available to Subgrantee under this Agreement. OHCS may, at its option, modify any approved NOA to reflect changes pursuant to Section 7, to correct errors in an NOA, to adjust Grant funds awarded under this Agreement in response to the receipt by Subgrantee of other funds or to reflect the exercise of remedies or other discretionary acts by OHCS under this Agreement or otherwise. The modification or termination of an NOA by OHCS does not terminate OHCS remedies with respect to Subgrantee's performance or non-performance of obligations that were due under this Agreement with respect to Work related to said NOA. At the option of OHCS, OHCS may issue any NOA to Subgrantee (or any modification or termination thereof) by email, fax, or first class mail at the address or number listed in sections 5 and 6 of the Agreement.

The Grant funds specified in an applicable NOA may be used to pay costs incurred during the specific expenditure periods and in the specific expenditure categories noted in the NOA provided, however, that all performance by the Subgrantee for which Grant fund reimbursement will be sought under this Agreement must be in compliance with this Agreement, including any amendments hereof.

4. Acceptance of Notices of Allocation (NOA).

Any NOA issued by OHCS under this Agreement is immediately binding upon the Subgrantee as to the amount of Grant funds available to Subgrantee under this Agreement with respect to related Work Plans. Subgrantee shall be obligated to perform Work obligations related to the NOA and corresponding Work Plans immediately upon its acceptance of same consistent with this Agreement. An accepted NOA shall be deemed to be incorporated into and constitute a part of this Agreement.

Unless earlier accepted by the Subgrantee in writing, the Subgrantee accepts an NOA as issued, and agrees to be bound by same (including modifications thereto), upon undertaking any performance of related Work.

5. Rollover Funds From a Prior Grant Agreement.

Subject to state and federal restrictions, Subgrantee may request in writing that grant authority allocated but not expended under a prior Master Grant Agreement, be allocated under this Agreement as an award of "rollover" Grant funds.

Subject to state and federal restrictions, OHCS may, at its sole and absolute discretion, approve any award of rollover grant funds from a prior Grant Agreement. Any rollover Grant funds shall be subject to all terms and conditions of this Agreement - and shall be subject to such terms and conditions of the prior Grant Agreement as OHCS may specify in its rollover approval.

Any request for an award of rollover Grant funds by Subgrantee must be made in form and content satisfactory to OHCS.

6. Requests for Funds.

Subgrantee shall request funds in such form and manner as is satisfactory to or required by OHCS. Further, in accordance with U.S. Department of Treasury Regulations, 31 CFR Part 205, implementing the Cash Management Improvement Act, Subgrantee shall limit any request for funds to the minimum amount needed to accomplish its described purposes and to time the request in accordance with the actual, immediate requirements in carrying out grant programs to be funded through the request for funds.

7. Remedies Related to Requests for Funds.

a. Withholding of Funds from Request.

OHCS may withhold any and all requested funds from Subgrantee under this Agreement if OHCS, in its sole discretion, determines that Subgrantee has failed to timely satisfy any material obligation arising under this Agreement or otherwise. Subgrantee obligations include, but are not limited to providing complete, accurate and timely reports satisfactory to OHCS about its performance under this Agreement as well as timely satisfying all Agreement obligations, including federal requirements relating to any awarded grant funds. OHCS also may withhold any and all requested funds from Subgrantee if OHCS, in its sole discretion, determines that the rate of requests for funds in any expenditure category is substantially different from approved budget submissions.

b. Redistribution or Retention of Funds.

Due to non-timely use.

If grant funds are not obligated for reimbursement by Subgrantee in a timely manner as determined by OHCS at its sole discretion, OHCS may at its sole discretion, reduce Subgrantee funding and redistribute such funds to other Subgrantees or retain such funds for other OHCS use. OHCS may implement adjustments pursuant to this subsection by modifying the applicable NOA. This remedy is in addition to any other remedies available to OHCS under this Agreement or otherwise.

2) Due to "substantial difference" in expenditure category from Approved Budget Submissions.

If the rate of request for any expenditure category is substantially different than in approved budget submissions as determined by OHCS at its sole discretion, OHCS may, at its sole discretion, reduce and redistribute or retain any and all funds otherwise available to Subgrantee under this Agreement. OHCS may implement adjustments pursuant to this subsection by modifying the applicable NOA. This remedy is in addition to any other remedies available to OHCS under this Agreement or otherwise.

c. Repayment of Excess Disbursed Funds.

1) Due to Modified NOA.

If Grant funds previously disbursed by OHCS to Subgrantee exceed a relevant modified NOA amount and remain unexpended by Subgrantee, Subgrantee shall not expend any such excess Grant funds. Subgrantee, instead, shall return any remaining unexpended Grant funds in excess of the modified NOA to OHCS within 60 calendar days of the modified NOA unless another use of such funds is authorized in writing by OHCS. This remedy is in addition to any other remedies available to OHCS under this Agreement or otherwise.

2) Due to Overpayment.

If OHCS makes an overpayment of Grant funds to Subgrantee in response to one or more funds requests, whether or not the underlying request(s) were inaccurate, Subgrantee shall repay such overpayment within 60 calendar days of its discovery by Subgrantee or upon notice by OHCS, unless OHCS in writing designates an earlier time for repayment or authorizes another use by Subgrantee of such overpayment. This remedy is in addition to any other remedies available to OHCS under this Agreement or otherwise.

8. Termination.

- a. OHCS may immediately terminate this Agreement in whole or in part upon written notice to the Subgrantee for cause related to any material misrepresentation, malfeasance, gross negligence, abandonment of performance or loss of authority to perform any of its obligations hereunder by Subgrantee, whether directly by Subgrantee or through one or more of its subrecipients, agents, subcontractors, successors or assigns, as determined by OHCS in its sole discretion.
- b. OHCS may, upon 30 days written notice, terminate this Agreement in whole or in part for cause including, but not limited to events described above in subsection 8.a. Cause may include any event, including an event of default, as determined by OHCS in its sole discretion that renders inappropriate the continuation of this Agreement or any part hereof. An event of default constitutes an act or omission by Subgrantee, its subrecipients, agents, representatives, contractors, or assigns by which Subgrantee, as determined by OHCS at its sole discretion, fails to timely perform one or more material obligations, or otherwise breaches a duty, owed to OHCS under this Agreement. Such events and events of default may include, but are not limited to an occurrence of any of the following:
 - 1) Subgrantee fails to fulfill timely any of its obligations under this Agreement;
 - 2) Subgrantee fails to comply timely with directives received from OHCS or from an agency that is the original source of the grant funds;
 - 3) Funds provided under this Agreement are used improperly or illegally by Subgrantee or any of its subrecipients;
 - 4) Funding for any or all grant programs relevant to this Agreement are denied, suspended, reduced or eliminated;
 - 5) Federal or state laws, regulations or guidelines are modified or interpreted in such a way that OHCS is prohibited from paying for or lacks authority to pay for any Work performance under this Agreement or to pay for any such performance from the planned funding source(s);
 - 6) Funding, appropriations, limitations or expenditure authorization to expend funds is denied, suspended, reduced or eliminated;
 - 7) Any certification, license or certificate required by law to be held by Subgrantee or others to provide the services required by this Agreement is for any reason denied, revoked, suspended, limited or not renewed;

- 8) Subgrantee (a) applies for or consents to the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or its property, (b) admits in writing its inability, or is generally unable, to pay its debts as they become due, (c) makes a general assignment for the benefit of its creditors, (d) commences a voluntary case under the federal Bankruptcy Code (as now or hereafter in effect), (e) is adjudicated as bankrupt or insolvent, or (f) fails to controvert in a timely or appropriate manner, or agrees in writing to, an involuntary petition for bankruptcy;
 - 9) Subgrantee is suspended, debarred, proposed for debarment, declared ineligible or voluntarily excluded from participating in agreements or contracts with any federal department or agency.
- c. Subgrantee may, upon 30 days written notice, terminate this Agreement in whole or in part, if:
- 1) OHCS unreasonably fails to provide timely funding hereunder and does not correct such failure within the 30-day notice period; or.
 - 2) OHCS provides one or more material directives which are contrary to federal or state laws, rules, regulations, guidelines, or original funding source requirements and does not correct such directives within the 30-day notice period.
- d. Either party may terminate this Agreement in whole or in part immediately upon written notice to the other party if Oregon statutes or federal laws, regulations or guidelines are modified, changed or interpreted by the Oregon Legislative Assembly, the federal government or a competent court (in a final determination) in such a way that one or both parties no longer has the authority to meet its obligations under this Agreement.
- e. Upon issuance of any notice to terminate this Agreement and prior to the effective date of the termination, OHCS may, in its sole and absolute discretion, require that Subgrantee obtain prior OHCS approval from it for any additional expenditures that would obligate OHCS to reimburse it from Agreement grant funds or otherwise.
- f. Notwithstanding the above, or any termination thereunder, neither Subgrantee nor OHCS shall be relieved of its liability to the other party for damages sustained by virtue of its breach of this Agreement. OHCS may withhold any reimbursement to Subgrantee in the amount of compensation for damages due OHCS from Subgrantee (as estimated by OHCS in its sole discretion) until such time as the exact amount of damages has been agreed upon or otherwise finally determined.
- g. In the event of termination of this Agreement by either party, all unexpended money, property, finished or unfinished documents, data, financial reports, audit reports, program reports, studies and reports purchased or prepared by Subgrantee under this Agreement shall be delivered to OHCS within sixty (60) days of the date of termination or upon such date as requested by OHCS.
- h. Termination of this Agreement shall not impair or invalidate any remedy available to OHCS or to Subgrantee hereunder, at law, or otherwise.

9. Compliance.

Both parties shall, and Subgrantee shall require and cause (including by contract) all subrecipients, contractors, agents and assigns to comply with this Agreement, including applicable federal, state, and local laws, rules, regulations, and guidelines as well as OHCS directives with respect to any of its obligations related to grant programs funded under this Agreement or for which requests for funding are made, whether or not any such requirement described herein or listed within the respective Work Plan, particularly the Federal Funding Accountability and Transparency Act (FFATA) of 2006 (P.L. 109-282), provisions of which include but may not be limited to a requirement for Subgrantees and subrecipients to have a Data Universal Numbering System (DUNS) number and to maintain a current registration in the Central Contractor Registration (CCR) database. Both parties shall, and Subgrantee shall require and cause its subrecipients to, comply with such requirements whether or not such requirements exist at the time this Agreement is executed, or arise subsequent to the execution of this Agreement. Performance by both parties of their respective obligations hereunder must be made efficiently, effectively and within applicable program timelines.

Subgrantee shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Agreement. Without limiting the generality of the foregoing, Subgrantee expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable to the Agreement: (i) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990, as amended; (iv) Executive Order 11246, as amended; (v) the Health Insurance Portability and Accountability Act of 1996; (vi) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vii) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (viii) ORS Chapter 659, as amended; (ix) all regulations and administrative rules established pursuant to the foregoing laws; and (x) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Agreement and required by law to be so incorporated. Subgrantee shall, to the maximum extent economically feasible in the performance of this Agreement, use recycled paper (as defined in ORS 279A.010(gg)), recycled PETE products (as defined in ORS 279A.010(hh)), and other recycled products (as "recycled product" is defined in ORS 279A.010(ii)).

10. Governing Law; Venue; Consent to Jurisdiction.

This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") involving OHCS that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon or, if necessary, the United States District Court for the District of Oregon. THE PARTIES, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENT TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

Except as provided in this section neither party waives any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. The parties acknowledge that this is a binding and enforceable agreement and, to the extent permitted by law, expressly waive any defense alleging that either party does not have the right to seek judicial enforcement of this Agreement.

11. Confidentiality.

Subgrantee shall, and shall require and cause its subrecipients to protect the confidentiality of all information concerning applicants for and recipients of services funded by this Agreement. It shall not release or disclose any such information except as necessary for the administration of the program(s), as authorized in writing by the applicant or recipient or as required by law. All records and files shall be appropriately secured to prevent access by unauthorized persons.

Subgrantee shall, and shall require and cause its subrecipients to ensure that all its officers, employees and agents are aware of and comply with this confidentiality requirement.

12. Monitoring Required.

a. OHCS Authorized to Monitor Each Subgrantee.

OHCS may monitor the activities of each Subgrantee and its subrecipients as it deems necessary or appropriate, among other things, to ensure Subgrantee and its subrecipients comply with the terms of this Agreement and that grant fund awards are used properly for authorized purposes hereunder OHCS also may ensure that performance goals are achieved as specified in this Agreement, including without limitation in the Scope of Work, related Program Elements, Work Plans and Budgets referenced in Exhibit A. Monitoring activities may include any action deemed necessary or appropriate by OHCS including, but not limited to the following: (1) the review (including copying) from time to time of any and all Subgrantee and subrecipient(s) files, records and other information of every type arising from or related to performance under this Agreement; (2) arranging for, performing, and evaluating general and limited scope audits; (3) conducting or arranging for on-site and field visits and inspections; (4) review of Subgrantee fiscal and program reports prior approval documentation; and (5) evaluating, training,

providing technical assistance and enforcing compliance of Subgrantee, subrecipient(s), and their officers, employees, agents, contractors and other staff. OHCS may utilize third parties in its monitoring and enforcement activities, including monitoring by peer agencies. OHCS monitoring and enforcement activities may be conducted in person, by telephone and by other means deemed appropriate by OHCS and may be effected through contractors, agents or other authorized representatives. Subgrantee consents to such monitoring and enforcement by OHCS and agrees to cooperate fully with same, including requiring by agreement and causing that its subrecipients so cooperate.

OHCS reserves the right, at its sole and absolute discretion, to request assistance in monitoring from outside parties including, but not limited to the Oregon Secretary of State, the Attorney General, the federal government, and law enforcement agencies.

b. Subgrantee Shall Fully Cooperate.

Subgrantee shall fully and timely cooperate with OHCS in the performance of any and all monitoring and enforcement activities. Failure by Subgrantee or any of its subrecipients to comply with this requirement is sufficient cause for OHCS to require special conditions and may be deemed by OHCS as a failure by the Subgrantee to perform its obligations under this Agreement.

c. Subgrantee Shall Monitor Its Subrecipients.

Subgrantee shall perform onsite visits to monitor the activities of its subrecipients as specified by applicable grant program requirements or otherwise directed by OHCS, but in no case less than at least once during the term of this Agreement, and not later than the third quarter of the term of this Agreement (unless otherwise approved in writing by OHCS) to ensure that grant funds are used for authorized purposes in compliance with this Agreement, including but not limited to specific program requirements, and that performance goals are achieved as specified in the Scope of Work.

13. Monitoring.

- a. OHCS generally will advise the Subgrantee as to its observations and findings generated by any on-site visit; usually through an exit interview. Within 60 days after an on-site inspection, OHCS will endeavor to provide Subgrantee with a written report as to its findings from that inspection. OHCS may advise the Subgrantee of any corrective action that it deems appropriate based upon its monitoring activities or otherwise. Subgrantee shall timely satisfy such corrective actions required by OHCS.
- b. OHCS may review (including copying) from time to time any and all Subgrantee and subrecipient(s) files, records, and other information of every type arising from or related to performance under this Agreement. Within 60 days after a review, OHCS will endeavor to communicate in writing to the Subgrantee. OHCS may advise the Subgrantee of any corrective action that it deems appropriate based upon its monitoring activities or otherwise. Subgrantee shall timely satisfy such corrective actions as reasonably required by OHCS.

14. Monitoring: Major Findings Resolution.

OHCS may track and follow up with Subgrantee regarding the correction by Subgrantee of findings made or other corrective actions required in OHCS' monitoring of Subgrantee's performance under this Agreement. The tracking record developed by OHCS may include, without limitation: findings, corrective actions, deliverables, due dates, responsible parties, actions taken, and final resolution. Subgrantees shall resolve findings and other required corrective actions within the timeframes reasonably given by OHCS by written report or otherwise.

15. Remedies.

- a. If OHCS determines, in its sole discretion, that Subgrantee has failed to comply timely with any material obligation under this Agreement, including but not limited to any OHCS directive or term of a corrective

action plan, OHCS may exercise any remedy available to it under this Agreement, applicable law, or otherwise. Such remedies may include, but are not limited to: (a) terminating any part or all of this Agreement; (b) modifying any NOA under this Agreement; (c) withholding and/or reducing grant funds; (d) disallowing costs; (e) suspending and/or recouping payments; (f) appointing a receiver for the receipt and administration of grant funds under this Agreement; (g) requiring corrective action as it may determine to be appropriate; (h) bringing suit or action in an appropriate forum for the enforcement of this Agreement and any remedy, as well as the recovery of damages, including by temporary restraining order, injunction, specific performance or otherwise; (i) debarring or otherwise limiting Subgrantee's eligibility for other funding from OHCS; (j) instituting criminal action for misstatements or fraud; and (k) requesting investigation, audit and/or sanction by other governmental bodies.

- b. The rights and remedies of OHCS provided in this Section shall not be exclusive and are in addition to any other rights and remedies provided under this Agreement, by law, or otherwise. This Section also does not limit Subgrantee's remedies provided under this Agreement, by law, or otherwise.
- c. No failure of or delay by OHCS to enforce any provision of this Agreement shall constitute a waiver by OHCS of that or any other provision, nor shall any single or partial exercise of any right, power or privilege under this Agreement preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege.
- d. Remedies provided under this Agreement or otherwise shall survive termination of this Agreement.

16. Return of Unexpended Funds at Program Final Expenditure Period End.

All unexpended cash or income from such funds remaining at the end of any program final period for any program(s) covered by this Agreement must be returned by Subgrantee to OHCS within the time allowed for using Grant funds requested under a Grant Program consistent with U.S. Department of Treasury regulations or other controlling law. Where not otherwise specified or restricted, Grant funds must be returned by Subgrantee to OHCS within Sixty (60) days following the expiration of the Grant Programs' expenditure period or the termination of this Agreement, whichever occurs first.

17. Expenditures Properly Supported.

Expenditures and requests for grant funds shall be supported by Subgrantee with properly executed payroll and time records, invoices, contracts, vouchers, orders, canceled checks and/or any other accounting documents pertaining in whole or in part to the Agreement (or in the case of subrecipients, under their respective contracts with Subgrantee) in accordance with generally accepted accounting principles and applicable state and federal requirements, including as specified herein. OHCS may require such other information as it deems necessary or appropriate in its sole discretion.

18. Unallowable Costs and Lobbying Activities.

Subgrantee shall review and comply with the allowable costs and other provisions applicable to expenditures under the particular grant programs covered by this Agreement. Subgrantee shall, among other obligations, comply with the provisions prohibiting the expenditure of funds for lobbying and related activities, whether in 2 CFR, Part 225 – Cost Principles for State, Local, and Indian Tribal Governments, 2 CFR, Part 230 – Cost Principles for Non-profit Organizations, or otherwise. If Subgrantee makes expenditures or incurs costs for purposes or an amount inconsistent with the allowable costs or any other provisions governing expenditures in an Agreement grant program, OHCS may exercise any and all remedies under this Agreement, at law or otherwise that it deems, in its sole discretion, to be necessary or appropriate.

19. Disallowance of Costs.

OHCS neither is responsible for nor shall it pay for any costs disallowed (a Disallowance of Costs) either upon request for reimbursement or as a result of any audit, review, or site visit or other disallowance action by OHCS except for costs incurred by Subgrantee solely due to the negligence of OHCS, its employees, officers or agents. If a cost is disallowed by OHCS after reimbursement has occurred, Subgrantee shall repay all disallowed costs to OHCS upon written notice within

the time frame specified by OHCS, which in no event shall exceed thirty (30) days.

If Subgrantee is a county, such disallowed costs may be recovered by OHCS only through repayment, withholding or by other means authorized by this Agreement or otherwise allowable at law not inconsistent with the Oregon Constitution, and particularly Article XI, Section 10. If Subgrantee is other than a county, OHCS may recover such disallowed costs through repayment, withholding, offset or other means permitted under this Agreement, by law or otherwise.

Subgrantee shall cooperate and shall cause its subrecipients to cooperate with OHCS and all appropriate investigative agencies and shall assist in recovering invalid payments.

20. Records Maintenance.

Subgrantee shall, and shall require and cause its subrecipients to, prepare and maintain such records as necessary for performance of and compliance with the terms of this Agreement.

The Subgrantee and its subrecipients shall retain all records pertinent to expenditures incurred under this Agreement and otherwise in a manner consistent with the requirements of state and federal law, including but not limited to those requirements listed in OHCS' Record Retention Schedule, as may be modified from time to time. Notwithstanding the above, if there is litigation, claims, audits, negotiations or other action that involves any of the records cited, then such records must be retained until final completion of such matters.

21. Records Access.

OHCS, the Oregon Secretary of State's Office, the federal government and the duly authorized representatives of such entities shall have free access to and the right to copy all or any part of the books, documents, papers, audits and records of Subgrantee and its subrecipients which are related to this Agreement as they deem appropriate, including without limitation, for the purpose of making audit, examination, excerpts, and transcripts. These records are the property of OHCS who may take possession of them at any time after three (3) business days' notice to Subgrantee or subrecipient, as the case may be. Subgrantee or subrecipient may retain copies of all records taken by OHCS under this Section.

In its agreements with subrecipients, Subgrantee shall require and cause its subrecipients to comply with the requirements of this Section and to grant right of access to and ownership by OHCS of the subrecipient's books and records related to this Agreement.

22. Audits.

Subgrantee shall, and shall require and cause its subrecipients to, submit to OHCS satisfactory financial and compliance audits for the periods covered by the grants in accordance with the provisions of OMB Circular No. A-133 "Audits of States, Local Governments, and Non-Profit Organizations."

OHCS may withhold any or all requested funds from Subgrantee if Subgrantee violates this provision and OHCS may deem such failure as a material default and exercise any available remedy under this Agreement, including without limitation, termination of this Agreement.

23. Fixed Assets.

Subgrantee shall, and shall cause its subrecipients to, maintain policies and procedures for property management that comply with all requirements of the applicable Code of Federal Regulations, OMB Circulars, and specific requirements of the source of funds. The following practices are in addition to those otherwise required:

a. High Risk Items.

Fixed assets with a high risk of loss include all computer equipment, electronic equipment, photography equipment, hand tools and any other items Subgrantee may identify as at risk. Fixed assets that are deemed to have a high risk of loss must be labeled, recorded on an inventory tracking system, and inventoried at least once a year.

b. Automobiles.

All automobiles, regardless of value, purchased in whole or in part with funds provided under this Agreement shall be the property of Subgrantee; provided however that OHCS is hereby granted a security interest in all such automobiles and the proceeds thereof and shall be noted as the security interest holder on the certificates of title. The original certificates of title to all such automobiles shall be delivered to and remain on file at OHCS. In its agreements with its subrecipients, Subgrantee shall prohibit its subrecipients from using funds provided thereunder to purchase any automobiles.

c. Insurance.

Subgrantee shall, at a minimum, provide the insurance coverage required by Oregon Revised Statute for automobiles and or equipment requiring registration through Oregon Department of Transportation, Department of Motor Vehicles that has been acquired in whole or in part with funds provided under this Agreement owned by Subgrantee with OHCS named as a security interest in all such automobiles and or equipment, and a copy of the insurance certificates to all such automobiles and or equipment shall be delivered to and remain on file at OHCS. In its agreements with its subrecipients, Subgrantee shall require and cause its subrecipients to comply with the requirements of this Section.

d. Loaned Equipment / Property Disposition.

All fixed assets owned by OHCS and loaned to Subgrantee under a standard agreement will remain the property of OHCS, regardless of their value. The disposition of all loaned equipment shall be readily available.

e. Disposal Requiring Prior Approval.

When Subgrantee wishes to dispose of a fixed asset in which OHCS has a security or insurance interest or when Subgrantee or a subrecipient wishes to dispose of a fixed asset having an original cost of more than \$5,000, Subgrantee shall submit a letter requesting OHCS' consent to do so addressed to the Financial Operations Manager with a copy to the appropriate Program Coordinator. If OHCS consents, OHCS Program Coordinator will provide instructions regarding the method of disposition. OHCS reserves the right to refuse to consent to such disposal and the right to object to the timing of such disposition. Such disposition, if permitted, shall be done in a manner consistent with the property management standards for equipment of the agency from which the original funding was received. In the case of mixed funding sources, the most restrictive standards shall apply.

24. Insurance and Workers Compensation.

Grantee will provide all necessary General Liability and Automotive insurance required by Oregon Law to perform services under this Grant Agreement, and provide proof of coverage upon request of Agency.

Grantee and all employers providing work, labor, or materials under this Agreement are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage that satisfies Oregon law for all of their subject workers. Out-of-state employers must provide Oregon worker's compensation coverage for their workers who work at a single location within Oregon for more than 30 days in a calendar year or who otherwise constitute "subject workers" under Oregon law.

25. Dual Payment.

Subgrantee shall not be compensated for work performed under this Agreement from any other department of the State of Oregon, nor from any other source, including the federal government, unless such funds are used solely to increase the total services provided under this Agreement. Any additional funds received through or for activities arising under this Agreement shall immediately be reported to OHCS.

26. Third Party Beneficiaries.

OHCS and Subgrantee are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

27. Notices.

Except as otherwise expressly provided in this Agreement, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, email, facsimile, or mailing the same, postage prepaid, or other written instrument, to Subgrantee or OHCS at the address or number set forth in this Agreement, or to such other addresses or numbers as either party may hereafter indicate pursuant to this Section; provided however that any notice of termination hereunder shall be given by certified or registered mail, return receipt requested. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing. Any communication or notice delivered by facsimile or email shall be deemed to be given when receipt of the transmission is generated by the transmitting machine. To be effective against OHCS, such facsimile transmission must be confirmed by telephone notice to OHCS' primary contact. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.

28. Subgrantee Status.

- a. Subgrantee shall perform all work under this Agreement as an independent contractor. Subgrantee is not an officer, employee or agent of OHCS or the State, as those entities are respectively defined in ORS chapter 456 and in ORS 30.265, with respect to work performed under this Agreement.
- b. Subgrantee agrees that insurance coverage, whether purchased or by self-insurance, for Subgrantee's agents, employees, officers and/or subcontractors is the sole responsibility of Subgrantee.
- c. Subgrantee certifies that it is not employed by or contracting with the federal government for the work covered by this Agreement.
- d. Subgrantee certifies to the best of its knowledge and belief that neither the Subgrantee nor any of its principals, officers, directors or employees:
 - 1) Is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any federal department or agency;
 - 2) Has within a three-year period preceding this Agreement been convicted of or had a civil judgment rendered against it for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, State or local) transaction or contract related to a public transaction; violation of federal or State antitrust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property;
 - 3) Is presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in subsection d.(2) above; and
 - 4) Has within a three-year period preceding this Agreement had one or more public transactions (federal, State or local) terminated for cause or default.

29. OPUS System.

The OPUS system is a web-based application developed by OHCS. OPUS runs on an Oracle application server and database maintained by OHCS and accessed by OHCS and its subgrantees through the Internet (the "Site").

Subgrantee and its subrecipients shall enter all appropriate and/or necessary data into OPUS or other OHCS approved system at the time of client intake for all Federal, State, and private grant programs awarded by OHCS through this Agreement. OHCS will enter allocations to Subgrantee on a program by program expenditure category basis unless it determines otherwise. Exceptions are only allowed with prior written approval by OHCS.

a. OPUS Use.

As a condition of use of the Site, User (Subgrantee and its subrecipients) agrees to all OHCS terms and conditions, contained in this Agreement, placed as notices on the Site, or as otherwise directed by OHCS. User agrees to not use the Site for any unlawful purpose. OHCS reserves the right, at its discretion, to update or revise the OPUS terms of use. Use of the Site constitutes acceptance of the OPUS terms and conditions.

Use of the OPUS system for additional reported "local" program data is at the entity's own risk. OHCS shall not modify or otherwise create any screen, report or tool in the OPUS system primarily or solely to meet needs related to this local data.

b. OPUS Data Rights.

Subgrantee hereby grants and shall require and cause any subrecipient to grant OHCS the right to reproduce, use, display, adapt, modify, distribute, and promote the content in any form and disclose, as allowed by law, any or all of the information or data furnished to or received by OHCS directly or indirectly resulting from this Agreement. Subgrantee also shall use and shall require and cause its subrecipients to use OPUS Client Release forms and Privacy Policy forms (samples provided by OHCS) in connection with obtaining and transmitting client data.

c. OPUS Disclaimer of Warranties.

Subgrantee understands and agrees, and shall require its subrecipients to agree, that all materials, information, software, products and services included in or available through the OPUS Site (the "content") are provided "as is" and "as available" for use. The content is provided without warranties of any kind, either express or implied, including, but not limited to, implied warranties of merchantability, fitness for a particular purpose, or non-infringement. OHCS does not warrant that the content is accurate, reliable or correct; that this Site will be available at any particular time or location; that any defects or errors will be corrected; or that the content is free of viruses or other harmful components. Use of the OPUS Site is solely at the User's risk. User hereby accepts the risk of its use of the Site, and of the use of the Site by its subrecipients, and expressly waives any claims and causes of action against the State and OHCS.

d. OPUS Limitation of Liability.

The Subgrantee agrees that under no circumstances shall OHCS be liable for any direct, indirect, punitive, incidental, special, or consequential damages that result from the use of, or inability to use the OPUS Site. This limitation applies whether the alleged liability is based on contract, tort, negligence, strict liability or any other basis, even if OHCS has been informed of the possibility of such damage.

e. OPUS Indemnification.

Subject to applicable law, Subgrantee agrees, and shall require its subrecipients to agree, to defend, indemnify (consistent with ORS Chapter 180), and hold harmless OHCS and its employees, contractors, officers and directors from all liabilities, claims, and expenses, including attorney fees that arise from use or misuse of this site. OHCS reserves the right, at its own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by Subgrantee, in which event Subgrantee will cooperate with OHCS in asserting any available defenses.

30. Attorney Fees.

In the event a lawsuit of any kind is instituted on behalf of OHCS or the Subgrantee with respect to this Agreement, or any right or claim related thereto, including but not limited to the collection of any payment due under this Agreement or to obtain performance of any kind under this Agreement, the prevailing party is, to the extent permitted by law, entitled to its reasonable attorney fees incurred before and during trial, on appeal, in arbitration, in bankruptcy, and in such other forum or proceeding appropriate thereto, together with such additional sums as the court or hearings officer may adjudge for reasonable costs and disbursements incurred therein. Reasonable fees shall not exceed the rate charged to OHCS by

its attorneys.

31. Captions.

The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions of this Agreement.

32. Severability.

If any term or provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision thereof.

33. Execution and Counterparts.

This Agreement may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.

34. Grant Funds.

Grant funds are used in conjunction with this Agreement. Subgrantee assumes sole liability for breach of the conditions of the grant (including all terms and conditions of this Agreement) by Subgrantee or by any of its subrecipients, agents or assigns and shall, upon breach of grant conditions that require the State to return funds to the grantor, whether such breach is by Subgrantee or by any of its subrecipients, agents or assigns, hold harmless and indemnify the State for an amount equal to the grant funds received under this Agreement together with any additional damages resulting to OHCS; or if there are legal limitations on the indemnification ability of the Subgrantee, the indemnification amount shall be the maximum amount of funds available for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount of grant funds received under this Agreement.

35. Indemnity.

Subject to applicable law, Subgrantee shall, and shall require by contract that its subrecipients shall, defend, save, hold harmless, and indemnify (consistent with ORS Chapter 180) the State of Oregon and OHCS and their officers, employees and agents from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever resulting from, arising out of, or relating to the activities of Subgrantee or its officers, employees, subrecipients, subcontractors, or agents under this Agreement.

36. Merger Clause.

This Agreement, attached exhibits and resulting NOA constitute the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, other modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties and all necessary OHCS approvals have been obtained. Such waiver, consent, modification or change if made shall be effective only in the specific instance and for the specific purpose given.

37. Waiver.

The failure of either party to enforce any provision of this Agreement shall not constitute a waiver of that or of any other provision of this Agreement.

38. Time of the Essence.

Time is of the essence in the performance of any and all obligations under this Agreement.

39. No Limitations on Actions in Exercise of Governmental Powers.

Nothing in this Agreement is intended, nor shall it be construed, to in any way limit the actions of OHCS in the exercise of its governmental powers. It is the express intention of the parties hereto that OHCS shall retain the full right and ability to exercise its governmental powers with respect to the Subgrantee, the grant funds, and the transactions contemplated by this Agreement to the same extent as if it were not a party to this Agreement, and in no event shall OHCS have any liability in contract arising under this Agreement by virtue of any exercise of its governmental powers.

40. No Assignment by Subgrantee.

Subgrantee shall not assign its rights or obligations under this Agreement without the express written consent of OHCS. OHCS may assign its rights and obligations under this Agreement, including to a successor entity.

41. Amendments.

The Agency reserves the right to amend the Agreement and its Work Plans to, among other revisions: extend its term; modify, delete, or add any services, or any combination of the foregoing. The parties may not waive, supplement or amended the terms of the Agreement, in any manner whatsoever, except by written amendment signed by all parties and for which all necessary State of Oregon approvals have been obtained.

Changes to the Work Plan by the Subgrantee or by one or more of its subrecipients shall require the prior written approval of OHCS. Requests for and justification of any change must be submitted in writing to OHCS and be approved in writing by OHCS prior to commencement of the requested change. OHCS may supplement or modify the Work Plan as previously provided in this Agreement.

All federal terms and conditions included in this agreement at time of Original Agreement execution may be amended from time to time by the Federal Grantor or Regulator of Funds. These amendments to federal terms and conditions included in original agreement will be sent to Subgrantee and will become part of the original agreement without a formal amendment process. New Federal Terms and Conditions not included in the Original Agreement will follow the formal amendment process.

42. Oregon False Claims Act

- a. Grantee acknowledges that the Oregon False Claims Act, ORS 180.750 to 180.785, applies to any action or conduct by Grantee pertaining to this Agreement that constitutes a "claim" (as defined by ORS 180.750(1)). By its execution of this Agreement, Grantee certifies the truthfulness, completeness, and accuracy of any statement or claim it has made, it makes, it may make, or causes to be made that pertains to this Agreement. In addition to other liabilities that may be applicable, Grantee further acknowledges that if it makes, or causes to be made, a false claim or performs a prohibited act under the Oregon False Claims Act, the Oregon Attorney General may enforce the liabilities and penalties provided by the Oregon False Claims Act against Grantee.
- b. Without limiting the generality of the foregoing, Grantee represents and warrants that:
 - 1) Grantee's representations, certifications, and other undertakings in this Agreement are not False Claims Act Violations; and
 - 2) None of Grantee's performance under this Agreement, including but not limited to any invoices, reports, or other deliverables in connection with its performance of this Agreement, will constitute False Claims Act Violations.
- c. For purposes of this Section 2.F., a "False Claims Act Violation" means a false claim as defined by ORS 180.750(2) or anything prohibited by ORS 180.755.
- d. Grantee shall immediately report in writing, to Agency, any credible evidence that a principal, employee, agent, subcontractor, subgrantee, or other person has made a false claim or committed a prohibited act under the Oregon False Claims Act, or has committed a criminal or civil violation of laws pertaining to fraud, bribery, gratuity, conflict of interest, or similar misconduct in connection with this Agreement or any moneys paid under

this Agreement.

- e. Grantee understands and agrees that any remedy that may be available under the Oregon False Claims Act shall be in addition to any other remedy available to the State of Oregon or Agency under any other provision of law, or this Agreement.

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MASTER GRANT AGREEMENT 2013-2014

EXHIBIT C

SPECIAL PROVISIONS

1. Procurement.

Except as specifically provided in this Agreement, OHCS *does not* waive or herein provide a waiver of any regulations, requirements and/or procedures applicable to use of Grant funds. For example, the OMB circulars require an entity's procurement procedures must require that *all procurement transactions* shall be conducted, as practical, to provide open and free competition. If a proposal identifies a specific entity to provide the services, the OHCS award *does not* provide the justification or basis to sole-source the procurement, i.e., avoid competition.

If allowable under the specific grant program from which funds will be expended and approved or pre-approved as necessary or required by OHCS:

a. **Contracts for Goods and Services.**

1. Subgrantee may contract for services purchased in whole or in part with funds provided under this Agreement, but only when the specialized skills, knowledge and resources to be provided by a vendor are not available within Subgrantee's organization or if the work required by this Agreement cannot be performed in a reasonable time with Subgrantee's staff.
2. This vendor must be of recognized professional expertise, certification, license, registration, or stature in a field. Vendor shall further be registered to do business in the State of Oregon, http://egov.sos.state.or.us/br/pkg_web_name_srch_inq.login.
3. Subgrantee shall develop and maintain policies and procedures for procuring, by purchase, rental or otherwise, any equipment, supplies, or other goods and services in a manner consistent with 2 CFR, Part 215 – Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Learning, Hospitals, and other Non-profit Organizations; and/or 2 CFR, Part 230 – Cost Principles for Non-profit Organizations, Office of Budget and Management Circular A-102, and any applicable federal agency codifications of The Grants Management Common Rule and the following guidelines for selection of contractors:
 - a. For Small Procurements of **\$5,000 or less**:
 - i. Encourage competition to the extent possible;
 - ii. Document the process as described in subsection (b)(iii) below; and
 - iii. Use best efforts to select small businesses, minority-owned firms, and women's business enterprises whenever possible consistent with section 2.
 - iv. As these procurements involve such small expenditures that they do not justify a significant investment of public resources in a more formal procurement process, therefore Subgrantee is prohibited from artificially dividing or fragmenting a procurement to bring the procurement amount below the \$5,000 threshold. To comply with this provision, Subgrantee should base the sizing of its procurements on the Subgrantee's realistic purchasing requirements or rational business practices.
 - b. For Procurements of **more than \$5,000**;

- i. Solicit a minimum of 3 responses;
 - ii. Every prospective bidder must be notified in the same way and receive the same information;
 - iii. Document the process – name of firm and person contacted, when, how, responses or bids, and name of person making contact. This documentation must be kept with the resulting contract; and
 - iv. Use best efforts to select small businesses, minority-owned firms, and women’s business enterprises whenever possible.
4. Subgrantee shall obtain written approval from OHCS prior to entering into any sole source contract or contract where only one bid or proposal is received when the contract is expected to be more than \$5,000 in the aggregate.
 5. In addition, to guidelines set out above, when Subgrantee purchases any vehicle, regardless of cost, or any equipment or other property costing more than \$5,000 per unit with funds provided in whole or in part under this Agreement, Subgrantee shall:
 - a. Obtain prior written approval from OHCS and any other required approval specific to the source of funds that will be expended.
 - b. Solicit (and retain documentation of) a minimum of three (3) bids.
 - c. Comply with Exhibit B, Section 33, Fixed Assets.

b. Construction Contracts.

1. Subgrantee shall comply with, and OHCS’ performance hereunder is conditioned upon Subgrantee’s compliance with, the terms of this Agreement, including without limitation the provisions of Oregon Revised Statute Chapters, as amended from time to time:
 - a. 279B.220 Conditions concerning payment, contributions, liens, withholding;
 - b. 279B.235 Condition concerning hours of labor;
 - c. 279B.270 State contracting agencies to use recovered resources and recycled materials; notice to prospective contractors;
 - d. 279C.505 Conditions concerning payment, contributions, liens, withholding, drug testing; and
 - e. 279C.515 Conditions concerning payment of claims by public officers, payment to persons furnishing labor or materials and complaints.
2. All Construction Contractors must be currently licensed and bonded through the State of Oregon Construction Contractors Board, https://ccbed.ccb.state.or.us/ccb_frames/consumer_info/ccb_index.htm.

c. Debarment and Snsension.

No contract shall be awarded to parties listed on the General Services Administration’s List of Parties Excluded from Federal Procurement or Nonprocurement Programs, <https://www.epls.gov/epls/search.do>, in accordance with E.O.s 12549 and 12689, “Debarment and Suspension”.

Nor shall any contract be awarded to parties listed on the State of Oregon Bureau of Labor and Industries Ineligible Contractors list, http://www.oregon.gov/BOLI/WHD/PWR/W_PWR_Handbooksandseminars.shtml.

2. Wage Determinations.

Subgrantee shall, and shall cause and require its subrecipients, contractors, and subcontracts, to fully comply with, on projects where DBA prevailing wage requirements must be paid, the requirements set out in the DOL regulations at 29 CFR Parts 1, 3, and 5 are applicable. In accordance with 29 CFR Part 1, federal agencies directly contracting for weatherization projects or providing assistance under the ARRA to other entities for such projects must include the standard DBA contract clauses found in 29 CFR 5.5(a) in their bid solicitations, assistance agreements, and the resulting contracts and grants, and must require that those requirements flow down to any contracts or subcontracts for the performance of the work. See also Exhibit E, Davis-Bacon And Related Acts Provisions And Procedures; www.wdol.gov; and 29 CFR 5.5 - Contract provisions and related matters.

3. Emerging Small, Minority, Women-Owned Business Objectives.

It is an important business objective of OHCS to promote the economic enhancement of small businesses (SBE), minority businesses (MBE), and women-owned businesses (WBE). The success of OHCS to track the amount of business received by SBE, MBE, and WBE firms (whether as a prime contractor or a subcontractor) is dependent upon the business community partnering with us in this important endeavor. If Subgrantee subcontracts to any of these businesses in the performance under this opportunity, Subgrantee shall document the total dollars for each business classification or reasons why such firms are not utilized under the resulting contract.

4. Subrecipient Agreements (Subawards).

Subgrantee shall not enter into any agreement or renewal with subrecipients without prior written approval of OHCS as outlined in Exhibit B, Section 40. OHCS' approval of any subrecipient shall not relieve Subgrantee of any of its duties or obligations under this Agreement.

Subgrantee shall require and cause its subrecipients to comply with all applicable provisions of this Agreement between OHCS and Subgrantee, each of which must be specifically incorporated into the subrecipient agreements in a manner satisfactory to OHCS. OHCS reserves the right to request that any subrecipient agreement be submitted to it for review and approval by OHCS within 10 business days from the date of written notification.

Subgrantee shall require and cause that all of its subrecipient agreements related to this Agreement must include language specifying that such agreements are subject to termination upon such a directive to Subgrantee by OHCS and that OHCS shall not be liable to any of the parties of that agreement or to other persons for directing that such agreement be terminated.

Subgrantee shall have a written agreement with each subrecipient that is consistent with this Agreement, including without limitation, relevant Exhibits and Work Plans that identify:

- a. The services or benefits that the subrecipient must provide when delivering the program.
- b. The laws and regulations with which the subrecipient must comply under the terms of the agreement (including but not limited to program specific requirements such as eligibility criteria and matching obligations, public policy for protecting civil rights and the environment, written procedures for appeal by clients of subrecipient determinations, government-wide administrative mandates affecting the subrecipient's accounting and record keeping systems, and local laws imposed by Subgrantee).
- c. The Subgrantee's and OHCS' monitoring rights and responsibilities and the methods used by Subgrantee for monitoring.
- d. A provision to certify that the subrecipient is an independent contractor and not an agent of OHCS or of Subgrantee.

5. Subgrant or Contractual Determination.

A subrecipient is a state or local government, nonprofit organization, or for-profit organization that expends subawarded funds received by Subgrantee from OHCS under this Agreement to carry out a program.

The guidance in paragraphs (a) through (c) of this section will be considered and reasonably applied by Subgrantee in determining whether relevant payments made or to be made by it in furtherance of this Agreement constitute an award under a subgrant received by a subrecipient or a payment for goods and services under a procurement contract received by a vendor or contractor.

a. Subgrant.

Characteristics indicative of an award received by a subrecipient are when the receiving organization:

- 1) Determines who is eligible to receive what financial assistance;
- 2) Has its performance measured against whether the objectives of the program are met;
- 3) Has responsibility for programmatic decision making;
- 4) Has responsibility for adherence to applicable program compliance requirements; and
- 5) Uses the funds to carry out a program of the receiving organization as compared to providing goods or services for a program of OHCS.

b. Contract.

Characteristics indicative of the procurement for goods and services received by Subgrantee are when the Vendor or Contractor:

- 1) Provides the goods and services within normal business operations;
- 2) Provides similar goods or services to many different purchasers;
- 3) Operates in a competitive environment;
- 4) Provides goods or services that are ancillary to the operation of the program; and
- 5) Is not subject to compliance requirements of the grant program.

c. Use of Judgment in Making Determination.

There may be unusual circumstances or exceptions to the listed characteristics. In making the determination of whether a subgrant or contractual relationship exists, the substance of the relationship is more important than the form of the agreement. It is not expected that all of the characteristics will be uniformly present. Accordingly, prudent judgment shall be exercised by Subgrantee should be used in determining whether an entity with which it contracts to accomplish its performance under this Agreement is a subrecipient or vendor.

d. Applicability to For-profit Subrecipients.

Since subsections (a) through (c) do not necessarily apply to for-profit subrecipients, Subgrantee (as the pass-through entity) shall establish reasonable requirements, as necessary, to ensure compliance by for-profit subrecipients. Consequently, Subgrantee should describe in any agreements with for-profit subrecipients the applicable compliance requirements and the for-profit subrecipient's compliance responsibilities. Methods to

ensure compliance for federal awards made to for-profit subrecipients may include pre-award audits, monitoring during the contract and post-award audits.

e. Compliance Responsibility for Vendors.

In most cases, the Subgrantee's or other auditee's compliance responsibility for vendors is only to ensure that the procurement, receipt and payment for goods and services comply with laws, regulations and the provisions of contracts or grant agreements. Program compliance requirements normally do not pass through to vendors. However, the Subgrantee or other auditee shall be responsible for ensuring compliance for vendor transactions that are structured such that the vendor is responsible for program compliance or the vendor's records must be reviewed to determine program compliance. Also, when these vendor transactions relate to a major program, the scope of the audit shall include determining whether these transactions are in compliance with laws, regulations and the provisions of contracts or grant agreements.

Regardless of whether goods or services are provided by a subrecipient or vendor, Subgrantee is still responsible for ensuring compliance with all grant requirements including but not limited to tracking and reporting requirements by the Agreement.

6. Responsibility for Work.

Subgrantee shall timely perform all Work identified in this Agreement consistent with its terms and conditions, including without limitation, the Work required with respect to the Grant Program Work Plans and NOA's. OHCS may add additional Work Plans to Exhibit A of this Agreement from time to time with the written approval of Subgrantee.

7. Non-assignment of Ultimate Responsibility for Work

Subgrantee shall retain ultimate responsible for timely performance of all Work regardless of any approvals received under this Agreement relating to subrecipients or subcontractors.

8. Work Plan(s) and Budget(s).

Each Grant Program Work Plan is unique to the Subgrantee. It must reflect the purpose of the related Grant Program and the methods proposed by the Subgrantee and its subrecipients, in detail acceptable to OHCS, to administer and/or deliver the Work associated with the requirements of that Grant Program. Work Plan Budgets must reflect the manner, in detail acceptable to OHCS that related Grant funds will be employed to accomplish the corresponding Work.

Subgrantee must request and receive prior written approval from OHCS for amendments to or deviations from its approved Work Plans and Budgets. OHCS may give or withhold such approval at its sole discretion. OHCS may allow the combining of applicable Work Plans and/or Budgets at its sole discretion.

Subgrantee shall perform all Work in accordance with the terms and conditions of this Agreement and specific Grant Program requirements in a manner satisfactory to OHCS.

9. Maintenance of Programmatic Capacity.

Subgrantee shall provide for and maintain the capacity for administration and performance of all Work required under this Agreement so as to result in a timely usage of Grant funds.

OHCS remedies for Subgrantee non-compliance with any Work requirements or for untimely usage of Grant funds may include, *inter alia*, the withholding of requested Grant funds or the reduction and redistribution of current or future funding allocations.

If the rate of request for any expenditure category is substantially different than in approved Budgets, OHCS may reduce and redistribute any or all Grant funds under this Agreement. OHCS Program Coordinators shall at their sole and absolute

discretion decide when a rate is to be considered "substantially different". This remedy is in addition to any other allowed under this Agreement.

10. Financial Integrity.

Subgrantee shall be responsible for financial integrity of accounting records and compliance with the following requirements in addition to those required by regulation:

- a. Subgrantee shall, and shall cause its subrecipients (including by contract) to, prepare and maintain accurate financial records documenting all expenditures made from funds provided under this Agreement. These records shall include financial and audit reports for the applicable accounting period for the program, including adjustments to reconcile the accounting records.
- b. Subgrantee shall reimburse expenditures of subrecipients under this Agreement only if they are:
 - 1) In payment of eligible activities or services performed under this Agreement.
 - 2) In payment of services performed or supplies delivered during the applicable program period;
 - 3) In the aggregate not in excess of 100% of the funds provided to the respective applicable grant program under this Agreement; and
 - 4) Not for duplicate payment for the same activities or services under both this Agreement and any other contract or agreement with subrecipients.
- c. Subgrantee shall pay its subrecipients within thirty (30) days of the date of requests for payment.
- d. Subgrantee shall maintain documentation of its monitoring of subrecipients. The documentation shall include, but not be limited to:
 - 1) An agreement that complies with the requirements of this Agreement.
 - 2) Documentation of the non-profit status of the subrecipient; and
 - 3) Copies of all of the subrecipients OMB Circular A-133 audits if the subrecipient is required to have such an audit.
 - 4) Documentation of other methods used by Subgrantee for monitoring subrecipient activities.
- e. Subgrantee shall maintain an Accounting System which conforms with the following requirements:
 - 1) Expenditures shall be segregated by line item category within the accounting system of Subgrantee or subrecipient, as the case may be, and reported on the required fiscal reports.
 - 2) Funds received together with any income that is attributable to funds provided thereby shall be identified and segregated for expenditures relating to the program(s) for which the original funds were provided. Any allocation methodology shall comply with any requirements applicable to that entity or program.

OHCS may, in its sole discretion, reduce Subgrantee funding and redistribute such Grant funding to other Subgrantees. Adjustments pursuant to this subsection may be implemented by means of the Notices of Allocation (NOA) described in this Agreement. This remedy is in addition to any other remedy allowed OHCS under this Agreement.

11. Programmatic Integrity

Subgrantee shall be responsible for programmatic integrity and compliance with the programmatic intent including but not limited to the following requirements:

Subgrantee shall provide and maintain adequate resources necessary to ensure that all staff, Subgrantee and subrecipient, are adequately trained to perform under this Agreement including, but not limited to the training in processing of eligibility determinations and authorizations or other programmatic requirements.

Subgrantee shall comply with programmatic regulations and guidelines as listed on Exhibit E, Grant Programs and Compliance Requirements.

Subgrantee shall have a written procedure for the handling of client appeal of determinations.

12. Reporting

In addition to specific reporting requirements addressed elsewhere in this Agreement and its Exhibits and Attachments, Subgrantee shall:

Subgrantee shall, and shall cause its subrecipients (including by contract) to, submit the required reports so that they are received by OHCS on or before the due dates specified herein this Agreement, as outlined in the applicable Work Plan, as newly required by any provider of funding under this Agreement, or as otherwise required by OHCS. Subgrantee shall require its subrecipients (including by contract) to submit the required reports to Subgrantee in sufficient time to allow Subgrantee to fulfill its reporting obligations to OHCS.

All reports shall be timely, complete, accurate and satisfactory to OHCS as well as in the format required by OHCS.

Reports must agree with the accounting records maintained by Subgrantee and/or its subrecipients and be certified by the chief executive officer of Subgrantee or its subrecipients, as the case may be.

All final reports shall be submitted by Subgrantee so as to be received by OHCS on or before the 60th day following the last day of the grant program period for that program, or the date that all activities funded by this Agreement for that grant program are completed, whichever is earlier.

If Subgrantee fails to produce or timely submit reports satisfactory to OHCS, OHCS may withhold any or all requests for funds of Subgrantee under this Agreement or any other contract or agreement in effect between OHCS and Subgrantee except as expressly limited by law. OHCS also may reduce, suspend, terminate and/or redistribute any or all Grant funds due to Subgrantee failure to produce or timely submit reports satisfactory to OHCS.

13. Eligibility Determination.

Subgrantee shall make eligibility determinations for its respective Grant Program funds in a form and manner prescribed or authorized by OHCS. The Center for Medicare and Medicaid Services regulations prohibit Subgrantee from accessing the Department of Human Services state information systems and screens containing eligibility by entities, agencies, or organizations who are not responsible for administering Medicaid programs.

MASTER GRANT AGREEMENT 2013-2014

EXHIBIT D

FEDERAL ASSURANCES

Subgrantee hereby assures and certifies that with respect to any funds delegated under this Agreement:

It will comply with all applicable Federal regulations, policies, guidelines, and requirements as they relate to the application, acceptance, and use of all funds under this Agreement which may include, but are not be limited to:

OMB Circulars Nos.:

- A-102 – Grants and Cooperative Agreements with State and Local Governments
- A-133 – Audits of States, Local Governments, and Non-profit Organizations

Code of Federal Regulations:

- 2 CFR, Part 225 – Cost Principles for State, Local, and Indian Tribal Governments
- 2 CFR, Part 215 – Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Learning, Hospitals, and other Non-profit Organizations
- 2 CFR, Part 230 – Cost Principles for Non-profit Organizations

NOTE: Certain of these assurances may not be applicable to every Grant Program in this agreement. If you have questions, please contact the OHCS Program Coordinator for the Grant Program in question.

As the duly authorized representative of the Subgrantee, I certify that the Subgrantee:

ASSURANCES : NON-CONSTRUCTION PROGRAMS

1. Has the legal authority to apply for Grant Program funds and the institutional, managerial and financial capability (including funds sufficient to pay the non-granted share of project cost) to ensure proper *planning, management and completion* of the programmatic requirements.
2. Will give the awarding agency, the Comptroller General of the United States and, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from ~~using~~ using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all statutes relating to nondiscrimination. These include but are not limited to:
 - (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; 42 USC 2000d
 - (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; 20USC1681
 - (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps;

- (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age;
 - (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse;
 - (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism;
 - (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records;
 - (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing;
 - (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and,
 - (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases. 42USC4601-4655
 8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
 9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction subagreements.
 10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
 11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).
 12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
 13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).
 14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing these programs.

ASSURANCES: CONSTRUCTION PROGRAMS

1. Has the legal authority to apply for Grant Program funds and the institutional, managerial and financial capability (including funds sufficient to pay the non-granted share of project cost) to ensure proper planning, management and completion of the programmatic requirements.
2. Will give the awarding agency, the Comptroller General of the United States and, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the assistance, and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will not dispose of, modify the use of, or change the terms of the real property title, or other interest in the site and facilities without permission and instructions from the awarding agency. Will record the Federal interest in the title of real property in accordance with awarding agency directives and will include a covenant in the title of real property acquired in whole or in part with Federal assistance funds to assure nondiscrimination during the useful life of the project.
4. Will comply with the requirements of the assistance awarding agency with regard to the drafting, review and approval of construction plans and specifications.
5. Will provide and maintain competent and adequate engineering supervision at the construction site to ensure that the complete work conforms with the approved plans and specifications and will furnish progress reports and such other information as may be required by the assistance awarding agency or State.
6. Will initiate and complete the work within the applicable time frame after notice of award.
7. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
8. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
9. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.
10. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to:
 - (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin;

- (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex;
 - (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps;
 - (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age;
 - (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse;
 - (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism;
 - (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records;
 - (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing;
 - (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and,
 - (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
11. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal and federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
 12. Will comply with the provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
 13. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333) regarding labor standards for federally-assisted construction subagreements.
 14. Will comply with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
 15. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).
 16. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
 17. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).
 18. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

19. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing these programs.

ADDITIONAL ASSURANCES (Pertaining to certain grant programs under this master Grant Agreement)

1. Will comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor Regulations (41 CFR Part 60).
2. Will comply with the Americans with Disabilities Act of 1990 (P.L. 101-336) and ORS 447.210 to 447.280.
3. Will comply with Section 16 of the Federal Energy Administration Act of 1974 (Pub. L. 93-275), Section 401 of the Energy Reorganization Act of 1974 (Pub. L. 93-438), Title IX of the Education Amendments of 1972, as amended, (Pub. L. 92-318, Pub. L. 93-568, and Pub. L. 94-482), the Department of Energy Organization Act of 1977 (Pub. L. 95.91), and the Energy Conservation and Production Act of 1976, as amended, (Pub. L. 94-385).
4. Will comply with Executive Order 11063 as amended by Executive Order 11259 (Equal Opportunity in Housing) and implementing regulations at 24 CFR part 107.
5. Will comply with Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 170(u) and Executive Order 11246 (3 CFR 1964-1965 Comp., p 339), Executive Orders 11625, 12432 and 12138 and all implementing regulations issued pursuant to these statutes and authorities.
6. Will comply with the Fire Administration Authorization Act of 1992.
7. Will Comply with 37 CFR part 401, "Rights to Inventions Made by Non-profit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements," and any implementing regulations issued by the awarding agency.
8. Will comply with the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352 et. Seq.) Contractors who apply or bid for an award of \$100,000 or more shall file the required certification.
9. No contract shall be awarded to parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with E.O.s 12549 and 12689, "Debarment and Suspension".
10. Will comply with Public Law 103-227, Part C – Environmental Tobacco Smoke, also know as the Pro-Children Act 1994 (Act). This Act requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted by an entity and used routinely or regularly for the provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State of local governments.
11. Will comply with Section 407 of Public Law 103-333 it is the sense of Congress that, to the extent practicable, all equipment and products purchased with funds made available in this Act should be American made.
12. Will comply with Section 508 of Public Law 103-333, statements, press releases, requests for proposals, bid solicitations and other documents describing projects or programs funded in whole or in part with Federal money, all grantees receiving Federal funds, including but not limited to State and local governments and recipients of Federal research grants, shall clearly state (1) the percentage of the total costs of the program or project which will be financed with Federal money, (2) the dollar amount of Federal funds for the project or program, and (3) percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources.
13. Will require any individual, organization or other entity with whom it subcontracts, subgrants or subleases for the purpose of providing any service, financial aid, equipment, property or structure to comply with laws cited above. To this end, the subcontractor shall be required to sign a written assurance form.

14. Will compile and maintain information pertaining to programs or activities as required by the specific program requirements.
15. Will recognize and agrees that grant funds will be extended in reliance upon the representations and agreements made in this assurance and that the United States and the state of Oregon together or separately shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the Subgrantee, its successors, transferees and assignees, as well as the person whose signature appears below and who is authorized to sign this assurance on behalf of the Subgrantee.

MASTER GRANT AGREEMENT 2013-2014

EXHIBIT E

THE OREGON STATE HISTORIC PRESERVATION OFFICE (SHPO)

1. Introduction

OHCS has entered into an Interagency Agreement (“Agreement”) with SHPO regarding properties affected by use of federally funded state weatherization assistance and minor owner-occupied housing rehabilitation programs.

OHCS has determined that the administration of these programs may have an affect on properties included in or eligible for inclusion in the National Register of Historic Places (National Register) and has consulted with the Oregon State Historic Preservation Office (SHPO) pursuant to 36 CFR 800.13 of the regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. 470F).

2. Stipulations

OHCS, Subgrantee, and SHPO agree that the programs will be administered in accordance with the following stipulations to satisfy the Section 106 responsibilities for all individual undertakings of the weatherization assistance and housing rehabilitation programs.

A. APPLICABILITY

The review process established by this Agreement will be completed prior to OHCS approval of any property owner altering the property eligible for assistance under these programs.

B. EXEMPT ACTIVITIES - PROJECTS NOT REQUIRING REVIEW BY SHPO

1. Projects affecting properties less than fifty (50) years old at the time the work takes place; provided it has not been determined to be eligible under National Register Criterion Consideration G for exceptional significance (36 CFR 60.4).
2. Interiors:
 - a) Projects limited to the interior spaces of properties not listed in the National Register where the work will not be visible from the exterior of the building.
 - b) Repairing or upgrading electrical or plumbing systems, installing fire, smoke or carbon monoxide alarms, and installing mechanical equipment, in a manner that does not affect the exterior of the building.
 - c) Conducting weatherization or energy conservation activities such as air sealing and insulating attics and floors, provided repairs are made by a qualified contractor using current best practices and methods that are prescribed in the *Site Built Housing and Mobile Home Weatherization Specifications For the State of Oregon Weatherization Assistance Program (2009)* and that utilize applicable preservation techniques in *Preservation Brief #3: Conserving Energy in Historic Buildings*.
3. Walls: The installation of dense pack cellulose wall insulation when the following conditions are met:
 - a) The installation is performed by a qualified contractor who follows the standards and guidelines that OHCS has implemented for dense pack cellulose insulation (dry installation);
 - b) The building does not display construction methods, techniques, and/or materials that are uniquely susceptible to damage that could be caused by the introduction of wall insulation (e.g., the siding does not appear to be able to withstand removal and replacement; the siding is masonry or stucco; there appear to be unique historic wall assemblies);
 - c) Portions of the siding are carefully removed before blowing dense pack cellulose into the walls, and then replaced;

- d) The exterior wall surface is free from areas where water can leak into the wall cavity (caulking around window openings and other wall penetrations has occurred or is part of the project);
 - e) There are no untreated wood members in direct contact with the ground, and the distance from the ground to the sill plate is more than 6 inches to keep water from wicking up into the wall cavity;
 - f) The potential for splash back from rain dripping from roofs is minimized with functioning gutters and/or other water diversion features;
 - g) There are overhanging eaves, and/or other protection is in place to protect the wall surface from the elements (rain and wind);
 - h) Post diagnostic testing (blower door tests) results meet the required minimum ventilation levels ;
 - i) Number of occupants and use is considered in evaluating expected interior moisture levels; and
 - j) Fans are installed when minimum ventilation levels are exceeded.
4. Roofing:
- a) Repairing or replacing roofing with materials that closely match the historic materials and form, or with materials that restore the original feature based on historic evidence, and in a manner that does not alter the roofline.
 - b) Installing continuous ridge vents covered with ridge shingles or boards, or roof jacks/vents, bath and kitchen fan vents, gable vents, soffit and frieze board vents, and combustion appliance flues, if not located on a primary roof elevation or visible from the public right-of-way.
5. Exterior painting:
- a) Painting exterior surfaces unless the property is subject to review by SHPO under ORS 358.475 or local landmark ordinance provisions, provided destructive surface preparation treatments, including, but not limited to, water-blasting, sandblasting and chemical removal, are not used.
 - b) Conducting Lead-based Paint Abatement or “Management in Place” activities carried out by a qualified contractor using current best practices and methods that are consistent with the preservation techniques in *Preservation Brief #37: Appropriate Methods for Reducing Lead-Paint Hazards in Historic Housing*.
6. Masonry:
- a) Power-washing exterior masonry performed by a qualified contractor at no more than 500-psi with mild detergent, using current best practices and methods that are consistent with the preservation techniques in *Preservation Brief #1, The Cleaning and Waterproof Coating of Masonry Buildings*.
 - b) Repairing masonry, including repointing, and rebuilding chimneys if the joints are done by hand and the mortar matches the original composition and color, and installing chimney flue liners, provided repairs are made by a qualified contractor using current best practices and methods that are consistent with the preservation techniques in *Preservation Brief #2: Re-pointing Mortar Joints in Historic Brick Buildings*.
7. Windows and Doors:
- a) Repairing or replacing caulking, weather-stripping, and other air infiltration control measures on windows and doors, and installing thresholds, in a manner that does not harm or obscure historic windows or trim.
 - b) Installing storm windows or doors, and wood screen doors in a manner that does not harm or obscure historic windows or trim.
 - c) Installing insulated exterior replacement doors where the openings are not altered and they cannot be viewed from the public right-of-way.
8. Foundations:
- a) Underpinning and ventilating crawl spaces provided the underpinning materials are set at least 2 inches behind the outer face of piers or foundations on the front facade.
 - b) Installing foundation vents, if painted or finished to match the existing foundation material.
9. Site Work:

- a) Repairing or replacing driveways, parking areas, and walkways, in a manner that does not disturb historic landscape materials or features.
- b) Repairing or replacing sewer lines, water lines and drain connections in a manner that does not disturb historic exterior building or landscape materials or features.

C. OHCS RESPONSIBILITIES

1. OHCS will require Subgrantee to retain access to pre- and post- documentation of the weatherization and rehabilitation work completed, including the work write-ups and photographs as part of its permanent project records.
2. OHCS will monitor every program for compliance with this Agreement according to established guidelines.

D. SHPO RESPONSIBILITIES

SHPO will provide technical assistance and training on the requirements of Section 106 and application of the Secretary of Interior's Standards for Rehabilitation to the extent possible.

E. DISCOVERIES AND UNFORESEEN EFFECTS

If, during the implementation of these programs, a previously unidentified property that may be eligible for inclusion in the National Register is encountered, or is affected in an unanticipated manner, the Subgrantee responsible for the weatherization or rehabilitation will assume its responsibilities pursuant to 36 CFR 800.13.

F. REPORTING

OHCS will require Subgrantee to forward by December 31st an annual report of all completed projects covered by the terms of this Agreement to SHPO and OHCS. The projects should be listed by the property address including city and county, and should include the construction date of the property and the type of project (refer to example in Appendix A of 36 CFR 800).

G. MONITORING

SHPO may monitor any activities carried out pursuant to this Agreement. Subgrantee will cooperate with SHPO in carrying out these monitoring and review responsibilities.

H. DISPUTE RESOLUTION

If OHCS, Subgrantee, and SHPO are unable to resolve any disagreement arising under the provisions of this Agreement, Subgrantee will, unless the dispute relates to the National Register eligibility of any property, forward full documentation regarding the project, the basis for the dispute, and initiate consultation with the Advisory Council on Historic Preservation (Council) in accordance with 36 CFR 800.9.

I. TERMINATION

In the event of termination, OHCS will require Subgrantee to ensure compliance with 36 CFR 800.4-6 with respect to individual undertakings covered by this Agreement.

J. FAILURE TO COMPLY WITH TERMS OF AGREEMENT

In the event that the terms of this Agreement cannot be carried out by the Subgrantee, no action will be taken or sanction of any action or any irreversible commitment by the Subgrantee that would result in an adverse effect to historic properties or would foreclose the Council's consideration of modifications or alternatives to the undertaking.

K. LIABILITY LIMITATIONS

In the event that the terms of this Agreement are not carried out by the Subgrantee as indicated in work plans submitted to OHCS, the Subgrantee(s) will assume all responsibility for the weatherization or rehabilitation project as indicated in its Master Grant Agreement between OHCS and Subgrantee.

2013-2014 MASTER GRANT AGREEMENT
Exhibit A, Program Element 01
Community Services Block Grant Program

1. **Description.** The Community Services Block Grant (CSBG) Program is a federal, anti-poverty block grant program that provides funds for distribution principally to Oregon's local community action agencies to create programs and services that reduce the causes of poverty, revitalize low-income communities, and empower low-income families and individuals to become self-sufficient.

2. **Definitions.** Capitalized words in this Program Element 01 have the meanings provided herein, as stated in Public Law 105-285, OAR 813-210, OAR 813-230, 45 CFR 96 or as otherwise provided by OHCS, unless the context clearly requires otherwise:

"Applicant" means any person who applies to receive CSBG benefits. Applicants include CSBG participants applying for recertification.

"CAPO" means Community Action Partnership of Oregon.

"CSBG" means Community Services Block Grant.

"HHS" means U.S. Department of Health and Human Services.

"HMIS" means Homeless Management Information System.

"HOUSEHOLD" means one or more persons occupying a housing unit.

"OHCS" or *"Department"* means the State of Oregon, acting by and through its Housing and Community Services Department.

"PROGRAM REQUIREMENTS" means the terms and conditions of this Agreement, including but not limited to all federal and state statutes applicable to the CSBG Program, federal and state rules and regulations applicable to the CSBG Program, and applicable OHCS directives, all as amended from time to time.

"ROMA" means Results Oriented Management Accountability.

"SUBGRANTEE" means the public or private nonprofit organization that has entered into this Agreement with OHCS to administer CSBG funds provided hereunder within the designated service area consistent with the terms of this Agreement, including all .

"SUBRECIPIENT" means a public or private nonprofit organization that enters into a written agreement with SUBGRANTEE satisfactory to OHCS to provide CSBG assistance to certified participants.

"WORK" means all obligations to be performed by SUBGRANTEE under this Agreement, including but not limited to the terms and conditions of this Program Element

"WORK PLAN APPLICATION" means Subgrantee Agency's Funding application, which is part of the contract between OHCS and the Subgrantee Agency.

3. **Procedural and Operational Requirements**

- A. SUBGRANTEE shall, and shall cause and shall require by contract that its SUBRECIPIENTS comply and perform all work to the satisfaction of OHCS, and in accordance with the terms of this Agreement, including its local WORK PLAN APPLICATION as approved by OHCS and supplemented herein, together with applicable PROGRAM REQUIREMENTS including CFDA 93.569 and 93.570, Public Law 105-285, OAR 813-210, OAR 813-230, and 45 CFR 96. The approved WORK PLAN APPLICATION is incorporated herein by reference. The remaining provisions of this Section 3 are supplemental to, and do not limit the obligations of SUBGRANTEE or its SUBRECIPIENTS arising under this Subsection 3A or otherwise under this agreement.
- B. SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to administer CSBG funds in a manner satisfactory to OHCS and in compliance with all PROGRAM REQUIREMENTS, including but not limited to the following terms and conditions:
- 1) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to use grant funds allocated specifically by OHCS for allowable administrative and overhead costs in order to provide the services outlined in this agreement. SUBGRANTEE shall adhere to the HHS CSBG administrative efficiency measure of a maximum of 17% or a reasonable measure as approved by OHCS. Allowable administrative costs are defined as costs related to the general management of the grantee organization. Allowable program costs are defined as costs that can be specifically identified with program activities including but not limited to, management, service delivery and data collection, undertaken by SUBGRANTEE or SUBRECIPIENT to achieve an outcome intended by the funding program.
 - 2) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to assure that funds allocated through CSBG will be used to support activities that are designed to assist low-income families and individuals, including families and individuals receiving assistance under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq), homeless families and individuals, migrant or seasonal farm workers, and elderly low-income individuals and families.
 - 3) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to assure that HOUSEHOLDS receiving CSBG program benefits do not have annual incomes which exceed 125% of the federal poverty level. Income verification includes, but is not limited to: wages (pay stubs), assistance payments such as alimony, SSI, TANF, child support, veteran's benefits, unemployment benefits, worker's compensation, retirement/pension and social security benefits. SUBGRANTEE is responsible to OHCS for any losses resulting from improper or negligent issuance of CSBG funds and shall repay such funds to OHCS within thirty (30) days written demand by OHCS.
 - 4) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to have documented Denial, Appeal, and Fair Hearing procedures for CSBG APPLICANTS satisfactory to OHCS. These policies and procedures must be accessible to APPLICANTS upon request. HOUSEHOLDS that believe they have been discriminated against during local hearing processes may request to appeal with OHCS.
 - 5) SUBGRANTEE shall establish and maintain regular SUBRECIPIENT monitoring practices (if applicable). An established process for SUBRECIPIENT monitoring must be outlined in the SUBRECIPIENT contract, as well as local documentation (e.g. staff policy/procedure manuals) satisfactory to OHCS. SUBGRANTEE shall obtain prior written approval from OHCS when renewing or adding additional SUBRECIPIENTS.
 - 6) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to maintain procedures for preventing, detecting and dealing with fraud. Established processes must be outlined in local documentation (e.g. staff policy/procedure manuals) satisfactory to OHCS.
 - 7) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to assure that all necessary documentation is included in HOUSEHOLD files, all in form and substance satisfactory to OHCS. Required documents for each applicant HOUSEHOLD are as follows:
 - a. Application/intake form that includes client characteristic data;

- b. Intake form has language stating *all information contained on form is true and correct to the best of my knowledge* and is signed by applicant and staff member;
 - c. Verification that HOUSEHOLD income does not exceed 125% of the FPL;
 - d. Documentation of income or self-declaration for clients with zero income;
 - e. Evidence that client was apprised of grievance procedures;
 - f. Authorization of Release of Information, signed and dated by client and staff member;
 - g. Confidentiality statement, signed and dated by client and staff member;
 - h. If applicable, evidence that the client was informed of their potential eligibility for child support services and informed of the locations of local resources;
 - i. Entrance, exit date, reason for exiting the program, housing status at exit; and
 - j. Such other documentation as OHCS may from time to time require.
- 8) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to allow OHCS and HHS access to, and to furnish to OHCS, whatever information and/or documentation OHCS determines is necessary or appropriate to conduct reviews and monitor progress or performance to determine conformity with PROGRAM REQUIREMENTS. SUBGRANTEE shall permit representatives of OHCS to visit its sites and require SUBRECIPIENTS to permit OHCS and HHS to visit their sites, to inspect same, and to review, audit, and copy all records OHCS or HHS deem pertinent to evaluating or enforcing PROGRAM REQUIREMENTS at any reasonable time, with or without benefit of prior notification. SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to cooperate fully with OHCS and HHS.
- 9) SUBGRANTEE shall administer the Community Services Block Grant program through a tripartite board composed of 1/3 public officials, no fewer than 1/3 are representative of low-income individuals and families and 1/3 are officials or members of business, industry labor, religious, law enforcement, education or other major groups and interests in the community served.

4. Reporting Obligations and Requirements

- A. SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to assure that data collection and reporting for CSBG funded activities be conducted through the use of OHCS approved HMIS and OPUS management information systems. SUBGRANTEE shall, and shall cause and require its SUBRECIPIENTS to assure that data entry into HMIS and OPUS occur in an accurate and timely manner as satisfactory to OHCS.
- B. SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to submit to the satisfaction of OHCS all reports as required in the Master Grant Agreement including the:
 - 1) CSBG-IS report which is due to OHCS annually by February 15th. Report includes: Sections D, E, F and G, the National Performance Indicators, and;
 - 2) SUBGRANTEE shall submit its Board agendas and meeting minutes quarterly by the 10th of the month following the end of each quarter—April 10th, July 10th, October 10th, January 10th.
- C. SUBGRANTEE shall provide additional reports as needed or requested by OHCS.
- D. SUBGRANTEE may request a reporting deadline extension when necessary.

5. Performance Measures

- A. SUBGRANTEE shall participate in and contribute to the CAPO and OHCS process to develop CSBG Program performance measures by July 1, 2014.

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2013-2014 MASTER GRANT AGREEMENT
Exhibit A, Program Element 02
Emergency Solutions Grant (ESG)

1. **Description.** The Emergency Solutions Grant (ESG) provides federal funds to support local programs in assisting individuals and families to quickly regain stability in permanent housing after experiencing a housing crisis or homelessness. ESG funds are available for five program components: street outreach, emergency shelter, homelessness prevention, rapid re-housing assistance, and data collection through the Homeless Management Information System.

2. **Definitions.** Capitalized words in this ESG Program Element shall have the meanings provided herein, as stated in 24 CFR Part 576, OAR 813.145 as amended, or as otherwise provided by OHCS unless the context clearly requires otherwise:

"CERTIFIED HOUSEHOLD" means any individual, family or household whose homeless status and eligibility for ESG services has been verified through required and adequate documentation.

"EMERGENCY SHELTER" means any facility whose primary purpose is to provide temporary or transitional shelter for the Homeless in general or for specific populations of the Homeless and which do not require occupants to sign leases or occupancy agreements.

"ESG" means Emergency Solutions Grant.

"EXTREMELY LOW INCOME" means an annual household income that is 30% or less of area median income based on HUD determined guidelines and adjusted for family size.

"HMIS" means Homeless Management Information System.

"HOMELESS" means individual, family or HOUSEHOLD that lacks a fixed, regular, and adequate nighttime residence in compliance with HUD.CFR 576.2 categorical definitions of literally homeless; imminent risk and at risk of homelessness; homeless under other Federal statutes; and fleeing/attempting to flee domestic violence.

"HOMELESSNESS PREVENTION" means services or programs designed to prevent the incidence of homelessness.

"HOMELESS SERVICES" means HUD allowable outreach, emergency shelter, rapid re-housing, homelessness prevention and data collection activities and assistance.

"HOUSEHOLD" means an individual living alone, family with or without children, or a group of individuals who are living together as one economic unit.

"HOUSEHOLD INCOME" means the total HOUSEHOLD receipts before taxes from all sources. Income may be reduced by deductions allowed by the DEPARTMENT. Income does not include assets or funds over which the applicant has no control.

"HUD" means the U.S. Department of Housing and Urban Development.

"LEGAL REQUIREMENTS" means federal and state statutes applicable to ESG, federal and state rules and regulations applicable to ESG, and OHCS directives, all as amended from time to time. LEGAL REQUIREMENTS are, and shall be deemed by the parties to constitute, terms and conditions of this Agreement.

"OHCS" means the State of Oregon, acting by and through its Housing and Community Services Department.

"PROGRAM PARTICIPANT" means a HOUSEHOLD that is provided services through ESG funded programs.

"RAPID RE-HOUSING" means housing relocation and stabilization services including rental assistance to assist HOUSEHOLDS in moving quickly to stable, permanent housing.

"SUBGRANTEE" means the public or private nonprofit organization which has entered into this Agreement with OHCS to administer ESG at the local level within the designated service area.

"SUBRECIPIENT" means a public or private nonprofit organization that enters into a written agreement with SUBGRANTEE satisfactory to OHCS to provide ESG assistance to CERTIFIED HOUSEHOLDS.

"WORK PLAN APPLICATION" means SUBGRANTEE's funding application, which is part of the contract between the DEPARTMENT and the SUBGRANTEE.

3. Scope of Work.

- A. SUBGRANTEE shall, and shall cause and shall require by contract that its SUBRECIPIENTS comply and perform all work to the satisfaction of OHCS, and in accordance with the terms of this Agreement, including its local WORK PLAN APPLICATION as approved by OHCS, and supplemented herein, together with applicable LEGAL REQUIREMENTS including CFDA 14.231, 42 U.S.C. 11371-11378, 24 CFR Part 576, OAR 813.145 as amended and ORS 458.505 to 458.545. The approved WORK PLAN APPLICATION is incorporated herein by reference. The remaining provisions of this Section 3 are supplemental to, and do not limit the obligations of SUBGRANTEE or its SUBRECIPIENTS arising under this Subsection 3A or otherwise under this agreement
- B. SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to administer Emergency Solutions Grant (ESG) Funds in a manner satisfactory to OHCS and in compliance with all PROGRAM REQUIREMENTS, including but not limited to the following terms and conditions:
- 1) SUBGRANTEE shall expend no more than 2.5 percent of its ESG Program award for allowable administrative costs in order to provide the services outlined in this agreement.
 - 2) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to assure that ESG program funds are used only for HOMELESS SERVICES within the five allowable program components as described in 24 CFR Part 576, Subpart B—Program Components and Eligible Activities. Program components are:
 - a) Street Outreach—essential services related to reaching out to unsheltered homeless individuals and families, connecting them with emergency shelter, housing or critical services, and providing urgent, non-facility-based care;
 - b) EMERGENCY SHELTER—major rehabilitation, conversion or renovation (property acquisition and new construction are **ineligible**) of a building to serve as a homeless shelter, essential services related to supporting shelter residents in transitioning to permanent housing, and costs of shelter operations;
 - c) Homelessness Prevention—housing relocation and stabilization services and short- and/or medium-term rental assistance as necessary to prevent EXTREMELY LOW INCOME households from becoming homeless;
 - d) Rapid Re-housing—housing relocation and stabilization services and short- and/or medium-term rental assistance as necessary to help literally HOMELESS and HOUSEHOLDS fleeing/attempting to flee domestic violence to move as quickly as possible into permanent housing and;
 - e) Data Collection—costs related to participating in an OHCS approved HMIS including six month determination of housing status.
 - 3) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to conduct an initial evaluation to determine eligibility for ESG assistance in accordance with existing local Continuum of Care developed centralized or coordinated assessment requirements, and OHCS approved SUBGRANTEE written standards for providing ESG assistance. SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to serve only CERTIFIED HOUSEHOLDS whose eligibility has been determined using ESG program eligibility criteria issued by OHCS and HUD. SUBGRANTEE is responsible to OHCS for

any losses resulting from improper or negligent issuance of ESG funds and shall repay such funds to OHCS within thirty (30) days upon written demand from OHCS.

- 4) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to provide ESG assistance only to HOUSEHOLDS that meet HUD's criteria for being defined as:
 - a) *Literally Homeless* meaning individual or family lacks a fixed, regular, and adequate nighttime residence including living in a place not meant for human habitation;
 - b) *Imminent Risk of Homelessness* meaning individual or family who will imminently lose their primary nighttime residence within fourteen days, has no subsequent residence identified and lacks the resources or support networks needed to obtain other permanent housing;
 - c) *Homeless under other Federal Statutes* meaning unaccompanied youth under 25 years of age or families with children and youth who do not otherwise qualify under the HUD HOMELESS definition but do meet HUD criteria and prior approval for being homeless within this category and/or;
 - d) *Fleeing/Attempting to Flee Domestic Violence* meaning individual or family fleeing or attempting to flee domestic violence, has no other residence and lacks the resources or support networks to obtain permanent housing.
- 5) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to meet OHCS and HUD recordkeeping requirements for the adequate documentation of HOMELESS status when determining the eligibility of HOUSEHOLDS served with ESG funds.
- 6) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to re-evaluate PROGRAM PARTICIPANT eligibility and need for homelessness prevention and rapid re-housing assistance. Re-evaluation for PROGRAM PARTICIPANTS receiving homelessness prevention services must occur not less than 3 months and not less than once annually for those receiving rapid re-housing services.
- 7) SUBGRANTEE and SUBRECIPIENTS may utilize ESG funds to address the specific needs of various HOMELESS subpopulations, such as victims of domestic violence, youth, mentally ill, veterans, families with children, or others. Specific targeting of funds should be outlined and approved by OHCS in the SUBGRANTEE's WORK PLAN APPLICATION.
- 8) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to have Denial, Appeal and Fair Hearing procedures accessible to applicants upon request. All appeals and fair hearing requests will be handled by the SUBGRANTEE. Clients who believe they have been discriminated against during local fair hearing processes may request an appeal to OHCS.
- 9) SUBGRANTEE and SUBRECIPIENTS may terminate assistance provided by ESG-funded activities to participants who violate program requirements. SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to have in place a procedure, satisfactory to OHCS, which governs the termination and grievance process. These procedures should describe the program requirements and the termination process, as well as the grievance procedure which recognizes the rights of individuals who may be affected. Termination and grievance procedures shall be clearly communicated to and easily understood by PROGRAM PARTICIPANTS and readily available upon request, or posted in a public location.
- 10) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to be responsible for maintaining an internal controls framework, satisfactory to OHCS, which assures ESG program integrity. For example, the following procedures should be established and outlined in local documentation (e.g. staff policy/procedure manuals):
 - a) SUBGRANTEE shall establish and maintain regular SUBRECIPIENT monitoring practices (if applicable). SUBGRANTEE shall obtain prior written approval from OHCS when adding additional SUBRECIPIENTS or renewing any SUBRECIPIENTS.

- b) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to assure that completed applications and HOUSEHOLD benefits are valid and correct. This includes adequate separation of duties among intake, authorization and fiscal staff.
 - c) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to maintain clear policy for cases where there may be a conflict of interest. This includes procedures for staff when employees, board members, friends or family members apply for program assistance services.
 - d) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to maintain clear procedures for dealing with applicants who may have committed fraud and for dealing with public complaints regarding potential fraud. All incidents of fraud must be reported to OHCS.
 - e) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to maintain clear procedures, satisfactory to OHCS, for preventing, detecting and dealing with employee fraud. All incidents of fraud must be reported to OHCS.
- 11) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to assure that all necessary documentation is included in client files as satisfactory to OHCS. This includes documentation of HOMELESS status used to determine program eligibility.
- 12) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to allow OHCS access to, or furnish, whatever information and/or documentation is necessary for OHCS to conduct reviews and monitor progress or performance to determine conformity with intended program purposes. SUBGRANTEE shall permit representatives of OHCS to visit its sites or SUBRECIPIENT sites, and to review and audit all records pertinent to ESG funding at any reasonable time, with or without benefit of prior notification.

4. Program Specific Reporting

- A. SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to assure that data collection and reporting for ESG funded activities be conducted through the use of OHCS approved HOMELESS Management Information System (HMIS). SUBGRANTEE shall, and shall cause and require its SUBRECIPIENTS to assure that data entry into HMIS occurs in an accurate and timely manner as satisfactory to OHCS.
- B. SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to submit all reports as required in the Master Grant Agreement including the "Homeless Quarterly Report" which is due 30 days following the end of each quarter—October 30th, January 30th, April 30th and July 30th.
- C. SUBGRANTEE shall provide additional reports as needed or requested by OHCS.
- D. SUBGRANTEE may request a reporting deadline extension when necessary.

5. Matching Requirements

- A. SUBGRANTEE shall make matching contributions to supplement their ESG program in an amount that equals the SUBGRANTEE's ESG fund allocation and in compliance with the following requirements:
 - 1) SUBGRANTEE may obtain matching cash and noncash contributions from any source including federal (non ESG), state, local and private.
 - 2) SUBGRANTEE may not use federal funds if those funds:
 - i. are prohibited from being used to match ESG funds and;
 - ii. are being used to match another Federal program.
 - 3) SUBGRANTEE matching contributions must meet all requirements that apply to ESG funds provided by HUD, except for the expenditure limits identified in 24 CFR 576.100.

- 4) SUBGRANTEE matching requirements must be provided and expended within the SUBGRANTEE's ESG grant fiscal year.
 - 5) SUBGRANTEE contributions used to match a previous ESG grant may not be used to match a subsequent ESG grant.
 - 6) SUBGRANTEE contributions used to match another Federal grant or award may not count as a ESG matching contribution.
 - 7) SUBGRANTEE must calculate the amount of cash and noncash contributions in compliance with 24 CFR 576.201.
- C. SUBGRANTEE may request a waiver to the match requirement when circumstances limit capacity to provide the ESG required 100% match.

6. Performance Measures

- A. SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to operate its ESG program in a manner designed to achieve the following performance goals:
- 1) Increased housing stability as measured by the percentage of households served who exit program into permanent housing. Preliminary statewide target is 30%.
 - 2) Increased housing stability as measured by the percentage of households served entering permanent housing with stays of six months or longer. Statewide target is 80%.

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2013-2014 MASTER GRANT AGREEMENT
Exhibit A, Program Element 03
Emergency Housing Account (EHA)

1. **Description.** The Emergency Housing Account (EHA) Program provides state funds to supplement effective existing local programs and to establish new innovative programs designed to prevent and reduce homelessness. EHA funds are available for six program components: emergency shelter and support services; transitional housing services; rapid re-housing services; homelessness prevention; data collection and; emergency, transitional and rapid re-housing capacity building.

2. **Definitions.** Capitalized words in this program element shall have the meanings provided herein, as stated in OAR 813.046 as amended, ORS 458.600 to 458.650, or as otherwise provided by OHCS unless the context clearly requires otherwise:

"CERTIFIED HOUSEHOLD" means any individual, family or household whose homeless status and eligibility for EHA services has been verified through required and adequate documentation.

"EHA" means Emergency Housing Account

"EMERGENCY SHELTER" means any facility whose primary purpose is to provide temporary or transitional shelter for the HOMELESS in general or for specific populations of the HOMELESS and which do not require occupants to sign leases or occupancy agreements.

"EXTREMELY LOW INCOME" means an annual household income that is 30% or less of area median income based on HUD determined guidelines and adjusted for family size.

"HMIS" means Homeless Management Information System

"HOMELESS" means individual, family or HOUSEHOLD that lacks a fixed, regular, and adequate nighttime residence in compliance with HUD CFR 576.2 or OHCS categorical definitions of literally homeless; imminent risk and at risk of homelessness; fleeing/attempting to flee domestic violence; and unstably housed and at-risk of losing their housing.

"HOMELESS PREVENTION" means services or programs designed to prevent the incidence of homelessness.

"HOMELESS SERVICES" means emergency shelter, transitional housing and supportive housing services, rapid re-housing, homelessness prevention and data collection activities and assistance.

"HOUSEHOLD" means an individual living alone, family with or without children, or a group of individuals who are living together as one economic unit.

"HOUSEHOLD INCOME" means the total HOUSEHOLD receipts before taxes from all sources. Income may be reduced by deductions allowed by the Department. Income does not include assets or funds over which the applicant has no control.

"HUD" means U.S. Department of Housing and Urban Development

"LEGAL REQUIREMENTS" means federal and state statutes applicable to EHA, federal and state rules and regulations applicable to EHA, and OHCS directives, all as amended from time to time. LEGAL REQUIREMENTS are, and shall be deemed by the parties to constitute, terms and conditions of this Agreement.

"LOW INCOME" means an annual Household income that is more than 50 percent but less than 80 percent of the area median income based on HUD determined guidelines and as adjusted for family size.

"OHCS" means the State of Oregon, acting by and through its Housing and Community Services Department.

"PROGRAM PARTICIPANT" means a HOUSEHOLD that is provided services through EHA funded programs.

"SELF-SUFFICIENCY" means earning a total HOUSEHOLD income at a level that enables the HOUSEHOLD to support itself and meet its basic needs without receipt of public subsidies.

"SUBGRANTEE" means the public or private nonprofit organization which has entered into this Agreement with OHCS to administer EHA at the local level within the designated service area.

"SUBRECIPIENT" means a public or private nonprofit organization that enters into a written agreement with SUBGRANTEE satisfactory to OHCS to provide EHA assistance to CERTIFIED HOUSEHOLDS.

"SUPPORTIVE HOUSING SERVICES" means services designed to stabilize and keep people in their own homes.

"TRANSITIONAL HOUSING" means temporary housing and services intended to facilitate homeless household's transition to permanent housing within a reasonable amount of time (usually less than 24 months) and which requires occupants to sign leases or occupancy agreements.

"VERY LOW INCOME" means an annual Household income that is 50% or less of the area median income based on HUD determined guidelines and adjusted for family size.

"WORK PLAN APPLICATION" means Subgrantee Agency's Funding application, which is part of the contract between the Department and the Subgrantee Agency.

3. Scope of Work.

A. SUBGRANTEE shall, and shall cause and shall require by contract that its SUBRECIPIENTS comply and perform all work to the satisfaction of OHCS, and in accordance with the terms of this Agreement, including its local WORK PLAN APPLICATION as approved by OHCS and supplemented herein, together with applicable LEGAL REQUIREMENTS including OAR 813.046 as amended, and ORS 458.600 to 458.650. The approved WORK PLAN APPLICATION is incorporated herein by reference. The remaining provisions of this Section 3 are supplemental to, and do not limit the obligations of SUBGRANTEE or its SUBRECIPIENTS arising under this Subsection 3A or otherwise under this agreement.

B. SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to administer Emergency Housing Account (EHA) funds in a manner satisfactory to OHCS and in compliance all PROGRAM REQUIREMENTS, including but not limited to the following terms and conditions:

1) SUBGRANTEE shall expend no more than ten percent of its EHA Program award for allowable administrative costs in order to provide the services outlined in this agreement. SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to expend no more than five percent of its EHA Program award from the SUBGRANTEE agency for allowable administrative costs.

2) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to assure EHA program funds are used only for HOMELESS SERVICES within the five allowable program components as described in OAR 813.046 as amended and OHCS Homeless State Program Guidelines. Program components are:

a) EMERGENCY SHELTER—major rehabilitation, conversion or renovation (property acquisition and new construction are **ineligible**) of a building to serve as a homeless shelter, essential

- services related to supporting shelter residents in transitioning to permanent housing, and costs of shelter operations;
- b) TRANSITIONAL HOUSING—costs of housing operations and essential services related to supporting transitional housing residents in obtaining permanent housing and economic independence;
 - c) HOMELESSNESS PREVENTION—SUPPORTIVE HOUSING SERVICES including housing stabilization and in-home assistance (when suitable programs are not geographically available), emergency payment of home payment, rent or utilities and other assistance designed to prevent homelessness and enable HOUSEHOLDS to continue to live in their own homes;
 - d) Rapid Re-housing—housing relocation and stabilization services and short- and/or medium term rental assistance as necessary to help literally HOMELESS and HOUSEHOLDS fleeing/attempting to flee domestic violence to move as quickly as possible into permanent housing;
 - e) Data Collection—costs related to participating in an OHCS approved HMIS including six month determination of housing status; and
 - f) Community Capacity Building—costs associated with programs, activities and projects that expand community capacity to provide emergency shelter, transitional housing and rapid-rehousing.
- 3) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to assure that EHA funds are used to supplement existing funding, to support existing programs or to establish new programs. EHA funds may not be used to replace existing funding.
 - 4) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to conduct an initial evaluation to determine eligibility for EHA assistance in accordance with existing Continuum of Care developed centralized or coordinated assessment requirements and OHCS approved SUBGRANTEE written standards for providing EHA assistance. SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to serve only CERTIFIED HOUSEHOLDS whose eligibility has been determined using EHA program eligibility criteria issued by OHCS. SUBGRANTEE is responsible to OHCS for any losses resulting from improper or negligent issuance of EHA funds.
 - 5) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to provide EHA assistance only to HOUSEHOLDS who meet the OHCS criteria for being defined as:
 - a) **Literally Homeless** meaning a household lacks a fixed, regular, and adequate nighttime residence including living in a place not meant for human habitation;
 - b) **Imminent Risk of Homelessness** meaning a household who will imminently lose their primary nighttime residence within fourteen days, has no subsequent residence identified and lacks resources or support networks needed to obtain permanent housing;
 - c) **Fleeing/Attempting to Flee Domestic Violence** meaning a household fleeing or attempting to flee domestic violence, has no other residence and lacks the resources or support networks to obtain permanent housing;
 - d) **At Risk of Homelessness** meaning an EXTREMELY LOW INCOME household that lacks sufficient resources or support networks needed to maintain or obtain permanent housing and whose current housing situation presents increased risk of homelessness.
 - e) **Unstably housed and at-risk of losing their housing** meaning a LOW or VERY LOW INCOME household who is experiencing housing instability and lacks the resources or support networks to obtain permanent housing.

- 6) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to assure that program services are available to EXTREMELY LOW INCOME, LOW INCOME and VERY LOW INCOME HOUSEHOLDS, including but not limited to, persons more than 65 years of age, disabled persons, farm workers and Native Americans, that are homeless or at risk of becoming HOMELESS.
- 7) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to meet OHCS recordkeeping requirements for the adequate documentation of HOMELESS status when determining the eligibility of HOUSEHOLDS served with EHA funds.
- 8) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to require all recipients of EHA services to participate in programs or activities that will increase HOUSEHOLD SELF-SUFFICIENCY.
- 9) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to re-evaluate PROGRAM PARTICIPANT eligibility and need for homelessness prevention and rapid re-housing assistance. Re-evaluation for PROGRAM PARTICIPANTS receiving homelessness prevention services must occur not less than 3 months and not less than once annually for those receiving rapid re-housing services.
- 10) SUBGRANTEE and SUBRECIPIENTS may utilize EHA funds to address the specific needs of various HOMELESS subpopulations, such as victims of domestic violence, youth, mentally ill, veterans, families with children, or others. Specific targeting of funds should be outlined and approved by OHCS in the SUBGRANTEE's WORK PLAN APPLICATION.
- 11) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to have Denial, Appeal and Fair Hearing procedures accessible to applicants upon request. All appeals and fair hearing requests will be handled by the SUBGRANTEE. Clients who believe they have been discriminated against during local fair hearing processes may request an appeal to OHCS.
- 12) SUBGRANTEE and SUBRECIPIENTS may terminate assistance provided by EHA-funded activities to participants who violate program requirements. SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to have in place a procedure, satisfactory to OHCS, which governs the termination and grievance process. These procedures should describe the program requirements and the termination process, as well as the grievance procedure which recognizes the rights of individuals who may be affected. Termination and grievance procedures shall be clearly communicated to and easily understood by PROGRAM PARTICIPANTS and readily available upon request, or posted in a public location.
- 13) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to be responsible for maintaining an internal controls framework, satisfactory to OHCS, which assures EHA program integrity. For example, the following procedures should be established and outlined in local documentation (e.g. staff policy/procedure manuals):
 - a) SUBGRANTEE shall establish and maintain regular SUBRECIPIENT monitoring practices (if applicable). SUBGRANTEE shall obtain prior written approval from OHCS when adding additional SUBRECIPIENTS or renewing any SUBRECIPIENTS.
 - b) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to assure that completed applications and HOUSEHOLD benefits are valid and correct. This includes adequate separation of duties among intake, authorization and fiscal staff.

- c) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to maintain clear policy for cases where there may be a conflict of interest. This includes procedures for staff when employees, board members, friends or family members apply for program assistance services.
 - d) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to maintain clear procedures for dealing with applicants who may have committed fraud and for dealing with public complaints regarding potential fraud. All incidents of fraud must be reported to OHCS.
 - e) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to maintain clear procedures, satisfactory to OHCS, for preventing, detecting and dealing with employee fraud. All incidents of fraud must be reported to OHCS.
- 14) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to assure that all necessary documentation is included in client files as satisfactory to OHCS. This includes documentation of HOMELESS status used to determine program eligibility.
 - 15) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to allow OHCS access to, or furnish, whatever information and/or documentation is necessary for OHCS to conduct reviews and monitor progress or performance to determine conformity with intended program purposes. SUBGRANTEE shall permit representatives of OHCS to visit its sites or SUBRECIPIENT sites, and to review and audit all records pertinent to ESG funding at any reasonable time, with or without benefit of prior notification.

4. Program Specific Reporting

- A. SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to assure that data collection and reporting for EHA funded activities be conducted through the use of OHCS approved HMIS. SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS to assure that data entry into HMIS occurs in an accurate and timely manner as satisfactory to OHCS.
- B. SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to submit all reports as required in the Master Grant Agreement as satisfactory to OHCS including the "Homeless Quarterly Report" which is due 30 days following the end of each quarter—October 30th, January 30th, April 30th and July 30th.
- C. SUBGRANTEE shall provide additional reports as needed or requested by OHCS.
- D. SUBGRANTEE may request a reporting deadline extension when necessary.

5. Performance Measures

- A. SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to operate its EHA program in a manner designed to achieve the following performance goals:
 - 1) Increased housing stability as measured by the percentage of households served who exit program into permanent housing. Preliminary statewide target is 30%.
 - 2) Increased housing stability as measured by the percentage of households served entering permanent housing with stays of six months or longer. Statewide target is 80%.

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2013-2014 MASTER GRANT AGREEMENT
Exhibit A, Program Element 04
State Homeless Assistance Program (SHAP)

1. **Description.** The State Homeless Assistance Program (SHAP) Program provides state funds to help meet the emergency needs of homeless Oregonians by providing operational support for emergency shelters and the supportive services directly related to them. SHAP funds are available for three program components: emergency shelter operations, shelter resident support services and data collection.

2. **Definitions.** Capitalized words in this program element shall have the meanings provided herein, as stated in OAR 813.240 as amended, ORS 458.505 to 458.545, or as otherwise provided by OHCS unless the context clearly requires otherwise:

"CERTIFIED HOUSEHOLD" means any individual, family or household whose homeless status and eligibility for SHAP services has been verified through required and adequate documentation.

"EMERGENCY SHELTER" means any facility whose primary purpose is to provide temporary or transitional shelter for the Homeless in general or for specific populations of the Homeless and does not require occupants to sign leases or occupancy agreements.

"HMIS" means Homeless Management Information System.

"HOMELESS" means an individual, family or HOUSEHOLD that lacks a fixed, regular, and adequate nighttime residence and meets HUD CFR 576.2 and OHCS categorical definitions of literally homeless, imminent risk of homelessness, fleeing/attempting to flee domestic violence and unstably housed and at-risk of losing their housing.

"HOMELESS PREVENTION" means services or programs designed to prevent the incidence of homelessness.

"HOUSEHOLD" means an individual living alone, family with or without children, or a group of individuals who are living together as one economic unit.

"HOUSEHOLD INCOME" means the total HOUSEHOLD receipts before taxes from all sources. Income may be reduced by deductions allowed by the DEPARTMENT. Income does not include assets or funds over which the applicant has no control.

"HUD" means U.S. Department of Housing and Urban Development

"LEGAL REQUIREMENTS" means federal and state statutes applicable to SHAP, federal and state rules and regulations applicable to SHAP, and OHCS directives, all as amended from time to time. LEGAL REQUIREMENTS are, and shall be deemed by the parties to constitute, terms and conditions of this Agreement.

"OHCS" means the State of Oregon, acting by and through its Housing and Community Services Department.

"PROGRAM PARTICIPANT" means a HOUSEHOLD that is provided services through SHAP funded programs.

"SHAP" means State Homeless Assistance Program.

"SUBGRANTEE" means the public or private nonprofit organization which has entered into this Agreement with OHCS to administer SHAP at the local level within the designated service area.

"SUBRECIPIENT" means a public or private nonprofit organization that enters into a written agreement with SUBGRANTEE satisfactory to OHCS to provide SHAP assistance to CERTIFIED HOUSEHOLDS.

“*WORK PLAN APPLICATION*” means SUBGRANTEE’s funding application, which is part of the contract between the DEPARTMENT and the SUBGRANTEE.

3. Scope of Work.

- A. SUBGRANTEE shall, and shall cause and shall require by contract that its SUBRECIPIENTS comply and perform all work to the satisfaction of OHCS, and in accordance with the terms of this Agreement, including its local WORK PLAN APPLICATION as approved by OHCS and supplemented herein, together with applicable LEGAL REQUIREMENTS including OAR 813.240 as amended and ORS 458.505 to 458.545. The approved WORK PLAN APPLICATION is incorporated herein by reference. The remaining provisions of this Section 3 are supplemental to, and do not limit the obligations of SUBGRANTEE or its SUBRECIPIENTS arising under this Subsection 3A or otherwise under this agreement
- B. SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to administer State Homeless Assistance Program (SHAP) Funds in a manner that is satisfactory to OHCS and in compliance with all PROGRAM REQUIREMENTS, including but not limited to the following terms and conditions:
- 1) SUBGRANTEE shall expend no more than ten percent of its SHAP Program award for allowable administrative costs in order to provide the services outlined in this agreement. SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to expend no more than five percent of its SHAP Program award from the SUBGRANTEE agency for allowable administrative costs.
 - 2) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to assure that SHAP program funds are used only for HOMELESS SERVICES within the three program components as described in OAR 813.240 as amended and OHCS Homeless Program Guidelines. Eligible program components are:
 - a) EMERGENCY SHELTER Operations—major rehabilitation, conversion or renovation (property acquisition and new construction are **ineligible**) of a building to serve as a homeless shelter and costs of shelter operations;
 - b) Shelter Resident Support Services—services designed to stabilize resident’s housing situation and transition PROGRAM PARTICIPANTS out of shelter to stable housing and;
 - c) Data Collection—costs related to participating in an OHCS approved HMIS including six month determination of housing status after program exit.
 - 3) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to provide eligible shelter resident services designed to stabilize the housing situation of the PROGRAM PARTICIPANT or transition the participant out of shelter. Such services may include: case management, counseling, access to health care, employment assistance, personal hygiene, nutritional assistance and other supportive services. SHAP funds shall **not** be utilized for purposes of rent or house payment to prevent eviction or foreclosure.
 - 4) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to conduct an initial evaluation to determine eligibility for SHAP assistance in accordance with existing local Continuum of Care developed centralized or coordinated assessment requirements and OHCS approved SUBGRANTEE written standards for providing SHAP assistance. SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to serve only CERTIFIED HOUSEHOLDS whose eligibility has been determined using SHAP program eligibility criteria issued by OHCS. SUBGRANTEE is responsible to OHCS for any losses resulting from improper or negligent issuance of SHAP funds.
 - 5) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to provide SHAP assistance only to HOUSEHOLDS who meet OHCS criteria for being defined as:
 - a) *Literally Homeless* meaning a household lacks a fixed, regular, and adequate nighttime residence including living in a place not meant for human habitation;

- b) *Imminent Risk of Homelessness* meaning a household who will imminently lose their primary nighttime residence within fourteen days, has no subsequent residence identified and lacks resources or support networks needed to obtain permanent housing;
 - c) *Fleeing/Attempting to Flee Domestic Violence* meaning a household fleeing or attempting to flee domestic violence, has no other residence and lacks the resources or support networks to obtain permanent housing;
 - d) *Unstably housed and at-risk of losing their housing* meaning a household who is experiencing housing instability and lacks the resources or support networks to obtain permanent housing.
- 6) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to meet OHCS recordkeeping requirements for the adequate documentation of HOMELESS status when determining the eligibility of HOUSEHOLDS served with SHAP funds.
 - 7) SUBGRANTEE and SUBRECIPIENTS may utilize SHAP funds to address the specific needs of various HOMELESS subpopulations, such as victims of domestic violence, youth, mentally ill, veterans, families with children, or others. Specific targeting of funds should be outlined and approved by OHCS in the SUBGRANTEE'S WORK PLAN APPLICATION.
 - 8) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to have Denial, Appeal and Fair Hearing procedures accessible to applicants upon request. All appeals and fair hearing requests will be handled by the SUBGRANTEE. Clients who believe they have been discriminated against during local fair hearing processes may request an appeal to OHCS.
 - 9) SUBGRANTEE and SUBRECIPIENTS may terminate assistance provided by SHAP-funded activities to participants who violate program requirements. SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to have in place a procedure, satisfactory to OHCS, which governs the termination and grievance process. These procedures should describe the program requirements and the termination process, as well as the grievance procedure which recognizes the rights of individuals who may be affected. Termination and grievance procedures shall be clearly communicated to and easily understood by PROGRAM PARTICIPANTS and readily available upon request, or posted in a public location.
 - 10) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to be responsible for maintaining an internal controls framework, satisfactory to OHCS, which assures SHAP program integrity. For example, the following procedures should be established and outlined in local documentation (e.g. staff policy/procedure manuals):
 - a) SUBGRANTEE shall establish and maintain regular SUBRECIPIENT monitoring practices (if applicable). SUBGRANTEE shall obtain prior written approval from OHCS when adding additional SUBRECIPIENTS or renewing any SUBRECIPIENTS.
 - b) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to assure that completed applications and HOUSEHOLD benefits are valid and correct. This includes adequate separation of duties among intake, authorization and fiscal staff.
 - c) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to maintain clear policy for cases where there may be a conflict of interest. This includes procedures for staff when employees, board members, friends or family members apply for program assistance services.
 - d) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to maintain clear procedures for dealing with applicants who may have committed fraud and for dealing with public complaints regarding potential fraud. All incidents of fraud must be reported to OHCS.

- e) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to maintain clear procedures for preventing, detecting and dealing with employee fraud. All incidents of fraud must be reported to OHCS.
- 11) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to assure that all necessary documentation is included in client files as satisfactory to OHCS. This includes documentation of HOMELESS status used to determine program eligibility.
- 12) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to allow OHCS access to, or furnish, whatever information and/or documentation is necessary for OHCS to conduct reviews and monitor progress or performance to determine conformity with intended program purposes. SUBGRANTEE shall permit representatives of OHCS to visit its sites or SUBRECIPIENT sites, and to review and audit all records pertinent to SHAP funding at any reasonable time, with or without benefit of prior notification.

4. Program Specific Reporting

- A. SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to assure that data collection and reporting for SHAP funded activities be conducted through the use of OHCS approved HMIS. SUBGRANTEE shall, and shall cause and require its SUBRECIPIENTS to assure that data entry into HMIS occurs in an accurate and timely manner as satisfactory to OHCS.
- B. SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to submit all reports as required in the Master Grant Agreement as satisfactory to OHCS including submission of the "Homeless Quarterly Report" which is due 30 days following the end of each quarter—October 30th, January 30th, April 30th and July 30th.
- C. SUBGRANTEE shall provide additional reports as needed or requested by OHCS.
- D. SUBGRANTEE may request a reporting deadline extension when necessary.

5. Performance Measures

- A. SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to operate the SHAP program in a manner designed to achieve the following performance goals:
 - 1) Increased housing stability as measured by the percentage of households served who exit program into permanent housing. Preliminary statewide target is 30%.
 - 2) Increased housing stability as measured by the percentage of households served entering permanent housing with stays of six months or longer. Statewide target is 80%.

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2013-2014 MASTER GRANT AGREEMENT
Exhibit A, Program 05
Housing Stabilization Program

1. **Description.** The Housing Stabilization Program (HSP) Program provides federal TANF funds to promote economic independence of families who are homeless or at risk of homelessness, by helping them access and maintain safe, stable and affordable permanent housing. HSP funds are available for three program components: emergency stabilization, family stabilization and data collection.

2. **Definitions.** Capitalized words in this work plan shall have the meanings provided herein, as stated in 42 U.S.C. 7, OAR 813.051 as amended, ORS 458.505 to 458.545, or as otherwise provided by OHCS unless the context clearly requires otherwise:

“*CMAP*” means Case Management Action Plan

“*CERTIFIED HOUSEHOLD*” means any individual, family or household whose homeless status and eligibility for HSP services has been verified through required and adequate documentation.

“*DHS*” means Department of Human Services.

“*EMERGENCY SHELTER*” means any facility whose primary purpose is to provide temporary or transitional shelter for the HOMELESS in general or for specific populations of the HOMELESS and which do not require occupants to sign leases or occupancy agreements.

“*EMERGENCY STABILIZATION*” means provision of one-time emergency services to meet up to 30 days of basic living needs due to HOUSEHOLD non-recurring financial crisis.

“*FAMILY STABILIZATION*” means provision of temporary services for up to 12 months to help PROGRAM PARTICIPANT obtain and maintain stable housing.

“*HMIS*” means Homeless Management Information System.

“*HOMELESS*” means an individual, family or HOUSEHOLD that lacks a fixed, regular and adequate nighttime residence in compliance with HUD CFR 576.2 and OHCS categorical definitions of literally homeless; imminent risk and at risk of homelessness, fleeing/attempting to flee domestic violence; and unstably housed and at-risk of losing their housing.

“*HOMELESS PREVENTION*” means services or programs designed to prevent the incidence of homelessness.

“*HOMELESS SERVICES*” means emergency stabilization, family stabilization and data collection activities and assistance designed to reduce homelessness.

“*HOUSEHOLD*” means an individual living alone, family with or without children, or a group of individuals who are living together as one economic unit.

“*HOUSEHOLD INCOME*” means the total HOUSEHOLD receipts before taxes from all sources. Income may be reduced by deductions allowed by the DEPARTMENT. Income does not include assets or funds over which the applicant has no control.

“*HSP*” means Housing Stabilization Program.

“*HUD*” means the U.S. Department of Housing and Urban Development.

"LEGAL REQUIREMENTS" means federal and state statutes applicable to HSP, federal and state rules and regulations applicable to HSP, and OHCS directives, all as amended from time to time. LEGAL REQUIREMENTS are, and shall be deemed by the parties to constitute, terms and conditions of this Agreement.

"OHCS" means the State of Oregon, acting by and through its Housing and Community Services Department.

"PROGRAM PARTICIPANT" means a HOUSEHOLD with an eligible dependent child or an eligible child who has applied on their own behalf that is provided services through HSP funded programs.

"SUBGRANTEE" means the public or private nonprofit organization which has entered into this Agreement with OHCS to administer HSP at the local level within the designated service area.

"SUBRECIPIENT" means a public or private nonprofit organization that enters into a written agreement with SUBGRANTEE satisfactory to OHCS to provide HSP assistance to certified participants.

"TANF" means Temporary Assistance to Needy Families.

"WORK PLAN APPLICATION" means SUBGRANTEE's funding application, which is part of the contract between the DEPARTMENT and the SUBGRANTEE.

3. Scope of Work.

- A. SUBGRANTEE shall, and shall cause and shall require by contract that its SUBRECIPIENTS comply and perform all work to the satisfaction of OHCS, and in accordance with the terms of this Agreement, including its local work plan application as approved by OHCS and supplemented herein, together with applicable LEGAL REQUIREMENTS including CFDA 93.558, 42 U.S.C. 7, OAR 813.051 as amended and ORS 458.505 to 458.545. The approved WORK PLAN APPLICATION is incorporated herein by reference. The remaining provisions of this Section 3 are supplemental to, and do not limit the obligations of SUBGRANTEE or its SUBRECIPIENTS arising under this Subsection 3A or otherwise under this agreement
- B. SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to administer Housing Stabilization Program (HSP) Funds in a manner that is satisfactory to OHCS and in compliance with all PROGRAM REQUIREMENTS, including but not limited to the following terms and conditions:
- 1) SUBGRANTEE shall expend no more than ten percent of its HSP Program award for allowable administrative costs in order to provide the services outlined in this agreement. SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to expend no more than five percent of its HSP Program award from the SUBGRANTEE agency for allowable administrative costs.
 - 2) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to assure HTP program funds are used only for HOMELESS SERVICES within the three allowable program components as described in OAR 813.051 as amended and OHCS Homeless Program Guidelines. Program components are:
 - a) EMERGENCY STABILIZATION—services or assistance that will address an emergency unmet basic need with a one-time payment not to exceed \$500 to prevent homelessness or utility shut-off;
 - b) FAMILY STABILIZATION—services or assistance identified in a jointly developed CMAP designed to assist PROGRAM PARTICIPANT in obtaining permanent housing with financial payments limited to \$7,200 within a 12-month time period.
 - c) Data Collection—costs related to participating in OHCS approved HMIS including six month determination of housing status after program exit.
 - 3) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to determine eligibility of PROGRAM PARTICIPANTS using HSP program eligibility criteria issued by OHCS and DHS. SUBGRANTEE is responsible to OHCS for any losses resulting from improper or negligent issuance of HSP funds.

- 4) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to assure that there is an eligible dependent child in any HOUSEHOLD receiving HSP funds. The dependent child must be living with either their parent(s) or a caretaker relative for the HOUSEHOLD to qualify. An eligible child that does not live with a parent or caretaker/relative may apply on his or her own behalf or may have an unrelated adult apply for them. An 18 year-old may apply on his or her own if enrolled in school.
- 5) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to assure that all HOUSEHOLD income is counted to determine eligibility for HSP services. The countable income must be equal to or below the HSP income limit in the month of application. The income limit for HSP is at or below 150% of the Federal Poverty Guidelines.
 - a) For the purpose of determining income eligibility for EMERGENCY STABILIZATION, SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to use the 30 days income for the month the HOUSEHOLD is applying for benefits.
 - b) For the purpose of determining income eligibility for FAMILY STABILIZATION, SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to use the 30 days income in the month of HOUSEHOLD application, or an average of the past 90 days (3 months).
- 6) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to provide HSP assistance only to HOUSEHOLDS who meet the OHCS criteria for being defined as:
 - a) **Literally Homeless** meaning a HOUSEHOLD lacks a fixed, regular, and adequate nighttime residence including living in a place not meant for human habitation;
 - b) **Imminent Risk of Homelessness** meaning a HOUSEHOLD who will imminently lose their primary nighttime residence within fourteen days, has no subsequent residence identified and lacks the resources or support networks needed to obtain permanent housing;
 - c) **Fleeing/Attempting to Flee Domestic Violence** meaning a HOUSEHOLD fleeing or attempting to flee domestic violence, has no other residence and lacks the resources or support networks to obtain permanent housing;
 - d) **Unstably Housed and At-risk of Losing Their Housing** meaning a household who is experiencing housing instability and lacks the resources or support networks to obtain permanent housing.
- 7) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to assure that HOUSEHOLD case plans are jointly developed and managed between DHS, SUBGRANTEE or SUBRECIPIENT, and the HOUSEHOLD.
- 8) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to assure that all applicant HOUSEHOLDS are informed during the intake interview of their right to an appeal. If a claim is denied, a written notice must tell the applicant:
 - a) The reason for denial of assistance;
 - b) That they may provide additional information for re-evaluating their claim;
 - c) That they have 30 days from the date of the Notice to ask for a hearing; and
 - d) Other rights and responsibilities.
- 9) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to be responsible for maintaining an internal controls framework, satisfactory to OHCS, which assures HSP program integrity. For example, the following procedures should be established and outlined in local documentation (e.g. staff policy/procedure manuals):
 - a) SUBGRANTEE shall establish and maintain regular SUBRECIPIENT monitoring practices (if applicable). SUBGRANTEE shall obtain prior written approval from OHCS when adding additional SUBRECIPIENTS or renewing any SUBRECIPIENTS.

- b) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to assure that completed applications and HOUSEHOLD benefits are valid and correct. This includes adequate separation of duties among intake, authorization and fiscal staff.
- c) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to maintain clear policy for cases where there may be a conflict of interest. This includes procedures for staff when employees, board members, friends or family members apply for energy assistance services.
- d) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to maintain clear procedures for dealing with applicants who may have committed fraud and for dealing with public complaints regarding potential fraud. All incidents of fraud must be reported to OHCS.
- e) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to maintain clear procedures for preventing, detecting and dealing with employee fraud. All incidents of fraud must be reported to OHCS.

10) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to assure that all necessary documentation is included in client files as satisfactory to OHCS. This includes applicant verification of income used to determine program eligibility.

11) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to allow OHCS access to, or furnish, whatever information and/or documentation is necessary for OHCS to conduct reviews and monitor progress or performance to determine conformity with intended program purposes. SUBGRANTEE shall permit representatives of OHCS to visit its sites or SUBRECIPIENT sites, and to review and audit all records pertinent to HSP funding at any reasonable time, with or without benefit of prior notification.

4. Program Specific Reporting

- A. SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to assure that data collection and reporting for HSP funded activities be conducted through the use of OHCS approved HMIS. SUBGRANTEE shall, and shall cause and require its SUBRECIPIENTS to assure that data entry into HMIS occurs in an accurate and timely manner as satisfactory to OHCS.
- B. SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to submit all reports as required in the Master Grant Agreement as satisfactory to OHCS including submission of the "Homeless Quarterly Report" which is due 30 days following the end of each quarter—October 30th, January 30th, April 30th and July 30th.
- C. SUBGRANTEE shall provide additional reports as needed or requested by OHCS.
- D. SUBGRANTEE may request a reporting deadline extension when necessary.

5. Performance Measures

- A. SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to operate the HTP program in a manner designed to achieve the following performance goals:
 - 1) Increased housing stability as measured by the percentage of households served who exit program into permanent housing. Preliminary statewide target is 30%.
 - 2) Increased housing stability as measured by the percentage of households served entering permanent housing with stays of six months or longer. Statewide target is 80%.

6. Matching Requirements

- A. SUBGRANTEE shall make matching contributions to supplement their HSP program in an amount that equals the SUBGRANTEE's HSP fund allocation and in compliance with the following requirements:

- 1) SUBGRANTEE may obtain matching cash and noncash contributions from any nonfederal source including state, local and private.
- 2) SUBGRANTEE matching requirements must be provided and expended within the SUBGRANTEE's HSP grant fiscal year.

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2013-2014 MASTER GRANT AGREEMENT
Exhibit A, Program Element 06
HOME Tenant Based Assistance Program

1. **Description.** The HOME Tenant Based Assistance (HTBA) program offers rental assistance for multiple months to very low income tenants to pay a portion of housing costs, as well as a refundable security deposit. The amount of payment is determined by a number of factors, including the tenant household's size and income and the unit's rent or the geographical area's standardized rent. Tenants receive rental assistance for a unit of their own choosing. A tenant may move to another rental property and still retain the rental subsidy.
2. **Definitions.** Capitalized words in this work plan shall have the meanings provided herein, as stated in 24 CFR Sec. 92, 42 U.S.C. 12701 et. seq., ORS 456.620, ORS 458.505, OAR 813.120, or as otherwise provided by OHCS unless the context clearly requires otherwise:

"ADJUSTED INCOME" means a household's annual income less specified allowances determined by HUD, including allowances for dependents, elderly family members, handicapped or disabled members and child care expenses.

"APPLICANT" means an individual or entity that has applied for HOME TBA funds.

"CERTIFIED HOUSEHOLD" means any HOUSEHOLD that meets the qualifications to receive HOME TBA-funded services.

"HOME" means HUD's HOME Investment Partnerships Program established by the HOME Investment Partnerships Act at Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990, as amended, 42 U.S.C. § 12701 et seq.

"HOUSEHOLD" means an individual living alone or a group of individuals who are living together as one economic unit.

"HUD" means the U.S. Department of Housing and Urban Development.

"HOUSING" means rental units, which may be in a rental complex or a free-standing single family home. It also includes, but is not limited to, rental manufactured housing and manufactured housing lots, permanent housing for disabled homeless persons, transitional housing and single room occupancy housing. Housing does not include emergency shelters (including domestic violence shelters) or facilities, correctional facilities and student dormitories.

"HUD SECTION 8 HOUSING QUALITY STANDARDS (HQS)" means those occupancy standards as contained in 24 C.F.R Sec. 982.401.

"LEGAL REQUIREMENTS" means federal and state statutes applicable to HOME TBA, federal and state rules and regulations applicable to HOME TBA, and OHCS directives, all as amended from time to time. LEGAL REQUIREMENTS are, and shall be deemed by the parties to constitute, terms and conditions of this Agreement.

"OHCS" means the State of Oregon, acting by and through its Housing and Community Services Department.

"PUBLIC HOUSING AUTHORITY (PHA)" means any Public Agency that is authorized to engage in or assist in the development or operation of Low-Income housing.

"SUBGRANTEE" means the public or private nonprofit organization which has entered into this Agreement with OHCS to administer HOME TBA at the local level within the designated service area.

"*SUBRECIPIENT*" means a public or private nonprofit organization that enters into a written agreement with SUBGRANTEE satisfactory to OHCS to provide HOME TBA assistance to a CERTIFIED HOUSEHOLD.

"*TBA*" means Tenant Based Assistance.

"*WORK PLAN APPLICATION*" means SUBGRANTEE Agency's Funding application, which is part of the contract between the OHCS and SUBGRANTEE Agency.

3. Scope of Work.

- A. SUBGRANTEE shall, and shall cause and shall require by contract that its SUBRECIPIENTS comply and perform all work to the satisfaction of OHCS, and in accordance with the terms of this Agreement, including its local work plan application as approved by OHCS and supplemented herein, together with applicable LEGAL REQUIREMENTS including CFDA 14.239, 42 USC 12701 et. seq., 24 CFR Sec. 92, ORS 456.620, ORS 458.505 and OAR 813.120. The approved WORK PLAN APPLICATION is incorporated herein by reference. The remaining provisions of this Section 3 are supplemental to, and do not limit the obligations of SUBGRANTEE or its SUBRECIPIENTS arising under this Subsection 3A or otherwise under this agreement
- B. SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to administer HOME Tenant Based Assistance (HTBA) funds in a manner satisfactory to OHCS and in compliance with all PROGRAM REQUIREMENTS, including but not limited to the following terms and conditions:
- 1) SUBGRANTEE may, and may cause and may require its SUBRECIPIENTS by contract to use grant funds allocated specifically by OHCS for allowable administrative and overhead costs in order to provide the services outlined in this agreement. SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to expend no more than the HOME TBA administrative award allocated by OHCS for these costs.
 - 2) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to complete HUD SECTION 8 HOUSING QUALITY STANDARDS inspections, and coordinate with the local Public Health Office for lead-based paint assessments.
 - 3) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to assure that HOME TBA funds are committed by the end of the each grant year. The grant year for HOME TBA funds begins on July 1 and ends on June 30. Any HOME TBA funds not committed by the end of the grant year will be recaptured by OHCS.
 - 4) SUBGRANTEES shall develop a written Tenant Selection Plan, satisfactory to OHCS, as instructed in the HOME TBA program manual. The plan must identify any target populations to be served and specify how HOUSEHOLDS will be selected to receive assistance. The plan must assure that assistance is available to all persons in the target population(s). The plan is approved by the OHCS program manager at the beginning of each biennium as part of the WORK PLAN APPLICATION. The SUBGRANTEE may also request approval for changes to the plan throughout the funding period, as needed.
 - 5) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to affirmatively market HOME TBA to all qualified members of specified targeted populations and the communities the SUBGRANTEE or SUBRECIPIENT serves. SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to assure that information about HOME TBA reaches the broadest possible range of potential APPLICANTS. This includes HOUSEHOLDS which may face obstacles to application, including but not limited to language barriers, geographic accessibility or disability.
 - 6) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to determine eligibility of HOUSEHOLDS prior to issuing HOME TBA funds using current eligibility criteria issued by

OHCS. SUBGRANTEE is responsible to OHCS for any losses resulting from improper or negligent issuance of HOME TBA funds.

- 7) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to assure that HOUSEHOLDS receiving HOME TBA funds have annual gross incomes not exceeding 50% of the area median income based on HOUSEHOLD size.
- 8) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to assure that rental subsidies do not exceed the difference between a specified rent standard and 30% of the tenant's monthly ADJUSTED INCOME.
- 9) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to assure that the tenant pays a minimum of \$10 per month toward HOUSING or utility costs.
- 10) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to assure that security deposits are consistent with local market practices, and not more than two month's rent.
- 11) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to use HOME TBA program funds for only rent or rent/utility subsidies, refundable rent deposits, and/or utility deposits. SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to make payment directly to the landlord and utility company.
- 12) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to ensure program participants develop and progress through a self-sufficiency plan during the course of the participant's HOME TBA assistance.
- 13) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to ensure that program grants are for 12 months unless all parties agree to a shorter period. Grants may be renewed, but shall not exceed a total of 24 months without review and file documentation by the SUBGRANTEE's HOME TBA program manager.
- 14) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to ensure the rental lease will not be for a lesser term than the HOME TBA program contract period.
- 15) SUBGRANTEE and its SUBRECIPIENTS may terminate HOME TBA assistance if the tenant is not in compliance with program requirements. If terminated, SUBGRANTEE or its SUBRECIPIENTS shall immediately provide the tenant and tenant's landlord with written notice of the termination and of SUBGRANTEE's appeal policy and procedures. All appeals and hearing requests will be conducted by the SUBGRANTEE.
- 16) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to keep files for both assisted and ineligible HOUSEHOLDS as satisfactory to OHCS. Files are required to contain documents specified in the OHCS HOME TBA program manual.
- 17) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to allow OHCS access to, or furnish, whatever information and/or documentation is necessary for OHCS to conduct reviews and monitor progress or performance to determine conformity with intended program purposes. SUBGRANTEE shall permit representatives of OHCS to visit its sites or SUBRECIPIENT sites, and to review and audit all records pertinent to HOME TBA at any reasonable time, with or without benefit of prior notification.

4. Program Specific Reporting

- A. SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to ensure that data collection and reporting for HOME TBA funded activities be conducted through the use of OHCS approved

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HMIS or other OHCS designated service data information system. SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS to assure that data entry into HMIS is accurate and occurs within 30 days of client contact.

- B. SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to submit all reports as required in the Master Agreement and outlined in the HOME TBA Program Manual as satisfactory to OHCS.
- C. SUBGRANTEE shall provide additional reports as needed or requested by OHCS.
- D. SUBGRANTEE may request a reporting deadline extension when necessary.

5. Match Requirement

- A. SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to assure MATCH of the federal HOME TBA money with qualifying non-federal funds. Match shall be 25% of the HOME TBA allocation unless OHCS determines a lesser percentage is required. SUBGRANTEE and SUBRECIPIENTS must assign MATCH to individual grants and keep track of their MATCH allocations.

6. Performance Measures

- A. SUBGRANTEE shall, and shall cause and shall require SUBRECIPIENTS by contract to operate its HOME TBA program in a manner designed to achieve the following performance goals:
 - 1) Increased housing stability as measured by the percentage of households served who maintained permanent housing for at least six months after exiting the program. Statewide target is 80%.

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2013-2014 MASTER GRANT AGREEMENT
Exhibit A, Program Element 07
Low Income Rental Housing Fund (LIRHF)

1. **Description.** The Low Income Rental Housing Fund (LIRHF) program offers rental assistance for multiple months to very low income tenants to pay a portion of housing costs, as well as a refundable security deposit. The amount of payment is determined by a number of factors, including the tenant household's size and income and the unit's rent or the geographical area's standardized rent. Tenants receive rental assistance for a unit of their own choosing. A tenant may move to another rental property and still retain the rental subsidy.
2. **Definitions.** Capitalized words in this program element shall have the meanings provided herein, as stated in OAR 813-049, ORS 456.620, 458.620, and ORS 458.650, or as otherwise provided by OHCS unless the context clearly requires otherwise:

"ADJUSTED INCOME" means a household's annual income less specified allowances determined by HUD, including allowances for dependents, elderly family members, handicapped or disabled members and child care expenses.

"APPLICANT" means an individual or entity that has applied for LIRHF funds.

"CERTIFIED HOUSEHOLD" means any HOUSEHOLD that meets the qualifications to receive LIRHF funded services.

"HOME" means HUD's HOME Investment Partnerships Program established by the HOME Investment Partnerships Act at Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990, as amended, 42 U.S.C. § 12701 et seq.

"HOUSEHOLD" means an individual living alone or a group of individuals who are living together as one economic unit.

"HUD" means the U.S. Department of Housing and Urban Development.

"HOUSING" means rental units, which may be in a rental complex or a free-standing single family home. It also includes, but is not limited to, rental manufactured housing and manufactured housing lots, permanent housing for disabled homeless persons, transitional housing and single room occupancy housing. Housing does not include emergency shelters (including domestic violence shelters) or facilities, correctional facilities and student dormitories.

"LEGAL REQUIREMENTS" means federal and state statutes applicable to LIRHF, federal and state rules and regulations applicable to LIRHF, and OHCS directives, all as amended from time to time. LEGAL REQUIREMENTS are, and shall be deemed by the parties to constitute, terms and conditions of this Agreement.

"LIRHF" means Low Income Rental Housing Fund.

"OHCS" means the State of Oregon, acting by and through its Housing and Community Services Department.

"PUBLIC HOUSING AUTHORITY (PHA)" means any Public Agency that is authorized to engage in or assist in the development or operation of Low-Income housing.

"SUBGRANTEE" means the public or private nonprofit organization which has entered into this Agreement with OHCS to administer LIRHF at the local level within the designated service area.

"SUBRECIPIENT" means a public or private nonprofit organization that enters into a written agreement with SUBGRANTEE satisfactory to OHCS to provide LIRHF assistance to a CERTIFIED HOUSEHOLD.

“*WORK PLAN APPLICATION*” means SUBGRANTEE Agency’s Funding application, which is part of the contract between the OHCS and SUBGRANTEE Agency.

3. Scope of Work.

- A. SUBGRANTEE shall, and shall cause and shall require by contract that its SUBRECIPIENTS comply and perform all work to the satisfaction of OHCS, and in accordance with the terms of this Agreement, including its local WORK PLAN APPLICATION as approved by OHCS and supplemented herein, together with applicable LEGAL REQUIREMENTS including OAR 813-049, ORS 456.620, 458.620 and ORS 458.650. The approved WORK PLAN APPLICATION is incorporated herein by reference. The remaining provisions of this Section 3 are supplemental to, and do not limit the obligations of SUBGRANTEE or its SUBRECIPIENTS arising under this Subsection 3A or otherwise under this agreement
- B. SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to administer Low Income Rental Housing Funds (LIRHF) in a manner satisfactory to OHCS and in compliance with all PROGRAM REQUIREMENTS, including but not limited to the following terms and conditions:
- 1) SUBGRANTEE may, and may cause and may require its SUBRECIPIENTS by contract to use grant funds allocated specifically by OHCS for allowable administrative and overhead costs in order to provide the services outlined in this agreement.
 - 2) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to assure that SUBGRANTEES and SUBRECIPIENTS who are also PUBLIC HOUSING AUTHORITIES do not use LIRHF to defray the cost of rents on units owned or actively managed by the PUBLIC HOUSING AUTHORITY.
 - 3) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to assure that LIRHF funds are committed by the end of the biennium. Any LIRHF funds not committed by the end of the biennium will be recaptured by OHCS.
 - 4) SUBGRANTEES shall develop a written Tenant Selection Plan, satisfactory to OHCS, as instructed in the LIRHF program manual. The plan must identify any target populations to be served and specify how HOUSEHOLDS will be selected to receive assistance. The plan must assure that assistance is available to all persons in the target population(s). The plan is approved by the OHCS program manager at the beginning of each biennium as part of the WORK PLAN APPLICATION. The SUBGRANTEE may also request approval for changes to the plan throughout the funding period, as needed.
 - 5) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to affirmatively market LIRHF to all qualified members of specified targeted populations and the communities the SUBGRANTEE or SUBRECIPIENT serves. SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to assure that information about LIRHF reaches the broadest possible range of potential APPLICANTS. This includes HOUSEHOLDS who may face obstacles to application, including but not limited to language barriers, geographic accessibility or disability.
 - 6) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to determine eligibility of HOUSEHOLDS prior to issuing LIRHF funds using current eligibility criteria issued by OHCS. SUBGRANTEE is responsible to OHCS for any losses resulting from improper or negligent issuance of LIRHF funds.
 - 7) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to assure that HOUSEHOLDS receiving LIRHF funds have annual gross incomes not exceeding 50% of the area median income based on HOUSEHOLD size.

- 8) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to assure that LIRHF rental subsidies do not exceed the difference between a specified rent standard and 30% of the tenant's monthly ADJUSTED INCOME.
- 9) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to assure that the tenant pays a minimum of \$10 per month toward HOUSING or utility costs.
- 10) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to assure that security deposits are consistent with local market practices, and not more than two month's rent.
- 11) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to use LIRHF program funds for only rent or rent/utility subsidies, refundable rent deposits, and/or utility deposits. SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to make payment directly to the landlord and utility company.
- 12) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to ensure program participants develop and progress through a self-sufficient plan during the course of the participant's LIRHF assistance.
- 13) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to assure that the rental lease will not be for a lesser term than the effective program contract period. Participant grant assistance may be renewed, but shall not exceed a total of 24 months without review and file documentation by the SUBGRANTEE's LIRHF program manager.
- 14) SUBGRANTEE and its SUBRECIPIENTS may terminate LIRHF assistance if the tenant is not in compliance with program requirements. If terminated, SUBGRANTEE or its SUBRECIPIENTS shall immediately provide the tenant and tenant's landlord with written notice of the termination and of SUBGRANTEE's appeal policy and procedures. All appeals and hearing requests will be conducted by the SUBGRANTEE.
- 15) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to keep files for both assisted and ineligible HOUSEHOLDS as satisfactory to OHCS. Files are required to contain documents specified in the OHCS LIRHF program manual.
- 16) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to be responsible for maintaining an internal controls framework, satisfactory to OHCS, which assures LIRHF program integrity. For example, the following procedures should be established and outlined in local documentation (e.g. staff policy/procedure manuals):
 - a) SUBGRANTEE shall establish and maintain regular SUBRECIPIENT monitoring practices (if applicable). SUBGRANTEE shall obtain prior written approval from OHCS when adding additional SUBRECIPIENTS or renewing any SUBRECIPIENTS.
 - b) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to assure that completed applications and HOUSEHOLD benefits are valid and correct. This includes adequate separation of duties among intake, authorization and fiscal staff.
 - c) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to maintain clear policy for cases where there may be a conflict of interest. This includes procedures for staff when employees, board members, friends or family members apply for program assistance services.
 - d) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to maintain clear procedures for dealing with applicants who may have committed fraud and for dealing with public complaints regarding potential fraud. All incidents of fraud must be reported to OHCS.

e) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to maintain clear procedures, satisfactory to OHCS, for preventing, detecting and dealing with employee fraud. All incidents of fraud must be reported to OHCS.

17) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to allow OHCS access to, or furnish, whatever information and/or documentation is necessary for OHCS to conduct reviews and monitor progress or performance to determine conformity with intended program purposes. SUBGRANTEE shall permit representatives of OHCS to visit its sites or SUBRECIPIENT sites, and to review and audit all records pertinent to LIRHF at any reasonable time, with or without benefit of prior notification.

4. Program Specific Reporting

- A. SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to ensure that data collection and reporting for LIRHF funded activities be conducted through the use of OHCS approved HMIS or other OHCS designated service data information system. SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS to assure that data entry into HMIS is accurate and occurs within 30 days of client contact.
- B. SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to submit all reports as required in the Master Agreement and outlined in the LIRHF program manual as satisfactory to OHCS.
- C. SUBGRANTEE shall provide additional reports as needed or requested by OHCS.
- D. SUBGRANTEE may request a reporting deadline extension when necessary.

5. Match Requirement

- A. SUBGRANTEE may use LIRHF funds to meet the match requirement of HUD's HOME Investment Partnerships Program.

6. Performance Measures

- A. SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to operate its LIRHF program in a manner designed to achieve the following performance goals:
 - 1) Increased housing stability as measured by the percentage of households served who maintained permanent housing for at least six months after exiting the program. Statewide target is 80%.

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2013-2014 MASTER GRANT AGREEMENT
Exhibit A, Program Element 08
Commodity Supplemental Food Program

1. Description. The Commodity Supplemental Food Programs (CSFP) is a federally funded program, designed to improve the health of low-income seniors at least 60 years of age by supplementing their diets with nutritious USDA commodity foods, nutrition educations, and information about other health services.

2. Definitions. Capitalized words in this work plan shall have the meanings provided herein, as stated in 7 CFR 247.1, or as otherwise provided by OHCS unless the context clearly requires otherwise:

"APPLICANT" means any person who applies to receive CFSP benefits. Applicants include CFSP participants applying for recertification.

"CERTIFICATION" means the determination that an Applicant is approved as a CFSP participant made in accordance with this Agreement and CFSP Legal Requirements.

"CERTIFICATION PERIOD" means the period of time that a participant may continue to receive CFSP benefits without a review of his or her eligibility.

"COMMODITIES" means nutritious foods provided by USDA for CSFP use.

"CSFP" means Commodity Supplemental Food Program

"OHCS" means the State of Oregon, acting by and through its Housing and Community Services Department, including as an SDA.

"LEGAL REQUIREMENTS" means federal and state statutes applicable to CSFP, federal and state rules and regulations applicable to CSFP, the OHCS CSFP Operations Manual, and OHCS directives, all as amended from time to time. LEGAL REQUIREMENTS are, and shall be deemed by the parties to constitute, terms and conditions of this Agreement.

"SUBGRANTEE" means the public or private nonprofit organization, which has entered into this Agreement with OHCS to administer CSFP at the local level within the designated service area.

"SUBRECIPIENT" means a public or private nonprofit organization that enters into a written agreement with SUBGRANTEE satisfactory to OHCS to provide CSFP assistance to certified participants.

"USDA" means the United States Department of Agriculture.

"WORK PLAN APPLICATION" means SUBGRANTEE's funding application, which is part of the contract between the DEPARTMENT and the SUBGRANTEE.

3. Scope of Work.

A. SUBGRANTEE shall, and shall cause and shall require by contract that its SUBRECIPIENTS comply and perform all work to the satisfaction of OHCS, and in accordance with the terms of this Agreement, including its local WORK PLAN APPLICATION as approved by OHCS, and supplemented herein, together with applicable LEGAL REQUIREMENTS including CFDA 10.565, 7 U.S.C. 612c, and 7 CFR 247. The approved WORK PLAN APPLICATION is incorporated herein by reference. The remaining provisions of this Section 3 are supplemental to, and do not limit the obligations of SUBGRANTEE or its SUBRECIPIENTS arising under this Subsection 3A or otherwise under this agreement.

B. SUBGRANTEE shall receive, store, monitor, account for, and distribute COMMODITIES in a manner satisfactory to OHCS and in compliance with all PROGRAM REQUIREMENTS, including but not limited to the following terms and conditions:

- 1) COMMODITIES received under this Agreement shall be used solely for the benefit of Certified CSFP participants within designated service areas of this Agreement. COMMODITIES shall not be sold, exchanged, or otherwise disposed of without the prior written approval of OHCS.
- 2) SUBGRANTEE shall, and shall cause and require that its SUBRECIPIENTS accurately maintain a complete record of receipt, distribution, disposal, and inventory of COMMODITIES satisfactory to OHCS. SUBGRANTEE shall, and shall cause and require its SUBRECIPIENTS to, sign receipts for any COMMODITIES received. The receipts must include, among other relevant information, the amount of COMMODITIES received, the date of receipt, the name, and address of the receiving agency, and recipient's signature acknowledging receipt.
- 3) SUBGRANTEE shall, and shall cause and require its SUBRECIPIENTS to provide adequate facilities satisfactory to OHCS for the handling, storage, and distribution of COMMODITIES as well as properly safeguard against damage, theft, spoilage, or other loss consistent with this Agreement, including LEGAL REQUIREMENTS.
- 4) SUBGRANTEE assumes full responsibility for reimbursing OHCS for, and shall pay to OHCS upon request; the USDA dollar value of any COMMODITIES improperly used, disbursed, wasted, lost, damaged, or disposed of due to the fault of the SUBGRANTEE, its SUBGRANTEES or their agents. SUBGRANTEE shall indemnify, hold harmless, save and defend (consistent with ORS chapter 180) OHCS with respect to any liability, claims, causes of action or damages: (i) arising from or relating to any such use, disbursement, waste, loss, damage, or disposal of COMMODITIES; (ii) arising from or relating to any actual or alleged improper or harmful storage or distribution of COMMODITIES; or, (iii) arising from or relating to any breach by SUBGRANTEE, its SUBRECIPIENTS, or their agents under this Agreement, including LEGAL REQUIREMENTS.
- 5) SUBGRANTEE shall immediately advise OHCS in writing of any complaints regarding COMMODITIES. SUBGRANTEE shall provide appropriate information regarding the product and nature of any and all such complaints, including as requested by OHCS, and cooperate fully in any investigations thereof pursued by OHCS or USDA.
- 6) Physical inventories of COMMODITIES, satisfactory to OHCS, shall be performed monthly by the SUBGRANTEE, SUBRECIPIENTS, and their agents. SUBGRANTEE will submit inventory reports to OHCS no later than the 20th working day of each month. Inventory reports must accurately identify product on hand, product received, product distributed, product remaining, and such other information as may be requested by OHCS. Such physical inventories shall be reconciled with SUBGRANTEE book inventories and maintained on file by SUBGRANTEE. In no event, may the inventory level of each COMMODITY food in storage exceed a three-month supply unless sufficient justification for additional inventory has been submitted to and approved by OHCS.
- 7) SUBGRANTEE shall not, and shall cause and require that its SUBRECIPIENTS not make orders for or use COMMODITIES in excess of their legitimate need, including to cover the over-issuance of caseloads. OHCS may monitor and require information from SUBGRANTEE and its SUBRECIPIENTS with respect to orders for or use of COMMODITIES to ensure, among other things, that the SUBGRANTEE and SUBRECIPIENTS are not over-ordering or using COMMODITIES to serve unapproved caseloads.
- 8) SUBGRANTEE shall, and shall cause and require its SUBRECIPIENTS to determine the eligibility of persons as CSFP participants prior to issuing or allowing the issuance of any COMMODITIES for end use. Eligibility shall be determined using current income eligibility information issued by the United States Department of Health and Human Services Federal Poverty Guidelines. SUBGRANTEE is responsible to OHCS for any losses resulting from improper or negligent issuance/distribution of USDA CSFP COMMODITIES.

- 9) SUBGRANTEE shall not, and shall cause and require that its SUBRECIPIENTS not solicit donations in any manner from clients or require any client to pay for CSFP COMMODITIES, join any organization or group, attend or participate in a religious practice or service, or any other activity unrelated to the distribution of CSFP COMMODITIES, as a condition for receiving CSFP COMMODITIES.
- 10) The SUBGRANTEE and SUBRECIPIENTS are required to provide nutrition education and/or referral to eligible APPLICANTS. This includes information concerning available health assistance programs.
- 11) SUBGRANTEE shall, and shall cause and require its SUBRECIPIENTS to strictly adhere to all applicable federal and state laws and regulations regarding civil rights and nondiscrimination as they currently exist and may hereafter be amended. This includes protection of the confidentiality of all APPLICANT/recipient records, papers, documents, tapes and any other materials that have been or may hereafter be established which relate to this agreement. The SUBGRANTEE and SUBRECIPIENTS are responsible for any additional Civil Rights reporting requirements as set forth in the CSFP Operation Manual.
- 12) SUBGRANTEE shall, and shall cause and require its SUBRECIPIENTS to allow OHCS access to, or furnish, whatever information and/or documentation is necessary for OHCS to conduct reviews and monitor progress or performance to determine conformity with intended CSFP purposes. SUBGRANTEE shall permit representatives of OHCS or USDA to visit its sites or SUBRECIPIENT sites, inspect food in storage, or the facilities used in handling or storing food, to monitor distributions and to review and audit all records pertinent to CSFP at any reasonable time, with or without benefit of prior notification.

4. Program Reporting

- A. SUBGRANTEE shall, and shall cause and require its SUBRECIPIENTS to retain all records, documents etc. required by USDA regulations, OHCS policies or this agreement for three years following the close of the federal fiscal year to which they pertain.
- B. SUBGRANTEE shall, and shall cause and require its SUBRECIPIENTS by contract to submit all reports as required in the Master Grant Agreement as satisfactory to OHCS including the following:
 - 1) USDA/FNS 153 Inventory Report due on the 20th day of each month for the prior month.
 - 2) USDA/FNS 153 Participation Report/WIC due on the 20th day of each month for the prior month.
 - 3) USDA/FNS 101 Racial and Ethnic Report due annually on May 30th
 - 4) Monthly food ordering through USDA Web-Based Supply Chain Management, due to USDA on or before the 15th of each month.

5. Performance Measures

- A. SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to operate the CSFP program in a manner designed to achieve the following performance goals:
 - 1) Increase consumption of nutritional food by 5% as measured by the percentage increase in the pounds of nutritional emergency food distributed to the Oregon Food Bank Network.

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2013-2014 MASTER GRANT AGREEMENT
Exhibit A, Program Element 09
Food Distribution Program on Indian Reservations

1. **Description.** The Food Distribution Program on Indian Reservations (FDPIR) is a federal program that provides commodity foods to low-income households, including the elderly living on Indian reservations, and to Native American families residing in designated areas near reservations.

2. **Definitions.** Capitalized words in this work plan shall have the meanings provided herein, as stated in 7 CFR 253.2, or as otherwise provided by OHCS unless the context clearly requires otherwise:

“*APPLICANT*” means any person who applies to receive FDPIR benefits. Applicants include FDPIR participants applying for recertification.

“*CERTIFICATION*” means the determination that an Applicant is approved as a FDPIR participant made in accordance with this Agreement and FDPIR Legal Requirements.

“*CERTIFICATION PERIOD*” means the period of time that a participant may continue to receive FDPIR benefits without a review of his or her eligibility.

“*COMMODITIES*” means nutritious foods provided by USDA for FDPIR use.

“*FDPIR*” means Food Distribution Program on Indian Reservations.

“*OHCS*” means the State of Oregon, acting by and through its Housing and Community Services Department, including as an SDA.

“*LEGAL REQUIREMENTS*” means federal and state statutes applicable to FDPIR, federal and state rules and regulations applicable to FDPIR, the OHCS FDPIR Operations Manual, and OHCS directives, all as amended from time to time. LEGAL REQUIREMENTS are, and shall be deemed by the parties to constitute, terms and conditions of this Agreement.

“*SUBGRANTEE*” means the public or private nonprofit organization, including an Indian tribal organization, which has entered into this Agreement with OHCS to administer FDPIR at the local level within the designated service area.

“*SUBRECIPIENT*” means a public or private nonprofit organization that enters into a written agreement with SUBGRANTEE satisfactory to OHCS to provide FDPIR assistance to certified participants.

“*USDA*” means the United States Department of Agriculture.

“*WORK PLAN APPLICATION*” means SUBGRANTEE’s funding application, which is part of the contract between the OHCS and the SUBGRANTEE.

3. **Scope of Work.**

A. SUBGRANTEE shall, and shall cause and shall require by contract that its SUBRECIPIENTS comply and perform all work to the satisfaction of OHCS, and in accordance with the terms of this Agreement, including its local WORK PLAN APPLICATION as approved by OHCS and supplemented herein, together with applicable LEGAL REQUIREMENTS including CFDA 10.567, 7 CFR 253, 7 CFR 250, Public Law 104-193 and USDA/FNS 501 Instruction Handbook. The approved WORK PLAN APPLICATION is incorporated herein by reference. The remaining provisions of this Section 3 are supplemental to, and do not limit the obligations of SUBGRANTEE or its SUBRECIPIENTS arising under this Subsection 3A or otherwise under this agreement

B. SUBGRANTEE shall receive, store, monitor, account for, and distribute in a manner satisfactory to OHCS and in compliance with all PROGRAM REQUIREMENTS, including but not limited to the following terms and conditions:

- 1) COMMODITIES received under this Agreement shall be used solely for the benefit of Certified FDIPIR participants within designated service areas of this Agreement. COMMODITIES shall not be sold, exchanged or otherwise disposed of without the prior written approval of OHCS.
- 2) SUBGRANTEE shall, and shall cause and require that its SUBRECIPIENTS accurately maintain a complete record of receipt, distribution, disposal, and inventory of COMMODITIES satisfactory to OHCS. SUBGRANTEE shall, and shall cause and require its SUBRECIPIENTS to, sign receipts for any COMMODITIES received. The receipts must include, among other relevant information, the amount of COMMODITIES received, the date of receipt, the name, and address of the receiving agency, and recipient's signature acknowledging receipt.
- 3) SUBGRANTEE shall, and shall cause and require its SUBRECIPIENTS to, provide adequate facilities satisfactory to OHCS for the handling, storage, and distribution of COMMODITIES, as well as properly safeguard against damage, theft, spoilage, or other loss consistent with this Agreement, including LEGAL REQUIREMENTS.
- 4) SUBGRANTEE assumes full responsibility for reimbursing OHCS for, and shall pay to OHCS upon request; the USDA dollar value of any COMMODITIES improperly used, disbursed, wasted, lost, damaged, or disposed of due to the fault of the SUBGRANTEE, its SUBGRANTEES or their agents. SUBGRANTEE shall indemnify, hold harmless, save and defend (consistent with ORS chapter 180) OHCS with respect to any liability, claims, causes of action or damages: (i) arising from or relating to any such use, disbursement, waste, loss, damage, or disposal of COMMODITIES; (ii) arising from or relating to any actual or alleged improper or harmful storage or distribution of COMMODITIES; or, (iii) arising from or relating to any breach by SUBGRANTEE, its SUBRECIPIENTS, or their agents under this Agreement, including LEGAL REQUIREMENTS.
- 5) SUBGRANTEE shall immediately advise OHCS in writing of any complaints regarding COMMODITIES. SUBGRANTEE shall provide appropriate information regarding the product and nature of any and all such complaints, including as requested by OHCS, and cooperate fully in any investigations thereof pursued by OHCS or USDA.
- 6) Physical inventories of COMMODITIES, satisfactory to OHCS, shall be performed monthly by the SUBGRANTEE, SUBRECIPIENTS, and their agents. SUBGRANTEE will submit inventory reports to OHCS and USDA/FNS no later than the 20th working day of each month. Inventory reports must accurately identify product on hand, product received, product distributed, product remaining, and such other information as may be requested by OHCS. Such physical inventories shall be reconciled with SUBGRANTEE book inventories and maintained on file by SUBGRANTEE. In no event, may the inventory level of each COMMODITY food in storage exceed a three-month supply unless sufficient justification for additional inventory has been submitted to and approved by OHCS.
- 7) SUBGRANTEE shall not, and shall cause and require that its SUBRECIPIENTS not make orders for or use COMMODITIES in excess of their legitimate need, including covering the over-issuance of caseloads. OHCS may monitor and require information from SUBGRANTEE and its

SUBRECIPIENTS with respect to orders for or use of COMMODITIES to ensure, among other things, that the SUBGRANTEE and SUBRECIPIENTS are not over-ordering or using COMMODITIES to serve unapproved caseloads.

- 8) SUBGRANTEE shall, and shall cause and require its SUBRECIPIENTS to determine the eligibility of persons as FDPIR participants prior to issuing or allowing the issuance of any COMMODITIES for end use. Eligibility shall be determined using current income eligibility information issued by OHCS. SUBGRANTEE is responsible to OHCS for any losses resulting from improper or negligent issuance/distribution of USDA FDPIR COMMODITIES.
- 9) SUBGRANTEE and SUBRECIPIENTS will not solicit donations in any manner from clients or require any client to pay for FDPIR COMMODITIES, join any organization or group, attend or participate in a religious practice or service, or any other activity unrelated to the distribution of FDPIR COMMODITIES, as a condition for receiving FDPIR COMMODITIES.
- 10) The SUBGRANTEE and SUBRECIPIENTS are required to provide nutrition education and/or referral to eligible APPLICANTS. This includes information concerning available health assistance programs.
- 11) The SUBGRANTEE and SUBRECIPIENTS, at all times, shall strictly adhere to all applicable federal and state laws and regulations regarding civil rights and nondiscrimination as they currently exist and may hereafter be amended. This includes protection of the confidentiality of all APPLICANT/recipient records, papers, documents, tapes and any other materials that have been or may hereafter be established which relate to this agreement. The SUBGRANTEE and SUBRECIPIENTS are responsible for any additional Civil Rights reporting requirements as set forth in the FDPIR USDA/FNS 501 Instruction Handbook.
- 12) SUBGRANTEE and SUBRECIPIENTS will allow OHCS access to, or furnish, whatever information and/or documentation is necessary for OHCS to conduct reviews and monitor progress or performance to determine conformity with intended FDPIR purposes. SUBGRANTEE shall permit representatives of OHCS or USDA to visit its sites or SUBRECIPIENT sites, inspect food in storage, or the facilities used in handling or storing food, to monitor distributions and to review and audit all records pertinent to FDPIR at any reasonable time, with or without benefit of prior notification.

4. Program Reporting

- A. SUBGRANTEE shall retain all records, documents etc. required by USDA regulations, OHCS policies or this agreement for three years following the close of the federal fiscal year in which they were funded. Subgrantee shall, make records available to OHCS up request.
- B. SUBGRANTEE shall, and shall cause and require its SUBRECIPIENTS by contract to submit all reports as required in the Master Grant Agreement as satisfactory to OHCS including the following:
 - 1) USDA/FNS 152 Inventory Report and Participation Report are due on the 20th day of each month for the prior month.
 - 2) USDA/FNS 101 Racial and Ethnic Report are due annually on April 30th.
 - 3) Monthly food ordering through USDA Web-Based Supply Chain Management, due to USDA on or before the 15th of each month.

5. Matching Requirements

- A. SUBGRANTEE shall make matching contributions, cash or non-cash, of which no more than one third shall be in-kind contributions.

6. Performance Measures

- A. SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to operate the FDPIR program in a manner designed to achieve the following performance goals:
 - 1) Increase consumption of nutritional food by 5% as measured by the percentage increase in the pounds of nutritional emergency food distributed to the Confederated Tribes of the Umatilla Indian Reservation.

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2013-2014 MASTER GRANT AGREEMENT
Exhibit A, Program Element 10
Oregon Hunger Response Fund

1. **Description.** The 1993 Oregon Legislature established Oregon Hunger Response Fund (OHRF). The purpose of Oregon Hunger Response Fund is to support capacity activity, linkage projects and food acquisition carried out by the Oregon Food Bank and statewide network of regional food banks.

2. **Definitions.** Capitalized words in this work plan shall have the meanings provided herein, as stated in OAR 813.250, or as otherwise provided by OHCS unless the context clearly requires otherwise:

“*APPLICANT*” means any person who applies to receive OHRF benefits. Applicants include OHRF participants applying for recertification.

“*CERTIFICATION*” means the determination that an Applicant is approved as an OHRF participant made in accordance with this Agreement and OHRF Legal Requirements.

“*CERTIFICATION PERIOD*” means the period of time that a participant may continue to receive OHRF benefits without a review of his or her eligibility.

“*OHRF*” means Oregon Hunger Response Fund.

“*OHCS*” means the State of Oregon, acting by and through its Housing and Community Services Department, including as an SDA.

“*LEGAL REQUIREMENTS*” means federal and state statutes applicable to OHRF, federal and state rules and regulations applicable to OHRF, OAR 813-071-0100, and OHCS directives, all as amended from time to time. LEGAL REQUIREMENTS are, and shall be deemed by the parties to constitute, terms and conditions of this Agreement.

“*LOW INCOME HOUSEHOLD*” means a household with an income that does not exceed 185% of the federal poverty guideline.

“*SUBGRANTEE*” means the public or private nonprofit organization, which has entered into this Agreement with OHCS to administer OHRF at the local level within the designated service area.

“*SUBRECIPIENT*” means a public or private nonprofit organization that enters into a written agreement with SUBGRANTEE satisfactory to OHCS to provide OHRF assistance to certified participants and other OHCS approved OHRF related activities.

“*WORK PLAN APPLICATION*” means SUBGRANTEE’s funding application, which is part of the contract between the OHCS and the SUBGRANTEE.

3. **Scope of Work.**

A. SUBGRANTEE shall, and shall cause and shall require by contract that its SUBRECIPIENTS comply and perform all work to the satisfaction of OHCS, and in accordance with the terms of this Agreement, including its local WORK PLAN APPLICATION as approved by OHCS and supplemented herein, together with applicable LEGAL REQUIREMENTS including OAR 813.071-0100. The approved WORK PLAN APPLICATION is incorporated herein by reference. The remaining provisions of this Section 3 are supplemental to, and do not limit the obligations of SUBGRANTEE or its SUBRECIPIENTS arising under this Subsection 3A or otherwise under this agreement.

B. SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to use OHRF funds for the following, eligible activities:

- 1) Capacity building activities and equipment purchases to strengthen or expand the Regional Food Bank and Emergency Food Organization infrastructure, and local support to facilitate expansion of the food supply, including the transportation of commodities.
 - 2) Acquisition and distribution of food in bulk form that is repackaged for household use.
 - 3) Linkage grants for outreach activities to under-served areas and populations to provide emergency food recipients with information and access to nutrition education and other support services such as SNAP.
 - 4) Reasonable administrative costs of the Program.
- C. SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to use OHRF funding to supplement, not supplant, existing funds used in supporting the work of the emergency food assistance network and member agencies.
- D. SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to receive, store, monitor, account for, and distribute OHRF food in compliance with the following terms and conditions:
- 1) Food obtained under this Agreement shall be used solely for the benefit of Certified OHRF participants within designated service areas of this Agreement. Food shall not be sold, exchanged or otherwise disposed of without the prior written approval of OHCS.
 - 2) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to provide adequate facilities satisfactory to OHCS for the handling, storage, and distribution of food, as well as properly safeguard against damage, theft, spoilage, or other loss consistent with this Agreement, including LEGAL REQUIREMENTS.
 - 3) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to determine the eligibility of persons as OHRF participants prior to issuing or allowing the issuance of any food for end use. Eligibility shall be determined using current income eligibility information issued by OHCS. SUBGRANTEE is responsible to OHCS for any losses resulting from improper or negligent issuance/distribution of food obtained with OHRF funding.
 - 4) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to not solicit donations in any manner from clients or require any client to pay for OHRF food or services, join any organization or group, attend or participate in a religious practice or service, or any other activity unrelated to the distribution of OHRF food or services, as a condition for receiving OHRF food or services.
- E. SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to maintain records and fulfill reporting requirements in compliance with the following terms and conditions:
- 1) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to maintain records satisfactory to OHCS, which document the use of program funds for linkage activities, as well as the receipt and distribution of purchased food.
 - 2) SUBGRANTEE shall provide OHCS with a year-end report satisfactory to OHCS of linkage projects and capacity-building activities, and food and equipment acquisitions by SUBGRANTEE and SUBRECIPIENTS.
 - 3) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to allow OHCS access to, or furnish, whatever information and/or documentation is necessary for OHCS to conduct reviews and monitor progress or performance to determine conformity with intended OHRF purposes. SUBGRANTEE shall permit representatives of OHCS to visit its sites or SUBRECIPIENT sites, inspect food in storage, or the facilities used in handling or storing food, to monitor distributions and to review and audit all records pertinent to OHRF at any reasonable time, with or without benefit of prior notification.

- 4) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to retain all records, documents etc. required by OHCS policies or this agreement for three years following the close of the federal fiscal year to which they pertain.

4. Program Reporting

- A. Subgrantee shall, maintain records that document the use of program funds for linkage and capacity activities and the receipt and distribution of commodities purchased and shall maintain records of program activities and fiscal transactions for a period of three years and shall make the records available to the OHCS upon request.
- B. SUBGRANTEE shall, and shall cause and require its SUBRECEPIENTS by contract to submit reports as required in the Master Grant Agreement as satisfactory to OHCS including the following:
 - 1) An annual audit of fiscal transactions within nine months of the end of the fiscal audit period due to OHCS March 1st.
 - 2) A comprehensive annual report of capacity activities and linkage projects carried out by each recipient agency and acquisitions of goods by the Oregon Food Bank due to OHCS March 1st. Subgrantee shall report on each Subrecipient agency in the comprehensive annual report including detailed description of the type and amount of food purchased with program funds.

5. Performance Measures

- A. SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to operate the OHRF program in a manner designed to achieve the following performance goals:
 - 1) Increase consumption of nutritional food by 5% as measured by the percentage increase in the pounds of nutritional emergency food distributed to the Oregon Food Bank Network.

2013-2014 MASTER GRANT AGREEMENT
Exhibit A, Program Element 11
The Emergency Food Assistance Program

- 1. Description.** The purpose of The Emergency Food Assistance Program (TEFAP) is to supplement the diets of low-income Americans, including the elderly, by providing them with emergency food and nutritional assistance. SUBGRANTEES distribute food to local organizations, such as food pantries, mass distribution sites and soup kitchens, which provide the food directly to eligible TEFAP participants.
- 2. Definitions.** Capitalized words in this work plan shall have the meanings provided herein, as stated in 7 CFR 253.2, or as otherwise provided by OHCS unless the context clearly requires otherwise:

"HOUSEHOLD RECIPIENT" means a household with an income at or below 185% of the federal poverty level eligible to receive TEFAP benefits.

"EMERGENCY FEEDING ORGANIZATIONS" means an eligible recipient agency, which provides nutrition assistance to relieve situations of emergency and distress through the provision of food to needy persons, including low-income and unemployed persons. Emergency feeding organizations have priority over other eligible recipient agencies in the distribution of TEFAP commodities pursuant to §251.4(h).

"FOOD BANK" means a public or charitable institution that maintains an established operation involving the provision of food or edible commodities, or the products of food or edible commodities, to food pantries, soup kitchens, hunger relief centers, or other food or feeding centers that, as an integral part of their normal activities, provide meals or food to feed needy persons on a regular basis.

"FOOD PANTRY" means a public or private nonprofit organization that distributes food to low-income and unemployed households, including food from sources other than the Department of Agriculture, to relieve situations of emergency and distress.

"CONGREGATE MEAL SITE" means emergency feeding organizations, which provide food to needy persons, including low-income, unemployed persons, homeless person.

"COMMODITIES" means nutritious foods provided by USDA for TEFAP use.

"OHCS" means the State of Oregon, acting by and through its Housing and Community Services Department, including as an SDA.

"LEGAL REQUIREMENTS" means federal and state statutes applicable to TEFAP, federal and state rules and regulations applicable to TEFAP, the OHCS TEFAP Operations Manual, and OHCS directives, all as amended from time to time. LEGAL REQUIREMENTS are, and shall be deemed by the parties to constitute, terms and conditions of this Agreement.

"SUBGRANTEE" means the public or private nonprofit organization, which has entered into this Agreement with OHCS to administer TEFAP at the local level within the designated service area.

"SUBRECIPIENT" means a public or private nonprofit organization that enters into a written agreement with SUBGRANTEE satisfactory to OHCS to provide TEFAP assistance to certified participants.

"TEFAP" means The Emergency Food Assistance Program.

"USDA" means the United States Department of Agriculture.

“WORK PLAN APPLICATION” means SUBGRANTEE’s funding application, which is part of the contract between OHCS and the SUBGRANTEE.

3. Scope of Work.

- A. SUBGRANTEE shall, and shall cause and shall require by contract that its SUBRECIPIENTS comply and perform all work to the satisfaction of OHCS, and in accordance with the terms of this Agreement, including its local WORK PLAN APPLICATION as approved by OHCS and supplemented herein, together with applicable LEGAL REQUIREMENTS including CFDA 10.568, 42 U.S.C. 7501-7516, 7 CFR 251, 7 CFR 250 and OAR 813-220. The approved WORK PLAN APPLICATION is incorporated herein by reference. The remaining provisions of this Section 3 are supplemental to, and do not limit the obligations of SUBGRANTEE or its SUBRECIPIENTS arising under this Subsection 3A or otherwise under this agreement
- B. SUBGRANTEE shall receive, store, monitor, account for, and distribute COMMODITIES in a manner satisfactory to OHCS and in compliance with all PROGRAM REQUIREMENTS, including but not limited to the following terms and conditions:
- 1) COMMODITIES received under this Agreement shall be used solely for the benefit of the TEFAP participants. COMMODITIES shall not be sold, exchanged, or otherwise disposed of without the prior written approval of OHCS.
 - 2) COMMODITIES may only be distributed to other emergency feeding organizations on a fair-share basis according to the priority system established for COMMODITIES in 7CFR 251.4(h)(a).
 - a) SUBGRANTEE shall cause and shall require by contract that SUBRECIPIENTS provide such information to SUBGRANTEE and OHCS, and shall cause and require that their selected local agencies provide such information to SUBGRANTEE and OHCS, concerning their performance of delegated obligations under this Agreement as SUBGRANTEE or OHCS may from time to time require.
 - b) SUBGRANTEE shall cause and shall require by contract that SUBRECIPIENTS provide SUBGRANTEE at least annually with a list of the selected local agencies to which they are distributing or have distributed COMMODITIES pursuant to their delegated obligations under this Agreement, including the names, addresses, and phone numbers of such local agencies, the contact names and information within such local agencies, the total number of households served by each such local agencies, the amount of food provided by each local agency, etc.
 - c) SUBGRANTEE shall cause and shall require by contract that SUBRECIPIENTS cause and require store, manage, inventory, monitor, and distribute COMMODITIES at the local level consistent with the obligations of SUBGRANTEE under this Agreement, including in conformance with LEGAL REQUIREMENTS.
 - 3) SUBGRANTEE shall not, and shall cause and require that its SUBRECIPIENTS shall not, charge any type of administrative fee with respect to COMMODITIES, including but not limited to fees for transportation, delivery, maintenance, storage, distribution, or disposal of it.
 - 4) SUBGRANTEE shall, and shall cause and require that it is SUBRECIPIENTS accurately maintain a complete record of receipt, distribution, disposal, and inventory of COMMODITIES satisfactory to OHCS. SUBGRANTEE shall, and shall cause and require its SUBRECIPIENTS to, sign receipts for any COMMODITIES received. The receipts must include, among other relevant information, the amount of COMMODITIES received, the date of receipt, the name, and address of the receiving agency, and recipient’s signature acknowledging receipt.

- 5) SUBGRANTEE shall, and shall cause and require its SUBRECIPIENTS to, provide adequate facilities satisfactory to OHCS for the handling, storage, and distribution of COMMODITIES as well as properly safeguard against damage, theft, spoilage, or other loss consistent with this Agreement, including LEGAL REQUIREMENTS.
- 6) SUBGRANTEE assumes full responsibility for reimbursing OHCS for, and shall pay to OHCS upon request; the USDA dollar value of any COMMODITIES improperly used, disbursed, wasted, lost, damaged, or disposed of due to the fault of the SUBGRANTEE, its SUBGRANTEES or their agents. SUBGRANTEE shall indemnify, hold harmless, save and defend (consistent with ORS chapter 180) OHCS with respect to any liability, claims, causes of action or damages: (i) arising from or relating to any such use, disbursement, waste, loss, damage, or disposal of COMMODITIES; (ii) arising from or relating to any actual or alleged improper or harmful storage or distribution of COMMODITIES; or, (iii) arising from or relating to any breach by SUBGRANTEE, its SUBRECIPIENTS, or their agents under this Agreement, including LEGAL REQUIREMENTS.
- 7) SUBGRANTEE shall immediately advise OHCS in writing of any complaints regarding COMMODITIES. SUBGRANTEE shall provide appropriate information regarding the product and nature of any and all such complaints, including as requested by OHCS, and cooperate fully in any investigations thereof pursued by OHCS or USDA.
- 8) Physical inventories of COMMODITIES, satisfactory to OHCS, shall be performed monthly by the SUBGRANTEE, SUBRECIPIENTS, and their agents. Inventory reports must accurately identify product on hand, product received, product distributed, product remaining, and such other information as may be requested by OHCS. Such physical inventories shall be reconciled with SUBGRANTEE book inventories and maintained on file by SUBGRANTEE.
- 9) SUBGRANTEE shall, and shall cause and require its SUBRECIPIENTS to determine the eligibility of persons as TEFAP participants prior to issuing or allowing the issuance of any COMMODITIES for end use. Eligibility shall be determined using current income eligibility information issued by OHCS. SUBGRANTEE is responsible to OHCS for any losses resulting from improper or negligent issuance/distribution of USDA TEFAP COMMODITIES.
- 10) SUBGRANTEE and SUBRECIPIENT FOOD PANTRIES or EMERGENCY FEEDING ORGANIZATIONS distributing TEFAP COMMODITIES to households for home consumption must certify the client's eligibility, using the appropriate form and income guidelines provided by HHS Poverty Guidelines and OHCS State Plan of Operations.
- 11) SUBGRANTEE and SUBRECIPIENT FOOD PANTRIES or EMERGENCY FEEDING ORGANIZATIONS must keep a record of the names of all households receiving food each day. Households should sign a receipt or list each time they receive food. Federal regulations do not require keeping a record of the specific TEFAP foods or quantities issued to each household.
- 12) SUBGRANTEE and SUBRECIPIENT CONGREGATE MEAL SITES must maintain record of number of meals served daily. CONGREGATE MEAL SITES do not have to maintain records of the names of people to whom they serve meals, and meal recipients do not have to sign for their meals.
- 13) SUBGRANTEE and SUBRECIPIENTS will not solicit donations in any manner from clients or require any client to pay for TEFAP COMMODITIES, join any organization or group, attend or participate in a religious practice or service, or any other activity unrelated to the distribution of TEFAP COMMODITIES, as a condition for receiving TEFAP COMMODITIES.
- 14) The SUBGRANTEE and SUBRECIPIENTS, at all times, shall strictly adhere to all applicable federal and state laws and regulations regarding civil rights and nondiscrimination as they currently exist and may hereafter be amended. This includes protection of the confidentiality of all APPLICANT/recipient records, papers,

documents, tapes and any other materials that have been or may hereafter be established which relate to this agreement. The SUBGRANTEE and SUBRECIPIENTS are responsible for any additional Civil Rights reporting requirements as set forth in the TEFAP Policies and Procedures Handbook.

- 15) SUBGRANTEE and SUBRECIPIENTS will allow OHCS access to, or furnish, whatever information and/or documentation is necessary for OHCS to conduct reviews and monitor progress or performance to determine conformity with intended TEFAP purposes. SUBGRANTEE shall permit representatives of OHCS or USDA to visit its sites or SUBRECIPIENT sites, inspect food in storage, or the facilities used in handling or storing food, to monitor distributions and to review and audit all records pertinent to TEFAP at any reasonable time, with or without benefit of prior notification.
- 16) SUBGRANTEE will attend training provided by the Recipient Agency regarding TEFAP, Civil Rights, etc., as required, and train staff on a regular basis and not less than annually on all aspects of TEFAP, Civil Rights laws, policies and requirements, etc.

4. Program Reporting

- A. SUBGRANTEE and SUBRECIPIENTS must retain all records, documents etc. required by USDA regulations, OHCS policies or this agreement for three years following the close of the federal fiscal year to which they pertain.
 - a) SUBGRANTEE shall, and shall cause and require its SUBRECEPIENTS by contract to submit reports as required in the Master Grant Agreement including monthly food ordering through USDA Web-Based Supply Chain Management as satisfactory to OHCS.

5. Performance Measures

- A. SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to operate the TEFAP program in a manner designed to achieve the following performance goals:
 - 1) Increase consumption of nutritional food by 5% as measured by the percentage increase in the pounds of nutritional emergency food distributed to the Oregon Food Bank Network.

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2013-2014 MASTER GRANT AGREEMENT
Exhibit A, Program Element 12
Low Income Home Energy Assistance Program

1. **Description.** The Low-Income Home Energy Assistance Program (LIHEAP) is intended to assist low-income households, particularly those with the lowest incomes who pay a high proportion of household income for home energy, primarily to meet their immediate home energy needs. Services covered by LIHEAP include bill payment assistance, energy education, case management, and home weatherization.
2. **Definitions.** Capitalized words in this work plan shall have the meanings provided herein, as stated in 42 U.S.C. 8621, ORS 458.505, 45 CFR 96, OAR 813-200, or as otherwise provided by OHCS unless the context clearly requires otherwise:

“ASSURANCE 16 FUNDS” mean the portion of LIHEAP funds used by states to provide services, including needs assessments, counseling, and assistance with energy vendors, that encourage and enable households to reduce their home energy needs and thereby the need for energy assistance.

“CRISIS ASSISTANCE” means the assistance provided to help low-income households to meet crisis situations such as supply shortages, loss of household heat, minor fuel source repairs, furnace repairs and other situations approved by the Department as described in the state plan and Energy Assistance Operations Manual.

“HOME ENERGY SUPPLIER” means a supplier who either delivers Home Energy in bulk to households, or provides Home Energy continuously via wire or pipe.

“HOUSEHOLD” means any individual residing alone or groups of individuals who are living together as one economic unit and purchase residential energy in common.

“LEGAL REQUIREMENTS” means federal and state statutes applicable to LIHEAP, federal and state rules and regulations applicable to LIHEAP, the LIHEAP State Plan, the Energy Assistance Operations Manual, and OHCS directives, all as amended from time to time. LEGAL REQUIREMENTS are, and shall be deemed by the parties to constitute, terms and conditions of this Agreement.

“LIHEAP” means the Low-Income Home Energy Assistance Program.

“OHCS” means the State of Oregon, acting by and through its Housing and Community Services Department.

“HHS” means U.S. Department of Health and Human Services

“SUBGRANTEE” means the public or private nonprofit organization which has entered into this Agreement with OHCS to administer LIHEAP at the local level within the designated service area.

“SUBRECIPIENT” means a public or private nonprofit organization that enters into a written agreement with SUBGRANTEE satisfactory to OHCS to provide LIHEAP assistance to certified participants.

“WORK PLAN APPLICATION” means SUBGRANTEE Agency’s Funding application, which is part of the contract between the OHCS and SUBGRANTEE Agency.

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3. Scope of Work.

- A. SUBGRANTEE shall, and shall cause and shall require by contract that its SUBRECIPIENTS comply and perform all work to the satisfaction of OHCS, and in accordance with the terms of this Agreement, including its local WORK PLAN APPLICATION as approved by OHCS and supplemented herein, together with applicable LEGAL REQUIREMENTS including CFDA 93.568, 2 U.S.C. 862I, ORS 458.505, 45 CFR 96, and OAR 813-200. The approved WORK PLAN APPLICATION is incorporated herein by reference. The remaining provisions of this Section 3 are supplemental to, and do not limit the obligations of SUBGRANTEE or its SUBRECIPIENTS arising under this Subsection 3A or otherwise under this agreement.
- B. SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to administer LIHEAP funds in a manner satisfactory to OHCS and in compliance with all PROGRAM REQUIREMENTS, including but not limited to the following terms and conditions:
- 1) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to provide heating assistance with LIHEAP funds anytime between October 1st and June 30th as funding allows.
 - 2) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to provide CRISIS ASSISTANCE from December 1st through March 15th. If direct service funds are exhausted before March 15th, SUBGRANTEE and SUBRECIPIENTS must be available to assist HOUSEHOLDS in crisis by providing information, referral, advocacy, and/or case management services. SUBGRANTEE may choose to offer CRISIS ASSISTANCE on a year-round basis.
 - 3) SUBGRANTEE may request approval from OHCS program coordinator to extend timelines for any assistance component based on funding and operational circumstances.
 - 4) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to assure that outreach is performed in a manner which ensures all eligible HOUSEHOLDS are made aware of available LIHEAP assistance. This includes, but is not limited to placing posters in local and county social service offices, publishing articles in local newspapers, broadcast media announcements, and vendor billing inserts and/or mailings. SUBGRANTEES may also execute interagency agreements with other low-income program offices to perform outreach tasks.
 - 5) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to assure applications for the LIHEAP program (every component, including crisis) will be accepted at sites that are geographically accessible to all HOUSEHOLDS across their service area.
 - 6) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to ensure that individuals who are "homebound" (physically infirm) will be provided alternative application methods, including but not limited to phone, mail and/or home visits.
 - 7) SUBGRANTEE may choose to prioritize vulnerable populations (including elderly, disabled and families with young children) for a brief phase at the start of the heating assistance season. Priority intake periods are intended to allow for additional time and outreach necessary to provide quality services to vulnerable populations, and shall not exclude non-targeted HOUSEHOLDS for more than a short period of time.
 - 8) SUBGRANTEE may request approval to target specific services to allowable populations based on community need. Clear policies for application, eligibility and outreach practices must be outlined in the local WORK PLAN APPLICATION and approved by OHCS. Examples of targeted populations include, but are not limited to:
 - a) HOUSEHOLDS that have not accessed other available energy assistance for the current program year (e.g. fuel funds, utility programs).

- b) Vulnerable Populations as defined by the LIHEAP statute, including seniors, disabled, and families with young children.
 - c) HOUSEHOLDS who opt to participate in pilot programs including long term case management, energy education, and/or arrearage management programs.
- 9) SUBGRANTEES with Tribal LIHEAP Grantees (tribes who receive LIHEAP funds directly from HHS) in their service area shall, and shall cause and shall require its SUBRECIPIENTS by contract to make every effort to assure that tribal HOUSEHOLDS do not receive duplicate payments or services. If for any reason an eligible tribal member is unable to access their tribal LIHEAP program (e.g. out of funds, geographically inaccessible, unanticipated hardship) they should be served as any other eligible household. HOUSEHOLDS affiliated with tribes not receiving LIHEAP funds from HHS should be treated as any other applicant. Any deviation from these policies must be approved by OHCS.
 - 10) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to assure that HOUSEHOLDS receiving LIHEAP benefits are determined to be eligible based on guidelines provided annually by OHCS. SUBGRANTEE is responsible to OHCS for any losses resulting from improper or negligent issuance of LIHEAP funds.
 - 11) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to use the benefit matrix and payment guidelines as outlined in the Energy Assistance Operations Manual to determine LIHEAP benefit levels. Any variation from statewide payment levels or types must be approved by OHCS.
 - 12) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to assure that eligible HOUSEHOLDS facing energy-related emergencies are served by “fast track” or expedited procedures which ensure that:
 - a) for life-threatening emergencies, some form of assistance will be provided within eighteen (18) hours of application that will resolve the energy crisis; and
 - b) for non-life-threatening emergencies, some form of assistance will be provided within forty-eight (48) hours of program application that will resolve the energy crisis.
 - 13) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to provide any of the following forms of assistance, or a combination thereof, to resolve energy related emergencies:
 - a) Bill Payment Assistance
 - b) Heat System Repair or Replacement- includes repair, replacement or conversion of inoperative, non-functional or unsafe household heating equipment necessary to alleviate potential heating and/or energy crisis. When considering furnace repair or replacement, considerable effort should be made to supplement LIHEAP funds with other leveraged resources.
 - c) Other Equipment Repair/Replacement- includes repair or replacement of inoperative, non-functional or unsafe household appliances/equipment necessary to alleviate home energy crisis. When considering equipment repair or replacement, considerable effort should be made to supplement LIHEAP funds with other leveraged resources.
 - d) Other Emergency Services- including , but not limited to information, referral, coordination of benefits, advocacy, case management and/or other goods and services necessary to relieve immediate threat to health and safety.

- 14) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to notify HOUSEHOLDS regarding the amount of bill payment assistance committed at the time of their intake. Applicants who apply by mail should receive a notice by mail or may be notified by telephone.
- 15) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to assure that LIHEAP ASSURANCE 16 FUNDS are used to reduce household energy burden, improve utility payment patterns, promote energy conservation and improve household self-sufficiency. SUBGRANTEE shall outline policies and procedures for awarding Assurance 16 funding in their local WORK PLAN APPLICATION.
- 16) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to have documented Denial, Appeal, and Fair Hearing procedures for LIHEAP applicants as outlined in the LIHEAP State Plan and the Energy Assistance Operations Manual. These policies and procedures must be available to applicants upon request.
- 17) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to assure that participating HOME ENERGY SUPPLIERS sign and comply with vendor contracts. SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to ensure that no HOME ENERGY SUPPLIER is paid with LIHEAP funds without a signed contract. In extreme cases where a HOME ENERGY SUPPLIER is not under contract, households may be paid directly.
- 18) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to be responsible for authenticating all HOME ENERGY SUPPLIERS paid with LIHEAP funds. A process for authentication (e.g. verifiable tax ID, business documentation) must be outlined and approved in the local WORK PLAN APPLICATION.
- 19) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to be responsible for paying HOME ENERGY SUPPLIERS within 45 days of committing a LIHEAP benefit, unless otherwise specified in the vendor contract.
- 20) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to be responsible for assuring that applicants understand and sign a vendor release of information (preferably on the program application) in cases where household information must be obtained from a utility/vendor.
- 21) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to be responsible for maintaining an internal controls framework, satisfactory to OHCS, which assures LIHEAP program integrity. This includes the following procedures to be established and outlined in local documentation (e.g. staff policy/procedure manuals):
 - a) SUBGRANTEE shall establish and maintain regular SUBRECIPIENT monitoring practices (if applicable). SUBGRANTEE shall obtain prior written approval from OHCS when adding additional SUBRECIPIENTS or renewing any SUBRECIPIENTS.
 - b) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to assure that completed applications and HOUSEHOLD benefits are valid and correct. This includes adequate separation of duties among intake, authorization and fiscal staff.
 - c) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to maintain clear policy for cases where there may be a conflict of interest. This includes procedures for staff when employees, board members, friends or family members apply for energy assistance services.
 - d) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to maintain clear procedures for dealing with applicants who may have committed fraud and for dealing with public complaints regarding potential fraud. All incidents of fraud must be reported to OHCS.

- e) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to maintain clear procedures, satisfactory to OHCS, for preventing, detecting and dealing with employee fraud. All incidents of fraud must be reported to OHCS.
- 22) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to maintain accurate program records necessary for reporting and monitoring, and in accordance with the following terms and conditions:
- a) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to assure that all necessary documentation is included in the client file. Required documents for each applicant household are outlined in the annual Energy Assistance Operations Manual.
 - b) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to allow OHCS access to, or furnish, whatever information and/or documentation is necessary for OHCS to conduct reviews and monitor progress or performance to determine conformity with intended program purposes. SUBGRANTEE shall permit representatives of OHCS to visit its sites or SUBRECIPIENT sites, and to review and audit all records pertinent to LIHEAP at any reasonable time, with or without benefit of prior notification.
- 23) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to not use LIHEAP funds to pay for any person influencing or attempting to influence an officer or employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant loan or cooperative agreement. If any funds other than LIHEAP have been paid or will be paid to any employees for influencing or attempting to influence an officer or employee of a Member of Congress in connection with the awarding of the Federal LIHEAP contract, grant, loan or cooperative agreement, SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to complete and submit Standard-Form-LLL ("Disclosure Form to Report Lobbying") in accordance with its instructions.

4. Program Specific Reporting

- A. SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to ensure that data collection and reporting for LIHEAP funded activities be conducted through the use of OHCS approved OPUS database. SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS to assure that data entry into OPUS occurs in an accurate and timely manner as satisfactory to OHCS, ideally at the time of intake.
- B. SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to maintain record of leveraged resources as outlined in the LIHEAP State Plan. SUBGRANTEES must use this documentation to complete and submit the LIHEAP Leverage report, satisfactory to OHCS, due annually by October 15th.
- C. SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to submit all reports as required in the Master Agreement and outlined in the Energy Assistance Operations Manual as satisfactory to OHCS.
- D. SUBGRANTEE shall provide additional reports as needed or requested by OHCS.
- E. SUBGRANTEE may request a reporting deadline extension when necessary.

5. Performance Measures

- A. SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to operate its LIHEAP program in a manner designed to achieve the following performance goals:

- 1) Increased energy stability as measured by the number of households served statewide prior to disconnect or out of fuel. The statewide target is 95%.

2013-2014 MASTER GRANT AGREEMENT
Exhibit A, Program Element 13
Low-Income Home Energy Assistance Program Weatherization Assistance Program

1. **Description.** The Department of Oregon Housing and Community Services (OHCS) has been designated by the Governor as the administrator of all federally funded low-income weatherization programs. The Low-Income Home Energy Assistance Program (LIHEAP) is a federally funded program which provides a portion of annual funding for weatherization assistance purposes.
2. **Definitions.** Capitalized words in this work plan shall have the meanings provided herein, as stated in Federal LIHEAP Guidelines, U.S. Department of Energy (DOE) Weatherization Assistance Program (WAP) regulations or as otherwise provided by OHCS unless the context clearly requires otherwise:

"BASELOAD SERVICES" means any measure that reduces non- heating and cooling costs. These measures can include, but are not limited to, compact fluorescent lights, water saving devices, and high efficiency water heaters.

"DOE" means the Federal Department of Energy.

"HHS" means U.S. Department of Health and Human Services

"ENERGY EDUCATION" means the activities and instruction designed to help low-income clients make appropriate decisions and life-style changes to effectively reduce energy consumption.

"LEGAL REQUIREMENTS" means federal and state statutes applicable to LIHEAP Weatherization, federal and state rules and regulations applicable to LIHEAP Weatherization, and OHCS directives, all as amended from time to time. LEGAL REQUIREMENTS are, and shall be deemed by the parties to constitute, terms and conditions of this Agreement.

"LIHEAP" means Low Income Home Energy Assistance Program.

"OHCS" means the State of Oregon, acting by and through its Housing and Community Services Department.

"QUALIFIED HOUSEHOLD" means any household that meets the qualifications to receive weatherization services.

"PEER EXCHANGE" means an exchange of information between peers; usually a visit by one agency to another to review work and exchange ideas and best practices to enhance their programs.

"REM/DESIGN" means a computerized residential modeling tool used for the purposes of determining the savings to investment ratio of a project of measure.

"SAVINGS TO INVESTMENT RATIO (SIR)" means a comparison of the annual savings to the initial investment in a measure. An SIR of 1.0 indicates that a measure will pay for itself in energy savings over the life of the measure.

"SUBGRANTEE" means the public or private nonprofit organization which has entered into this Agreement with OHCS to administer LIHEAP Weatherization funds at the local level within the designated service area.

"SUBRECIPIENT" means a public or private nonprofit organization that enters into a written agreement with SUBGRANTEE satisfactory to OHCS to provide LIHEAP Weatherization assistance to certified participants.

"WALK AWAY" means deferring a project that is either structurally unsound or has safety hazards that cannot be addressed under the scope of the program. The project is deferred until the necessary repairs can be completed.

"WAP" means the Weatherization Assistance Program.

"WEATHERIZATION SERVICES" means conservation measures meant to reduce heating and cooling loads. These measures may include both air infiltration reduction and thermal improvements such as wall, attic and floor insulation.

"WORK PLAN APPLICATION" means Subgrantee Agency's Funding application, which is part of the contract between OHCS and the Subgrantee Agency.

3. Scope of Work.

- A. SUBGRANTEE shall, and shall cause and shall require by contract that its SUBRECIPIENTS comply and perform all work to the satisfaction of OHCS, and in accordance with the terms of this Agreement, including its local WORK PLAN APPLICATION as approved by OHCS and supplemented herein, together with applicable LEGAL REQUIREMENTS including CFDA 93.568, 42 U.S.C. § 8621-8630. The approved WORK PLAN APPLICATION is incorporated herein by reference. The remaining provisions of this Section 3 are supplemental to, and do not limit the obligations of SUBGRANTEE or its SUBRECIPIENTS arising under this Subsection 3A or otherwise under this agreement.
- B. SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to administer LIHEAP Weatherization funds in a manner satisfactory to OHCS and in compliance with all PROGRAM REQUIREMENTS, including but not limited to the following terms and conditions:
- 1) SUBGRANTEE may, and may cause and may require its SUBRECIPIENTS by contract to use LIHEAP Weatherization funds for allowable administrative costs in order to provide the services outlined in this agreement.
 - 2) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to use Training and Technical Assistance (T&TA) funds for the purposes of Training and Technical Assistance as outlined in the LIHEAP and DOE State Plans. SUBGRANTEE reserves the right to submit an OHCS budget change request to have funds moved for the purpose of providing weatherization assistance.
 - 3) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to determine eligibility of program applicants using program eligibility criteria issued by OHCS. SUBGRANTEE is responsible to OHCS for any losses resulting from improper or negligent issuance of LIHEAP Weatherization funds.
 - 4) SUBGRANTEE and SUBRECIPIENTS shall determine priority among program applicants by using at minimum the following criteria and such other criteria as satisfactory to OHCS:
 - a. Households with seniors as defined by those persons over the age of 60.
 - b. Households with disabled members living in it.
 - c. Households with children under the age of six (6).
 - 5) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to provide allowable weatherization assistance that may include, but is not necessarily limited to WEATHERIZATION SERVICES, BASELOAD SERVICES, and ENERGY EDUCATION not to exceed an average of \$6,000 per unit weatherized.
 - 6) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to address Health and Safety issues as required by the LIHEAP and DOE State Plans, including but not limited to

- a. Using WAP prescribed methods of home analysis to determine existing Health and Safety needs.
 - b. Testing for the presence of carbon monoxide and combustion appliance zone depressurization testing of one-hundred percent (100%) of the homes containing combustion appliances.
 - c. Installing Carbon Monoxide alarms in one-hundred percent (100%) of homes with Combustion Appliances.
- 7) SUBGRANTEE may, and may cause and may require its SUBRECIPIENTS by contract to use LIHEAP Weatherization Funds for the replacement of appliances as funding sources allow. SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to dispose of appliances in accordance with EPA guidelines.
- 8) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to provide ENERGY EDUCATION to QUALIFIED HOUSEHOLDS through such means that may include, but are not limited to:
- a. Referral to another department within the SUBGRANTEE or SUBRECIPIENT agency.
 - b. Referral to another agency that provides ENERGY EDUCATION services.
 - c. As part of the weatherization program. This may include, but is not limited to in-home ENERGY EDUCATION, or ENERGY EDUCATION as part of a classroom setting.
- 9) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to maintain a WALK AWAY policy that is satisfactory to OHCS. Once a WALK AWAY is determined by the SUBGRANTEE or SUBRECIPIENT, a "Letter of Service Denial" or "Delay Due to Site Conditions" shall be mailed to the applicant with the specific reason given. WALK AWAY reasons may include, but are not limited to, the following:
- a. Structurally unsound dwelling.
 - b. Evidence of substantial, persistent infestation of rodents, insects, or other harmful/objectionable animals, which are difficult to control.
 - c. Electrical or plumbing hazards which cannot be resolved prior to, or as a part of, weatherization assistance.
 - d. The presence of raw sewage around or in any part of the dwelling.
 - e. Environmental hazards such as serious moisture problems, friable asbestos, or other hazardous materials, which cannot be resolved prior to or as a part of the weatherization assistance.
 - f. The presence of a dead animal, or animal feces, in any area of the dwelling where program staff must install weatherization measures.
 - g. Excessive debris in and around the dwelling which limits the program staff access to the dwelling.
 - h. Maintenance and housekeeping practices which are negligent to the point of limiting access of program staff to the dwelling.
 - i. An apparent threat of violence of abuse to any program staff member, or any household member, during the weatherization process.

- j. The presence and/or use of any controlled substance in the dwelling during the weatherization process.
 - k. Dwelling in which the costs of repairs substantially exceed the cost of the weatherization measures.
 - l. Major remodeling is in progress, limiting the proper completion of weatherization measures.
 - m. Substantial standing water in or around the crawl space or basement area limiting the proper completion of weatherization measures.
 - n. Uncooperative property owner or tenant who refuses a weatherization measure, refuses to make modifications necessary to permit a measure to be completed, or refuses to allow contractor staff access to dwelling.
 - o. Home is being advertised as being for sale.
- 10) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to require and ensure all weatherization staff and contractors who have the potential to disturb lead paint during the course of work to be certified in Lead Safe Weatherization Practices.
 - 11) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to require their weatherization contractors and weatherization programs have a certified lead safe renovator on staff.
 - 12) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to require weatherization staff that visit homes to attend mold and mildew training.
 - 13) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to require at least two (2) staff members to be certified as a REM/DESIGN operator. This requirement may be waived at the discretion of the OHCS program coordinator. A waiver shall only be in effect for the length of this contract.
 - 14) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to carry an active contractor's license with Construction Contractors Board (CCB). Exceptions are Government Entities, Public Non-Profits, and Tribal Governments.
 - 15) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to allow OHCS access to, or furnish, whatever information and/or documentation is necessary for OHCS to conduct reviews and monitor progress or performance to determine conformity with intended program purposes. SUBGRANTEE shall permit representatives of OHCS to visit its sites or SUBRECIPIENT sites, and to review and audit all records pertinent to LIHEAP Weatherization at any reasonable time, with or without benefit of prior notification.
 - 16) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to participate in PEER EXCHANGE annually if the agency is determined to be "at risk" through the OHCS monitoring process. Agencies participating in PEER EXCHANGE must follow PEER EXCHANGE protocols as directed in the LIHEAP and DOE State Plans.
 - 17) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to assure that LIHEAP funds are not used to pay for any person influencing or attempting to influence an officer or employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant loan or cooperative agreement. If any funds other than LIHEAP have been paid or will be paid to any employees for influencing or attempting to influence an officer or employee of a Member of Congress in connection

with the awarding of the Federal LIHEAP contract, grant, loan or cooperative agreement, SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to complete and submitting Standard-Form-LLL ("Disclosure Form to Report Lobbying") in accordance with its instructions.

4. Program Specific Reporting

- A. SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to ensure that data collection and reporting for LIHEAP Wx funded activities be conducted through the use of OHCS approved OPUS database. SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS to assure that data entry into OPUS occurs in an accurate and timely manner as satisfactory to OHCS, ideally at the time of audit completion.
- B. SUBGRANTEE shall submit all reports as required in the Master Agreement including but not limited to the "Weatherization Quarterly Program Report" which is due quarterly by the 15th of January, April, July, and October to OHCS.
- C. SUBGRANTEE shall provide additional reports as needed and requested by OHCS.
- D. SUBGRANTEE may request a reporting deadline extension when necessary.

5. Performance Measures

- A. SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to operate its low-income weatherization program in a manner designed to achieve the following performance goals:
 - 1) Households served by the low-income weatherization program, utilizing funds from OHCS, should realize an average 12% savings in their annual energy bill due to weatherization improvements as predicted through proper use of an OHCS approved computerized auditing tool.
 - 2) In homes where health and safety issues are identified 70% shall have the issues reduced or eliminated as grant funds allow.

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2013-2014 MASTER GRANT AGREEMENT
Exhibit A, Program Element 14
Oregon Energy Assistance Program

1. **Description.** The Oregon Energy Assistance Program (OEAP) provides electric bill payment assistance to low-income households who have an account with Portland General Electric or Pacific Power utility vendors.
2. **Definitions.** Capitalized words in this work plan shall have the meanings provided herein, as stated in ORS 757.612, OAR 813-202, or as otherwise provided by OHCS unless the context clearly requires otherwise:

"CRISIS ASSISTANCE" means the assistance provided to low income households for crisis situations such as supply shortages, loss of Household heat, or other situations approved by OHCS as described in the LIHEAP state plan and the Energy Assistance Operations Manual.

"HOME ENERGY SUPPLIER" means Portland General Electric and Pacific Power utility vendors.

"HOUSEHOLD" means any individual residing alone or groups of individuals who are living together as one economic unit and purchase residential energy in common.

"LEGAL REQUIREMENTS" means federal and state statutes applicable to OEAP, federal and state rules and regulations applicable to OEAP, the Energy Assistance Operations Manual, and OHCS directives, all as amended from time to time. LEGAL REQUIREMENTS are, and shall be deemed by the parties to constitute, terms and conditions of this Agreement.

"LIHEAP" means the Low Income Home Energy Assistance Program.

"OEAP" means the Oregon Energy Assistance Program.

"OHCS" means the State of Oregon, acting by and through its Housing and Community Services Department.

"SUBGRANTEE" means the public or private nonprofit organization which has entered into this Agreement with OHCS to administer OEAP at the local level within the designated service area.

"SUBRECIPIENT" means a public or private nonprofit organization that enters into a written agreement with SUBGRANTEE satisfactory to OHCS to provide OEAP assistance to qualified applicants.

"WORK PLAN APPLICATION" means SUBGRANTEE Agency's Funding application, which is part of the contract between OHCS and the SUBGRANTEE Agency.

3. **Scope of Work.**

- A. SUBGRANTEE shall, and shall cause and shall require by contract that its SUBRECIPIENTS comply and perform all work to the satisfaction of OHCS, and in accordance with the terms of this Agreement, including its local WORK PLAN APPLICATION as approved by OHCS and supplemented herein, together with applicable LEGAL REQUIREMENTS including ORS 757.612 and OAR 813-202. The approved WORK PLAN APPLICATION is incorporated herein by reference. The remaining provisions of this Section 3 are supplemental to, and do not limit the obligations of SUBGRANTEE or its SUBRECIPIENTS arising under this Subsection 3A or otherwise under this agreement.
- B. SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to administer OEAP funds in a manner satisfactory to OHCS and in compliance with all PROGRAM REQUIREMENTS, including but not limited to the following terms and conditions:

- 1) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to assure that outreach is performed in a manner which ensures all eligible HOUSEHOLDS are made aware of available OEAP assistance. This includes, but is not limited to placing posters in local and county social service offices, publishing articles in local newspapers, broadcast media announcements, and vendor billing inserts and/or mailings. SUBGRANTEES may also execute interagency agreements with other low-income program offices to perform outreach tasks.
- 2) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to assure applications for the OEAP program (every component, including crisis) will be accepted at sites that are geographically accessible to all eligible HOUSEHOLDS across their service area.
- 3) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to assure that individuals who are "homebound" (physically infirm) will be provided alternative application methods, including but not limited to phone, mail and/or home visits.
- 4) SUBGRANTEE may request approval to target specific services to allowable populations based on community need. Clear policies for client application, eligibility and outreach practices must be outlined in the local WORK PLAN APPLICATION and approved by OHCS. Examples of targeted populations include, but are not limited to:
 - a) HOUSEHOLDS that have not accessed other available energy assistance for the current program year (e.g. fuel funds, utility programs).
 - b) Vulnerable Populations as defined by the LIHEAP program statute, including seniors, disabled, and families with young children.
 - c) HOUSEHOLDS who opt to participate in pilot programs including long term case management, energy education, and/or arrearage management programs.
- 5) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to assure that HOUSEHOLDS receiving OEAP benefits are eligible based on guidelines provided by OHCS. SUBGRANTEE is responsible to OHCS for any losses resulting from improper or negligent issuance of OEAP funds.
- 6) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to use the statewide benefit matrix and payment guidelines as outlined in the Energy Assistance Operations Manual to determine OEAP benefit levels. Any variation from statewide payment levels or types must be approved by OHCS.
- 7) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to assure that eligible HOUSEHOLDS facing energy-related emergencies are served by "fast track" or expedited procedures which ensure that:
 - a) for life-threatening emergencies, some form of assistance will be provided within eighteen (18) hours of application that will resolve the energy crisis; and
 - b) for non-life-threatening emergencies, some form of assistance will be provided within forty-eight (48) hours of program application that will resolve the energy crisis.
- 8) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to notify HOUSEHOLDS regarding the amount of bill payment assistance committed at the time of their intake. Applicants who apply by mail should receive a notice by mail or may be notified by telephone.

- 9) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to have documented Denial, Appeal, and Fair Hearing procedures for OEAP applicants. These policies and procedures must be accessible to applicants upon request.
- 10) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to assure that participating HOME ENERGY SUPPLIERS sign and comply with vendor contracts. SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to assure that no HOME ENERGY SUPPLIER is paid with OEAP funds without a signed contract.
- 11) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to be responsible for paying HOME ENERGY SUPPLIERS within 45 days of committing an OEAP benefit, unless otherwise specified in the vendor contract.
- 12) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to be responsible for assuring that applicants understand and sign a vendor release of information (preferably on the program application) in cases where household information must be obtained from a utility/vendor.
- 13) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to be responsible for maintaining an internal controls framework, satisfactory to OHCS, which assures OEAP program integrity. This includes the following procedures to be established and outlined in local documentation (e.g. staff policy/procedure manuals):
 - a) SUBGRANTEE shall establish and maintain regular SUBRECIPIENT monitoring practices (if applicable). SUBGRANTEE shall obtain prior written approval from OHCS when adding additional SUBRECIPIENTS or renewing any SUBRECIPIENTS.
 - b) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to assure that completed applications and HOUSEHOLD benefits are valid and correct. This includes adequate separation of duties among intake, authorization and fiscal staff.
 - c) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to maintain clear policy for cases where there may be a conflict of interest. This includes procedures for staff when employees, board members, friends or family members apply for energy assistance services.
 - d) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to maintain clear procedures for dealing with applicants who may have committed fraud and for dealing with public complaints regarding potential fraud. All incidents of fraud must be reported to OHCS.
 - e) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to maintain clear procedures, satisfactory to OHCS, for preventing, detecting and dealing with employee fraud. All incidents of fraud must be reported to OHCS.
- 14) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to maintain accurate program records necessary for reporting and monitoring, and in accordance with the following terms and conditions:
 - a) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to assure that all necessary documentation is included in the client file. Required documents for each applicant household are outlined in the annual Energy Assistance Operations Manual.
 - b) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to allow OHCS access to, or furnish, whatever information and/or documentation is necessary for OHCS to conduct reviews and monitor progress or performance to determine conformity with intended program purposes. SUBGRANTEE shall permit representatives of OHCS to visit its sites or SUBRECIPIENT

sites, and to review and audit all records pertinent to OEAP at any reasonable time, with or without benefit of prior notification.

4. Program Specific Reporting

- A. SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to ensure that data collection and reporting for OEAP funded activities be conducted through the use of OHCS approved OPUS or other OHCS designated service data information system. SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS to assure that data entry into OPUS occurs in an accurate and timely manner as satisfactory to OHCS, ideally at the time of intake.
- B. SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to submit all reports as required in the Master Agreement and outlined in the Energy Assistance Operations Manual as satisfactory to OHCS.
- C. SUBGRANTEE shall provide additional reports as needed and requested by OHCS.
- D. SUBGRANTEE may request a reporting deadline extension when necessary.

5. Performance Measures

- A. SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to operate its OEAP program in a manner designed to achieve the following performance goals:
 - 1) Increased energy stability as measured by the percentage of households served statewide prior to disconnect or out of fuel. The statewide target is 95%.

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2013-2014 MASTER GRANT AGREEMENT
Exhibit A, Program Element 15
Bonneville Power Administration Weatherization Assistance Program

1. **Description.** The Oregon Housing and Community Services Department has been designated by the Governor as the administrator of all federally funded low-income weatherization programs. The Bonneville Power Administration (BPA) created a low-income weatherization program available to households (owners and renters) who heat with electricity from a public utility.
2. **Definitions.** Capitalized words in this work plan shall have the meanings provided herein, as stated in Federal Department of Energy Weatherization Assistance Program regulations or as otherwise provided by OHCS unless the context clearly requires otherwise:

"BASELOAD SERVICES" means any measure that reduces non- heating and cooling costs. These measures can include, but are not limited to, Compact Fluorescent Lights (CFLs), water saving devices, and high efficiency water heaters.

"DOE" means the Federal Department of Energy.

"ENERGY EDUCATION" means the activities and instruction designed to help low-income clients make appropriate decisions and life-style changes to effectively reduce energy consumption.

"LEGAL REQUIREMENTS" means federal and state statutes applicable to BPA WAP, federal and state rules and regulations applicable to BPA WAP, the DOE State Plan and OHCS directives, all as amended from time to time. LEGAL REQUIREMENTS are, and shall be deemed by the parties to constitute, terms and conditions of this Agreement.

"OHCS" means the State of Oregon, acting by and through its Housing and Community Services Department.

"QUALIFIED HOUSEHOLD" means any household that meets the qualifications to receive weatherization services.

"PEER EXCHANGE" means an exchange of information between peers; usually a visit by one agency to another to review work and exchange ideas and best practices to enhance their programs.

"REM/DESIGN" means a computerized residential modeling tool used for the purposes of determining the savings to investment ratio of a project of measure.

"SAVINGS TO INVESTMENT RATIO (SIR)" means a comparison of the annual savings to the initial investment in a measure. An SIR of 1.0 indicates that a measure will pay for itself in energy savings over the life of the measure.

"SUBGRANTEE" means the public or private nonprofit organization, including an Indian tribal organization, which has entered into this Agreement with OHCS to administer BPA WAP at the local level within the designated service area.

"SUBRECIPIENT" means a public or private nonprofit organization that enters into a written agreement with SUBGRANTEE satisfactory to OHCS to provide BPA WAP assistance to certified participants.

"WALK AWAY" means deferring a project that is either structurally unsound or has safety hazards that cannot be addressed under the scope of the program. The project is deferred until the necessary repairs can be completed.

"WAP" means the Weatherization Assistance Program.

"WEATHERIZATION SERVICES" means conservation measures meant to reduce heating and cooling loads. These measures may include both air infiltration reduction and thermal improvements such as wall, attic and floor insulation.

"WORK PLAN APPLICATION" means Subgrantee Agency's Funding application, which is part of the contract between OHCS and the Subgrantee Agency.

3. Scope of Work.

- A. SUBGRANTEE shall, and shall cause and shall require by contract that its SUBRECIPIENTS comply and perform all work to the satisfaction of OHCS, and in accordance with the terms of this Agreement, including its WORK PLAN APPLICATION as approved by OHCS and supplemented herein, together with applicable LEGAL REQUIREMENTS including 42 U.S.C. 6851 – 6872 and 42 U.S.C. 7101. The approved WORK PLAN APPLICATION is incorporated herein by reference. The remaining provisions of this Section 3 are supplemental to, and do not limit the obligations of SUBGRANTEE or its SUBRECIPIENTS arising under this Subsection 3A or otherwise under this agreement.
- B. SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to administer BPA WAP funds in a manner satisfactory to OHCS and in compliance with all PROGRAM REQUIREMENTS, including but not limited to the following terms and conditions:
- 1) SUBGRANTEE may, and may cause and may require its SUBRECIPIENTS by contract to use BPA WAP funds for allowable administrative costs in order to provide the services outlined in this agreement.
 - 2) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to use Training and Technical Assistance (T&TA) funds for the purposes of Training and Technical Assistance as outlined in the DOE State Plan. SUBGRANTEE reserves the right to submit an OHCS budget change request to have funds moved for the purpose of providing weatherization assistance.
 - 3) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to determine eligibility of BPA WAP applicants using program eligibility criteria issued by OHCS. SUBGRANTEE is responsible to OHCS for any losses resulting from improper or negligent issuance of BPA WAP funds.
 - 4) SUBGRANTEE and SUBRECIPIENTS shall determine priority among BPA WAP applicants by using at minimum the following criteria and such other criteria as satisfactory to OHCS:
 - a. Households with seniors as defined by those persons over the age of 60.
 - b. Households with disabled members living in it.
 - c. Households with children under the age of six (6).
 - 5) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to provide allowable weatherization assistance that may include, but is not necessarily limited to WEATHERIZATION SERVICES, BASELOAD SERVICES, and ENERGY EDUCATION. SUBGRANTEE and SUBRECIPIENTS may install 100% of cost effective measures as determined through the use of an OHCS approved computerized auditing tool.
 - 6) All WEATHERIZATION SERVICES and BASELOAD SERVICES, except for the purposes of Health and Safety, must have a SAVINGS TO INVESTMENT RATIO (SIR) of 1.0 or greater as determined through the use of an OHCS-approved auditing tool.
 - 7) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to maintain a Health and Safety average not to exceed thirty percent (30%) of the total job cost. SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to address Health and Safety issues as required by the DOE State Plan, including but not limited to:

- a. Using WAP prescribed methods of home analysis to determine existing Health and Safety needs.
 - b. Testing for the presence of carbon monoxide and combustion appliance zone depressurization testing of one-hundred percent (100%) of the homes containing combustion appliances.
 - c. Addressing Indoor air quality in all weatherized homes by performing pre and post blower door tests on one-hundred percent (100%) of homes weatherized to insure that the minimum ventilation levels for each home are met and through the proper installation of vented exhaust fans with flow controllers in those homes not meeting the minimum ventilation level requirements.
 - d. Installing Carbon Monoxide alarms in one-hundred percent (100%) of homes with Combustion Appliances.
 - e. Assessment of existing mold and mildew conditions in one-hundred percent (100%) of homes weatherized with BPA WAP funds.
- 8) SUBGRANTEE may, and may cause and may require its SUBRECIPIENTS by contract to use weatherization funds for the replacement of inefficient appliances as funding sources allow. SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to dispose of appliances in accordance with EPA guidelines.
- 9) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to provide ENERGY EDUCATION to QUALIFIED HOUSEHOLDS through such means that may include, but are not limited to:
- a. Referral to another department within the SUBGRANTEE or SUBRECIPIENT agency.
 - b. Referral to another agency that provides ENERGY EDUCATION services.
 - c. As part of the weatherization program. This may include, but is not limited to in-home ENERGY EDUCATION, or ENERGY EDUCATION as part of a classroom setting.
- 10) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to maintain a WALK AWAY policy that is satisfactory to OHCS. Once a WALK AWAY is determined by the SUBGRANTEE or SUBRECIPIENT, a "Letter of Service Denial" or "Delay Due to Site Conditions" shall be mailed to the applicant with the specific reason given. WALK AWAY reasons may include, but are not limited to, the following:
- a. Structurally unsound dwelling.
 - b. Evidence of substantial, persistent infestation of rodents, insects, or other harmful/objectionable animals, which are difficult to control.
 - c. Electrical or plumbing hazards which cannot be resolved prior to, or as a part of, weatherization assistance.
 - d. The presence of raw sewage around or in any part of the dwelling.
 - e. Environmental hazards such as serious moisture problems, friable asbestos, or other hazardous materials, which cannot be resolved prior to or as a part of the weatherization assistance.
 - f. The presence of a dead animal, or animal feces, in any area of the dwelling where program staff must install weatherization measures.

- g. Excessive debris in and around the dwelling which limits the program staff access to the dwelling.
 - h. Maintenance and housekeeping practices which are negligent to the point of limiting access of program staff to the dwelling.
 - i. An apparent threat of violence of abuse to any program staff member, or any household member, during the weatherization process.
 - j. The presence and/or use of any controlled substance in the dwelling during the weatherization process.
 - k. Dwelling in which the costs of repairs substantially exceed the cost of the weatherization measures.
 - l. Major remodeling is in progress, limiting the proper completion of weatherization measures.
 - m. Substantial standing water in or around the crawl space or basement area limiting the proper completion of weatherization measures.
 - n. Proposed weatherization conservation measures will result in minimal energy savings and the cost of these measures have a SAVINGS TO INVESTMENT RATIO (SIR) of less than one (1).
 - o. Uncooperative property owner or tenant who refuses a weatherization measure, refuses to make modifications necessary to permit a measure to be completed, or refuses to allow contractor staff access to dwelling.
 - p. Home is being advertised as being for sale.
- 11) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to require and ensure all weatherization staff and contractors who have the potential to disturb lead paint during the course of work to be certified in Lead Safe Weatherization Practices.
 - 12) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to require their weatherization contractors and weatherization programs have a certified lead safe renovator on staff.
 - 13) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to require weatherization staff that visit homes to attend mold and mildew training.
 - 14) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to require at least two (2) staff members to be certified as a REM/DESIGN operator. This requirement may be waived at the discretion of the OHCS program coordinator. A waiver shall only be in effect for the length of this contract.
 - 15) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to carry an active contractor's license with Construction Contractors Board (CCB). Exceptions are Government Entities, Public Non-Profits, and Tribal Governments.
 - 16) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to allow OHCS access to, or furnish, whatever information and/or documentation is necessary for OHCS to conduct reviews and monitor progress or performance to determine conformity with intended program purposes. SUBGRANTEE shall permit representatives of OHCS to visit its sites or SUBRECIPIENT sites, and to review and audit all records pertinent to BPA funding at any reasonable time, with or without benefit of prior notification.
 - 17) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to participate in PEER EXCHANGE annually if the agency is determined to be "at risk" through the OHCS monitoring

process. Agencies participating in PEER EXCHANGE must follow PEER EXCHANGE protocols as directed in the DOE State Plan.

4. Program Specific Reporting

- A. SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to ensure that data collection and reporting for BPA WAP funded activities be conducted through the use of OHCS approved OPUS or other OHCS designated service data information system. SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS to assure that data entry into OPUS occurs in an accurate and timely manner as satisfactory to OHCS, ideally at the time of audit completion.
- B. SUBGRANTEE shall submit all reports as required in the Master Agreement including but not limited to the "Weatherization Quarterly Program Report" which is due quarterly by the 15th of January, April, July, and October to OHCS.
- C. SUBGRANTEE shall provide additional reports as needed and requested by OHCS.
- D. SUBGRANTEE may request a reporting deadline extension when necessary.

5. Performance Measures

- A. SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to operate its low-income weatherization program in a manner designed to achieve the following performance goals:
 - 1) Households served by the low-income weatherization program, utilizing funds from OHCS, should realize an average 12% savings in their annual energy bill due to weatherization improvements as predicted through proper use of an OHCS approved computerized auditing tool.
 - 2) In homes where health and safety issues are identified 70% shall have the issues reduced or eliminated as grant funds allow.

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2013-2014 MASTER GRANT AGREEMENT
Exhibit A, Program Element 16
Department of Energy Weatherization Assistance Program

1. **Description.** The Department of Oregon Housing and Community Services has been designated by the Governor as the administrator of all federally funded low-income weatherization programs. The U.S. Department of Energy (DOE) makes funds available to Oregon for the Weatherization Assistance Program (WAP).
2. **Definitions.** Capitalized words in this work plan shall have the meanings provided herein, as stated in Federal Department of Energy Weatherization Assistance Program regulations or as otherwise provided by OHCS unless the context clearly requires otherwise:

"BASELOAD SERVICES" means any measure that reduces non- heating and cooling costs. These measures can include, but are not limited to, Compact Fluorescent Lights (CFLs), water saving devices, and high efficiency water heaters.

"DOE" means the Federal Department of Energy.

"ENERGY EDUCATION" means the activities and instruction designed to help low-income clients make appropriate decisions and life-style changes to effectively reduce energy consumption.

"LEGAL REQUIREMENTS" means federal and state statutes applicable to DOE WAP, federal and state rules and regulations applicable to DOE WAP, and OHCS directives, all as amended from time to time. LEGAL REQUIREMENTS are, and shall be deemed by the parties to constitute, terms and conditions of this Agreement.

"OHCS" means the State of Oregon, acting by and through its Housing and Community Services Department.

"QUALIFIED HOUSEHOLD" means any household that meets the qualifications to receive weatherization services.

"PEER EXCHANGE" means an exchange of information between peers; usually a visit by one agency to another to review work and exchange ideas and best practices to enhance their programs.

"REM/DESIGN" means a computerized residential modeling tool used for the purposes of determining the savings to investment ratio of a project of measure.

"SAVINGS TO INVESTMENT RATIO (SIR)" means a comparison of the annual savings to the initial investment in a measure. An SIR of 1.0 indicates that a measure will pay for itself in energy savings over the life of the measure.

"SUBGRANTEE" means the public or private nonprofit organization, including an Indian tribal organization, which has entered into this Agreement with OHCS to administer DOE WAP at the local level within the designated service area.

"SUBRECIPIENT" means a public or private nonprofit organization that enters into a written agreement with SUBGRANTEE satisfactory to OHCS to provide DOE WAP assistance to certified participants.

"WALK AWAY" means deferring a project that is either structurally unsound or has safety hazards that cannot be addressed under the scope of the program. The project is deferred until the necessary repairs can be completed.

"WAP" means the Weatherization Assistance Program.

"WEATHERIZATION SERVICES" means conservation measures meant to reduce heating and cooling loads. These measures may include both air infiltration reduction and thermal improvements such as wall, attic and floor insulation.

"*WORK PLAN APPLICATION*" means Subgrantee Agency's Funding application, which is part of the contract between OHCS and the Subgrantee Agency.

3. Scope of Work.

- A. SUBGRANTEE shall, and shall cause and shall require by contract that its SUBRECIPIENTS comply and perform all work to the satisfaction of OHCS, and in accordance with the terms of this Agreement, including its local WORK PLAN APPLICATION as approved by OHCS and supplemented herein, together with applicable LEGAL REQUIREMENTS including CFDA 81.042 – 42 U.S.C. 6851 – 6872 and 42 U.S.C. 7101. The approved WORK PLAN APPLICATION is incorporated herein by reference. The remaining provisions of this Section 3 are supplemental to, and do not limit the obligations of SUBGRANTEE or its SUBRECIPIENTS arising under this Subsection 3A or otherwise under this agreement.
- B. SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to administer DOE WAP funds in a manner satisfactory to OHCS and in compliance with all PROGRAM REQUIREMENTS, including but not limited to the following terms and conditions:
- 1) SUBGRANTEE may, and may cause and may require its SUBRECIPIENTS by contract to use DOE WAP funds for allowable administrative costs in order to provide the services outlined in this agreement.
 - 2) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to use Training and Technical Assistance (T&TA) funds for the purposes of Training and Technical Assistance as outlined in the DOE State Plan. SUBGRANTEE reserves the right to submit an OHCS budget change request to have funds moved for the purpose of providing weatherization assistance.
 - 3) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to determine eligibility of DOE WAP applicants using program eligibility criteria issued by OHCS. SUBGRANTEE is responsible to OHCS for any losses resulting from improper or negligent issuance of DOE WAP funds.
 - 4) SUBGRANTEE and SUBRECIPIENTS shall determine priority among DOE WAP applicants by using at minimum the following criteria and such other criteria as satisfactory to OHCS:
 - a. Households with seniors as defined by those persons over the age of 60.
 - b. Households with disabled members living in it.
 - c. Households with children under the age of six (6).
 - 5) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to provide allowable weatherization assistance that may include, but is not necessarily limited to WEATHERIZATION SERVICES, BASELOAD SERVICES, and ENERGY EDUCATION not to exceed an average of \$6,500 per unit weatherized.
 - 6) All WEATHERIZATION SERVICES and BASELOAD SERVICES, except for the purposes of Health and Safety, must have a SAVINGS TO INVESTMENT RATIO (SIR) of 1.0 or greater as determined through the use of an OHCS-approved auditing tool.
 - 7) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to maintain a Health and Safety average not to exceed fifteen percent (15%) of the SUBGRANTEE total program allocation. SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to address Health and Safety issues as required by the DOE State Plan, including but not limited to:
 - a. Using WAP prescribed methods of home analysis to determine existing Health and Safety needs.

- b. Testing for the presence of carbon monoxide and combustion appliance zone depressurization testing of one-hundred percent (100%) of the homes containing combustion appliances.
 - c. Addressing Indoor air quality in all weatherized homes by performing pre and post blower door tests on one-hundred percent (100%) of homes weatherized to insure that the minimum ventilation levels for each home are met and through the proper installation of vented exhaust fans with flow controllers in those homes not meeting the minimum ventilation level requirements.
 - d. Installing Carbon Monoxide alarms in one-hundred percent (100%) of homes with Combustion Appliances.
 - e. Assessment of existing mold and mildew conditions in one-hundred percent (100%) of homes weatherized with DOE WAP funds.
- 8) SUBGRANTEE may, and may cause and may require its SUBRECIPIENTS by contract to use weatherization funds for the replacement of inefficient appliances as funding sources allow. SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to dispose of appliances in accordance with EPA guidelines.
- 9) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to provide ENERGY EDUCATION to QUALIFIED HOUSEHOLDS through such means that may include, but are not limited to:
- a. Referral to another department within the SUBGRANTEE or SUBRECIPIENT agency.
 - b. Referral to another agency that provides ENERGY EDUCATION services.
 - c. As part of the weatherization program. This may include, but is not limited to in-home ENERGY EDUCATION, or ENERGY EDUCATION as part of a classroom setting.
- 10) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to maintain a WALK AWAY policy that is satisfactory to OHCS. Once a WALK AWAY is determined by the SUBGRANTEE or SUBRECIPIENT, a "Letter of Service Denial" or "Delay Due to Site Conditions" shall be mailed to the applicant with the specific reason given. WALK AWAY reasons may include, but are not limited to, the following:
- a. Structurally unsound dwelling.
 - b. Evidence of substantial, persistent infestation of rodents, insects, or other harmful/objectionable animals, which are difficult to control.
 - c. Electrical or plumbing hazards which cannot be resolved prior to, or as a part of, weatherization assistance.
 - d. The presence of raw sewage around or in any part of the dwelling.
 - e. Environmental hazards such as serious moisture problems, friable asbestos, or other hazardous materials, which cannot be resolved prior to or as a part of the weatherization assistance.
 - f. The presence of a dead animal, or animal feces, in any area of the dwelling where program staff must install weatherization measures.
 - g. Excessive debris in and around the dwelling which limits the program staff access to the dwelling.

- h. Maintenance and housekeeping practices which are negligent to the point of limiting access of program staff to the dwelling.
 - i. An apparent threat of violence of abuse to any program staff member, or any household member, during the weatherization process.
 - j. The presence and/or use of any controlled substance in the dwelling during the weatherization process.
 - k. Dwelling in which the costs of repairs substantially exceed the cost of the weatherization measures.
 - l. Major remodeling is in progress, limiting the proper completion of weatherization measures.
 - m. Substantial standing water in or around the crawl space or basement area limiting the proper completion of weatherization measures.
 - n. Proposed weatherization conservation measures will result in minimal energy savings and the cost of these measures have a SAVINGS TO INVESTMENT RATIO (SIR) of less than one (1).
 - o. Uncooperative property owner or tenant who refuses a weatherization measure, refuses to make modifications necessary to permit a measure to be completed, or refuses to allow contractor staff access to dwelling.
 - p. Home is being advertised as being for sale.
- 11) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to require and ensure all weatherization staff and contractors who have the potential to disturb lead paint during the course of work to be certified in Lead Safe Weatherization Practices.
 - 12) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to require their weatherization contractors and weatherization programs have a certified lead safe renovator on staff.
 - 13) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to require weatherization staff that visit homes to attend mold and mildew training.
 - 14) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to require at least two (2) staff members to be certified as a REM/DESIGN operator. This requirement may be waived at the discretion of the OHCS program coordinator. A waiver shall only be in effect for the length of this contract.
 - 15) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to carry an active contractor's license with Construction Contractors Board (CCB). Exceptions are Government Entities, Public Non-Profits, and Tribal Governments.
 - 16) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to assure that data collection and reporting for DOE WAP funded activities be conducted through the use of the OHCS OPUS database. SUBGRANTEE shall, and shall cause and require its SUBRECIPIENTS by contract to assure that data entry into OPUS occurs in an accurate and timely manner as satisfactory to OHCS.
 - 17) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to allow OHCS access to, or furnish, whatever information and/or documentation is necessary for OHCS to conduct reviews and monitor progress or performance to determine conformity with intended program purposes. SUBGRANTEE shall permit representatives of OHCS to visit its sites or SUBRECIPIENT sites, and to review and audit all records pertinent to DOE funding at any reasonable time, with or without benefit of prior notification.

- 18) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to participate in PEER EXCHANGE annually if the agency is determined to be “at risk” through the OHCS monitoring process. Agencies participating in PEER EXCHANGE must follow PEER EXCHANGE protocols as directed in the DOE State Plan.

4. Program Specific Reporting

- A. SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to ensure that data collection and reporting for DOE WAP funded activities be conducted through the use of OHCS approved OPUS or other OHCS designated service data information system. SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS to assure that data entry into OPUS occurs in an accurate and timely manner as satisfactory to OHCS, ideally at the time of audit completion.
- B. SUBGRANTEE shall submit all reports as required in the Master Agreement including but not limited to the “Weatherization Quarterly Program Report” which is due quarterly by the 15th of January, April, July, and October to OHCS.
- C. SUBGRANTEE shall provide additional reports as needed and requested by OHCS.
- D. SUBGRANTEE may request a reporting deadline extension when necessary.

5. Performance Measures

- A. SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to operate its low-income weatherization program in a manner designed to achieve the following performance goals:
- 1) Households served by the low-income weatherization program, utilizing funds from OHCS, should realize an average 12% savings in their annual energy bill due to weatherization improvements as predicted through proper use of an OHCS approved computerized auditing tool.
 - 2) In homes where health and safety issues are identified 70% shall have the issues reduced or eliminated as grant funds allow.

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2013-2014 MASTER GRANT AGREEMENT
Exhibit A, Program Element 17
DOJ Settlement Funds: Low-Income Weatherization Assistance Program

1. **Description.** The Oregon State Department of Justice (DOJ) makes settlement funds available for use in the Low-Income Weatherization Assistance Program using Department of Energy WAP guidelines. The program is available to owners and renters who meet income qualifications determined by OHCS, regardless of heating source.
2. **Definitions.** Capitalized words in this work plan shall have the meanings provided herein, as stated in Federal Department of Energy Weatherization Assistance Program regulations or as otherwise provided by OHCS unless the context clearly requires otherwise:

"BASELOAD SERVICES" means any measure that reduces non- heating and cooling costs. These measures can include, but are not limited to, Compact Fluorescent Lights (CFLs), water saving devices, and high efficiency water heaters.

"DOE" means the Federal Department of Energy.

"ENERGY EDUCATION" means the activities and instruction designed to help low-income clients make appropriate decisions and life-style changes to effectively reduce energy consumption.

"LEGAL REQUIREMENTS" means federal and state statutes applicable to DOE WAP, federal and state rules and regulations applicable to DOE WAP, Department of Justice directives and OHCS directives, all as amended from time to time. LEGAL REQUIREMENTS are, and shall be deemed by the parties to constitute, terms and conditions of this Agreement.

"OHCS" means the State of Oregon, acting by and through its Housing and Community Services Department.

"QUALIFIED HOUSEHOLD" means any household that meets the qualifications to receive weatherization services.

"PEER EXCHANGE" means an exchange of information between peers; usually a visit by one agency to another to review work and exchange ideas and best practices to enhance their programs.

"REM/DESIGN" means a computerized residential modeling tool used for the purposes of determining the savings to investment ratio of a project of measure.

"SAVINGS TO INVESTMENT RATIO (SIR)" means a comparison of the annual savings to the initial investment in a measure. An SIR of 1.0 indicates that a measure will pay for itself in energy savings over the life of the measure.

"SETTLEMENT FUNDS" means legal settlement monies awarded to OHCS from the Oregon Department of Justice for the purpose of providing low-income weatherization services.

"SUBGRANTEE" means the public or private nonprofit organization which has entered into this Agreement with OHCS to administer SETTLEMENT FUNDS at the local level within the designated service area.

"SUBRECIPIENT" means a public or private nonprofit organization that enters into a written agreement with SUBGRANTEE satisfactory to OHCS to provide SETTLEMENT FUNDS assistance to certified participants.

"WALK AWAY" means deferring a project that is either structurally unsound or has safety hazards that cannot be addressed under the scope of the program. The project is deferred until the necessary repairs can be completed.

"WAP" means the Weatherization Assistance Program.

"WEATHERIZATION SERVICES" means conservation measures meant to reduce heating and cooling loads. These measures may include both air infiltration reduction and thermal improvements such as wall, attic and floor insulation.

"WORK PLAN APPLICATION" means Subgrantee Agency's Funding application, which is part of the contract between OHCS and the Subgrantee Agency.

3. Scope of Work.

- A. SUBGRANTEE shall, and shall cause and shall require by contract that its SUBRECIPIENTS comply and perform all work to the satisfaction of OHCS, and in accordance with the terms of this Agreement, including its local WORK PLAN APPLICATION as approved by OHCS and supplemented herein, together with applicable LEGAL REQUIREMENTS including 42 U.S.C. 6851 – 6872 and 42 U.S.C. 7101. The approved WORK PLAN APPLICATION is incorporated herein by reference. The remaining provisions of this Section 3 are supplemental to, and do not limit the obligations of SUBGRANTEE or its SUBRECIPIENTS arising under this Subsection 3A or otherwise under this agreement.
- B. SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to administer SETTLEMENT FUNDS in a manner satisfactory to OHCS and in compliance with all PROGRAM REQUIREMENTS, including but not limited to the following terms and conditions:
- 1) SUBGRANTEE may, and may cause and may require its SUBRECIPIENTS by contract to use SETTLEMENT FUNDS for allowable administrative costs in order to provide the services outlined in this agreement.
 - 2) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to use Training and Technical Assistance (T&TA) funds for the purposes of Training and Technical Assistance as outlined in the DOE State Plan. SUBGRANTEE reserves the right to submit an OHCS budget change request to have funds moved for the purpose of providing weatherization assistance.
 - 3) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to determine eligibility of program applicants using program eligibility criteria issued by OHCS. SUBGRANTEE is responsible to OHCS for any losses resulting from improper or negligent issuance of SETTLEMENT FUNDS.
 - 4) SUBGRANTEE and SUBRECIPIENTS shall determine priority among program applicants by using at minimum the following criteria and such other criteria as satisfactory to OHCS:
 - a. Households with seniors as defined by those persons over the age of 60.
 - b. Households with disabled members living in it.
 - c. Households with children under the age of six (6).
 - 5) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to provide allowable weatherization assistance that may include, but is not necessarily limited to WEATHERIZATION SERVICES, BASELOAD SERVICES, and ENERGY EDUCATION not to exceed an average of \$6,500 per unit weatherized.
 - 6) All WEATHERIZATION SERVICES and BASELOAD SERVICES, except for the purposes of Health and Safety, must have a SAVINGS TO INVESTMENT RATIO (SIR) of 1.0 or greater as determined through the use of an OHCS-approved auditing tool.

- 7) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to maintain a Health and Safety average not to exceed fifteen percent (15%) of the SUBGRANTEE total program allocation. SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to address Health and Safety issues as required by the DOE State Plan, including but not limited to:
 - a. Using WAP prescribed methods of home analysis to determine existing Health and Safety needs.
 - b. Testing for the presence of carbon monoxide and combustion appliance zone depressurization testing of one-hundred percent (100%) of the homes containing combustion appliances.
 - c. Addressing Indoor air quality in all weatherized homes by performing pre and post blower door tests on one-hundred percent (100%) of homes weatherized to insure that the minimum ventilation levels for each home are met and through the proper installation of vented exhaust fans with flow controllers in those homes not meeting the minimum ventilation level requirements.
 - d. Installing Carbon Monoxide alarms in one-hundred percent (100%) of homes with Combustion Appliances.
 - e. Assessment of existing mold and mildew conditions in one-hundred percent (100%) of homes weatherized with SETTLEMENT FUNDS.
- 8) SUBGRANTEE may, and may cause and may require its SUBRECIPIENTS by contract to use SETTLEMENT FUNDS for the replacement of inefficient appliances as funding sources allow. SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to dispose appliances in accordance with EPA guidelines.
- 9) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to provide ENERGY EDUCATION to QUALIFIED HOUSEHOLDS through such means that may include, but are not limited to:
 - a. Referral to another department within the SUBGRANTEE or SUBRECIPIENT agency.
 - b. Referral to another agency that provides ENERGY EDUCATION services.
 - c. As part of the weatherization program. This may include, but is not limited to in-home ENERGY EDUCATION, or ENERGY EDUCATION as part of a classroom setting.
- 10) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to maintain a WALK AWAY policy that is satisfactory to OHCS. Once a WALK AWAY is determined by the SUBGRANTEE or SUBRECIPIENT, a "Letter of Service Denial" or "Delay Due to Site Conditions" shall be mailed to the applicant with the specific reason given. WALK AWAY reasons may include, but are not limited to, the following:
 - a. Structurally unsound dwelling.
 - b. Evidence of substantial, persistent infestation of rodents, insects, or other harmful/objectionable animals, which are difficult to control.
 - c. Electrical or plumbing hazards which cannot be resolved prior to, or as a part of, weatherization assistance.
 - d. The presence of raw sewage around or in any part of the dwelling.

- e. Environmental hazards such as serious moisture problems, friable asbestos, or other hazardous materials, which cannot be resolved prior to or as a part of the weatherization assistance.
 - f. The presence of a dead animal, or animal feces, in any area of the dwelling where program staff must install weatherization measures.
 - g. Excessive debris in and around the dwelling which limits the program staff access to the dwelling.
 - h. Maintenance and housekeeping practices which are negligent to the point of limiting access of program staff to the dwelling.
 - i. An apparent threat of violence of abuse to any program staff member, or any household member, during the weatherization process.
 - j. The presence and/or use of any controlled substance in the dwelling during the weatherization process.
 - k. Dwelling in which the costs of repairs substantially exceed the cost of the weatherization measures.
 - l. Major remodeling is in progress, limiting the proper completion of weatherization measures.
 - m. Substantial standing water in or around the crawl space or basement area limiting the proper completion of weatherization measures.
 - n. Proposed weatherization conservation measures will result in minimal energy savings and the cost of these measures have a SAVINGS TO INVESTMENT RATIO (SIR) of less than one (1).
 - o. Uncooperative property owner or tenant who refuses a weatherization measure, refuses to make modifications necessary to permit a measure to be completed, or refuses to allow contractor staff access to dwelling.
 - p. Home is being advertised as being for sale.
- 11) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to require and ensure all weatherization staff and contractors who have the potential to disturb lead paint during the course of work to be certified in Lead Safe Weatherization Practices.
 - 12) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to require their weatherization contractors and weatherization programs have a certified lead safe renovator on staff.
 - 13) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to require weatherization staff that visit homes to attend mold and mildew training.
 - 14) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to require at least two (2) staff members to be certified as a REM/DESIGN operator. This requirement may be waived at the discretion of the OHCS program coordinator. A waiver shall only be in effect for the length of this contract.
 - 15) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to carry an active contractor's license with Construction Contractors Board (CCB). Exceptions are Government Entities, Public Non-Profits, and Tribal Governments.

- 16) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to allow OHCS access to, or furnish, whatever information and/or documentation is necessary for OHCS to conduct reviews and monitor progress or performance to determine conformity with intended program purposes. SUBGRANTEE shall permit representatives of OHCS to visit its sites or SUBRECIPIENT sites, and to review and audit all records pertinent to SETTLEMENT FUNDS at any reasonable time, with or without benefit of prior notification.
- 17) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to participate in PEER EXCHANGE annually if the agency is determined to be "at risk" through the OHCS monitoring process. Agencies participating in PEER EXCHANGE must follow PEER EXCHANGE protocols as directed in the DOE State Plan.

4. Program Specific Reporting

- A. SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to ensure that data collection and reporting for DOJ funded activities be conducted through the use of OHCS approved OPUS or other OHCS designated service data information system. SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS to assure that data entry into OPUS occurs in an accurate and timely manner as satisfactory to OHCS, ideally at the time of audit completion.
- B. SUBGRANTEE shall submit all reports as required in the Master Agreement including but not limited to the "Weatherization Quarterly Program Report" which is due quarterly by the 15th of January, April, July, and October to OHCS.
- C. SUBGRANTEE shall provide additional reports as needed and requested by OHCS.
- D. SUBGRANTEE may request a reporting deadline extension when necessary.

5. Performance Measures

- A. SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to operate its low-income weatherization program in a manner designed to achieve the following performance goals:
 - 1) Households served by the low-income weatherization program, utilizing funds from OHCS, should realize an average 12% savings in their annual energy bill due to weatherization improvements as predicted through proper use of an OHCS approved computerized auditing tool.
 - 2) In homes where health and safety issues are identified 70% shall have the issues reduced or eliminated as grant funds allow.

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2013-2014 MASTER GRANT AGREEMENT
Exhibit A, Program Element 18
Energy Conservation Helping Oregonians Weatherization Assistance Program

1. **Description.** The Oregon Housing and Community Services Department has been designated by the Governor as the administrator of all federally funded low-income weatherization programs. Energy Conservation Helping Oregonians (ECHO) is a weatherization program funded by ratepayers of Portland General Electric and Pacific Power. Only low-income households (owners and renters) that are PGE or Pacific Power customers are eligible for the program.
2. **Definitions.** Capitalized words in this work plan shall have the meanings provided herein, as stated in ORS 757.612, OAR 813.205, ECHO program requirements or as otherwise provided by OHCS unless the context clearly requires otherwise:

"BASELOAD SERVICES" means any measure that reduces non- heating and cooling costs. These measures can include, but are not limited to, Compact Fluorescent Lights (CFLs), water saving devices, and high efficiency water heaters.

"ECHO" means Energy Conservation Helping Oregonians Program.

"ENERGY EDUCATION" means the activities and instruction designed to help low-income clients make appropriate decisions and life-style changes to effectively reduce energy consumption.

"LEGAL REQUIREMENTS" means federal and state statutes applicable to ECHO, federal and state rules and regulations applicable to ECHO, and OHCS directives, all as amended from time to time. LEGAL REQUIREMENTS are, and shall be deemed by the parties to constitute, terms and conditions of this Agreement.

"OHCS" means the State of Oregon, acting by and through its Housing and Community Services Department.

"QUALIFIED HOUSEHOLD" means any household that meets the qualifications to receive ECHO services.

"PEER EXCHANGE" means an exchange of information between peers; usually a visit by one agency to another to review work and exchange ideas and best practices to enhance their programs.

"REM/DESIGN" means a computerized residential modeling tool used for the purposes of determining the savings to investment ratio of a project of measure.

"SAVINGS TO INVESTMENT RATIO (SIR)" means a comparison of the annual savings to the initial investment in a measure. An SIR of 1.0 indicates that a measure will pay for itself in energy savings over the life of the measure.

"SUBGRANTEE" means the public or private nonprofit organization which has entered into this Agreement with OHCS to administer ECHO at the local level within the designated service area.

"SUBRECIPIENT" means a public or private nonprofit organization that enters into a written agreement with SUBGRANTEE satisfactory to OHCS to provide ECHO assistance to certified participants.

"WALK AWAY" means deferring a project that is either structurally unsound or has safety hazards that cannot be addressed under the scope of the program. The project is deferred until the necessary repairs can be completed.

"WAP" means the Weatherization Assistance Program.

"WEATHERIZATION SERVICES" means conservation measures meant to reduce heating and cooling loads. These measures may include both air infiltration reduction and thermal improvements such as wall, attic and floor insulation.

"WORK PLAN APPLICATION" means Subgrantee Agency's Funding application, which is part of the contract between OHCS and the Subgrantee Agency.

3. Scope of Work.

- A. SUBGRANTEE shall, and shall cause and shall require by contract that its SUBRECIPIENTS comply and perform all work to the satisfaction of OHCS, and in accordance with the terms of this Agreement, including its local WORK PLAN APPLICATION as approved by OHCS and supplemented herein, together with applicable LEGAL REQUIREMENTS including ORS 757.612 and OAR 813.205. The approved WORK PLAN APPLICATION is incorporated herein by reference. The remaining provisions of this Section 3 are supplemental to, and do not limit the obligations of SUBGRANTEE or its SUBRECIPIENTS arising under this Subsection 3A or otherwise under this agreement.
- B. SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to administer ECHO funds in a manner satisfactory to OHCS and in compliance with all PROGRAM REQUIREMENTS, including but not limited to the following terms and conditions:
- 1) SUBGRANTEE may, and may cause and may require its SUBRECIPIENTS by contract to use ECHO funds for allowable administrative costs in order to provide the services outlined in this agreement.
 - 2) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to use Training and Technical Assistance (T&TA) funds for the purposes of Training and Technical Assistance as outlined in ECHO guidelines. SUBGRANTEE reserves the right to submit an OHCS budget change request to have funds moved for the purpose of providing weatherization assistance.
 - 3) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to determine eligibility of ECHO applicants using program eligibility criteria issued by OHCS. SUBGRANTEE is responsible to OHCS for any losses resulting from improper or negligent issuance of ECHO funds.
 - 4) SUBGRANTEE and SUBRECIPIENTS shall determine priority among ECHO applicants by using at minimum the following criteria and such other criteria as satisfactory to OHCS:
 - a. Households with seniors as defined by those persons over the age of 60.
 - b. Households with disabled members living in it.
 - c. Households with children under the age of six (6).
 - 5) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to provide allowable weatherization assistance that may include, but is not necessarily limited to WEATHERIZATION SERVICES, BASELOAD SERVICES, and ENERGY EDUCATION. SUBGRANTEE and SUBRECIPIENTS may install 100% of cost effective measures as determined through the use of an OHCS approved computerized auditing tool.
 - 6) WEATHERIZATION SERVICES and BASELOAD SERVICES, except for the purposes of Health and Safety, must have a SAVINGS TO INVESTMENT RATIO (SIR) of 1.0 or greater as determined through the use of an OHCS-approved auditing tool.
 - 7) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to maintain a Health and Safety average not to exceed fifteen percent (15%) of the SUBGRANTEE total program allocation. SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to address Health and Safety issues as required by ECHO guidelines, including but not limited to:
 - a. Using WAP prescribed methods of home analysis to determine existing Health and Safety needs.

- b. Testing for the presence of carbon monoxide and combustion appliance zone depressurization testing of one-hundred percent (100%) of the homes containing combustion appliances.
 - c. Addressing Indoor air quality in all weatherized homes by performing pre and post blower door tests on one-hundred percent (100%) of homes weatherized to insure that the minimum ventilation levels for each home are met and through the proper installation of vented exhaust fans with flow controllers in those homes not meeting the minimum ventilation level requirements.
 - d. Installing Carbon Monoxide alarms in one-hundred percent (100%) of homes with Combustion Appliances.
 - e. Assessment of existing mold and mildew conditions in one-hundred percent (100%) of homes weatherized with ECHO funds.
- 8) SUBGRANTEE may, and may cause and may require its SUBRECIPIENTS by contract to use weatherization funds for the replacement of inefficient appliances as funding sources allow. SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to dispose appliances in accordance with EPA guidelines.
- 9) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to provide ENERGY EDUCATION to QUALIFIED HOUSEHOLDS through such means that may include, but are not limited to:
- a. Referral to another department within the SUBGRANTEE or SUBRECIPIENT agency.
 - b. Referral to another agency that provides ENERGY EDUCATION services.
 - c. As part of the weatherization program. This may include, but is not limited to in-home ENERGY EDUCATION, or ENERGY EDUCATION as part of a classroom setting.
- 10) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to maintain a WALK AWAY policy that is satisfactory to OHCS. Once a WALK AWAY is determined by the SUBGRANTEE or SUBRECIPIENT, a "Letter of Service Denial" or "Delay Due to Site Conditions" shall be mailed to the applicant with the specific reason given. WALK AWAY reasons may include, but are not limited to, the following:
- a. Structurally unsound dwelling.
 - b. Evidence of substantial, persistent infestation of rodents, insects, or other harmful/objectionable animals, which are difficult to control.
 - c. Electrical or plumbing hazards which cannot be resolved prior to, or as a part of, weatherization assistance.
 - d. The presence of raw sewage around or in any part of the dwelling.
 - e. Environmental hazards such as serious moisture problems, friable asbestos, or other hazardous materials, which cannot be resolved prior to or as a part of the weatherization assistance.
 - f. The presence of a dead animal, or animal feces, in any area of the dwelling where program staff must install weatherization measures.
 - g. Excessive debris in and around the dwelling which limits the program staff access to the dwelling.

- h. Maintenance and housekeeping practices which are negligent to the point of limiting access of program staff to the dwelling.
 - i. An apparent threat of violence of abuse to any program staff member, or any household member, during the weatherization process.
 - j. The presence and/or use of any controlled substance in the dwelling during the weatherization process.
 - k. Dwelling in which the costs of repairs substantially exceed the cost of the weatherization measures.
 - l. Major remodeling is in progress, limiting the proper completion of weatherization measures.
 - m. Substantial standing water in or around the crawl space or basement area limiting the proper completion of weatherization measures.
 - n. Proposed weatherization conservation measures will result in minimal energy savings and the cost of these measures have a SAVINGS TO INVESTMENT RATIO (SIR) of less than one (1).
 - o. Uncooperative property owner or tenant who refuses a weatherization measure, refuses to make modifications necessary to permit a measure to be completed, or refuses to allow contractor staff access to dwelling.
 - p. Home is being advertised as being for sale.
- 11) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to require and ensure all weatherization staff and contractors who have the potential to disturb lead paint during the course of work to be certified in Lead Safe Weatherization Practices.
 - 12) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to require their weatherization contractors and weatherization programs have a certified lead safe renovator on staff.
 - 13) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to require weatherization staff that visit homes to attend mold and mildew training.
 - 14) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to require at least two (2) staff members to be certified as a REM/DESIGN operator. This requirement may be waived at the discretion of the OHCS program coordinator. A waiver shall only be in effect for the length of this contract.
 - 15) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to carry an active contractor's license with Construction Contractors Board (CCB). Exceptions are Government Entities, Public Non-Profits, and Tribal Governments.
 - 16) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to allow OHCS access to, or furnish, whatever information and/or documentation is necessary for OHCS to conduct reviews and monitor progress or performance to determine conformity with intended program purposes. SUBGRANTEE shall permit representatives of OHCS to visit its sites or SUBRECIPIENT sites, and to review and audit all records pertinent to ECHO funding at any reasonable time, with or without benefit of prior notification.
 - 18) SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to participate in PEER EXCHANGE annually if the agency is determined to be "at risk" through the OHCS monitoring process. Agencies participating in PEER EXCHANGE must follow PEER EXCHANGE protocols as directed in the ECHO guidelines.

4. Program Specific Reporting

- A. SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to ensure that data collection and reporting for ECHO funded activities be conducted through the use of the OHCS approved OPUS database or other OHCS designated service data information system. SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS to assure that data entry into OPUS occurs in an accurate and timely manner as satisfactory to OHCS, ideally at the time of audit completion.
- B. SUBGRANTEE shall submit all reports as required in the Master Agreement including but not limited to the "Weatherization Quarterly Program Report" which is due quarterly by the 15th of January, April, July, and October to OHCS.
- C. SUBGRANTEE shall provide additional reports as needed and requested by OHCS.
- D. SUBGRANTEE may request a reporting deadline extension when necessary.

5. Performance Measures

- A. SUBGRANTEE shall, and shall cause and shall require its SUBRECIPIENTS by contract to operate its low-income weatherization program in a manner designed to achieve the following performance goals:
 - 1) Households served by the low-income weatherization program, utilizing funds from OHCS, should realize an average 12% savings in their annual energy bill due to weatherization improvements as predicted through proper use of an OHCS approved computerized auditing tool.
 - 2) In homes where health and safety issues are identified 70% shall have the issues reduced or eliminated as grant funds allow.

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July 18, 2013

Board of County Commissioner
Clackamas County

Members of the Board:

Approval of a Facilities Use Agreement with North Clackamas School District No. 12, for
the Women, Infants, and Children WIC program.

Purpose/Outcomes	Provide a space for the operation of the Women, Infants, and Children WIC program to serve Clackamas County Citizens
Dollar Amount and Fiscal Impact	Contract maximum value is \$8,461.20, and will be paid \$769.20 monthly. This agreement is funded through the State LPHA contract.
Funding Source	252-3240-8401-40059 – WIC Services. No County General Funds are involved.
Safety Impact	None
Duration	Effective August 01, 2013 and terminates on June 30, 2014
Previous Board Action	The Board previously viewed this contract on May 31, 2012 Agenda item 053112-A6.
Contact Person	Dana Lord, Interim Public Health Director – 503-655-8405
Contract No.	6310

BACKGROUND:

Clackamas County Public Health Division (CCPHD) receives funding through the State of Oregon, Oregon Health Authority, Local Public Health Authority (LPHA) to facilitate the Women, Infants, and Children (WIC) Program. The Board viewed and approved the new LPHA contract on June 27, 2013, Agenda item A-12.

The purpose of this agreement is to provide facility space for the low-income, Women's, Infants and Children (WIC), Nutrition Program at the Wichita Community Services Building in Milwaukie to serve north Clackamas County. This facility is a hub of eleven different programs providing services for families seeking support.

This agreement is effective August 1, 2013 and terminates on June 30, 2014. County Counsel reviewed the original agreement on August 3, 2011. No County General Funds are involved.

RECOMMENDATION:

Staff recommends the Board approval of this agreement and authorizes Cindy Becker, H3S Director to sign on behalf of Clackamas County.

Respectfully submitted,



Cindy Becker, Director

FACILITIES USE AGREEMENT

WICHITA COMMUNITY SERVICES BUILDING

START DATE: August 01, 2013

END DATE: June 30, 2014

DISTRICT: North Clackamas School District No. 12 (ADistrict@)

PARTNER: Name: Clackamas County acting by and through its Health, Housing and Human Services Department, Public Health Division (ATenant@)
Address: 2051 Kaen Road, Suite 367
Oregon City, Oregon 97045
Phone: (503)655-8405
Fax: (503)655-8350
Contact: Heidi Bates
E-Mail: heidibat@co.clackamas.or.us

PREMISES: Wichita Community Services Building
Suite/Room/Area Room 1 ()

NATURE OF USE: Office of Educational Programming

RENT RATE: \$ 769.20 per calendar month

DEPOSIT AMOUNT: \$ N/A

INSURANCE LIMIT: Not less than \$1,000,000 CSL Commercial General Liability

GENERAL PROVISIONS B

1. *Term.* The Term is from the Start Date to the End Date, inclusive. No holding over is permitted. This lease may be terminated by either party, upon 30days' notice.
2. *Rent.* Rent is due on the first day of each month of the Term in advance. If the Term starts or ends with other than a full calendar month, the Rent for that month shall be prorated according to the number of days in said month.
3. *Deposit.* The Deposit is refundable within 30 days after termination of this Agreement. District shall have the right to offset against the Deposit any sums owing from Tenant to District not paid when due; any damages caused by Tenant=s default; the cost of curing any default by Tenant; and, the cost of performing any repair or cleanup that is Tenant=s responsibility. Offset against the Deposit shall not be an exclusive remedy in any of the above cases, but may be invoked by District, at its option, in addition to

any other remedy provided by law or this Agreement for Tenant=s nonperformance. If an offset is claimed by the District, Tenant will make whole the Deposit within 10-days of demand.

4. *Use.* Tenant shall use the Premises for no other purpose than stated herein without the District=s prior written consent. Tenant has a nonexclusive right to the quiet use of the common areas of the Wichita Community Services Building (Athe Building@), including the parking areas, in conjunction with the other tenants on a cooperative basis. Tenant shall not annoy, obstruct or interfere with the rights, privileges and quiet enjoyment of the District or other tenants of the Building. Tenant shall promptly comply with all applicable laws, ordinances, rules and regulations of any public authority. Tenant shall not conduct any activities that will increase Landlord=s insurance rates for any portion of the Building or that will in any manner degrade or damage the condition or reputation of the District or the Building.

5. *Condition of Premises.* Except as otherwise expressly set forth in this Agreement, the Premises is accepted by Tenant in its *As is@* condition, subject to any and all patent and latent defects and faults, without reliance upon any representation by District as to the condition or suitability of the Premises for any intended use or purpose by Tenant and without any representation or warranty by District as to its compliance with applicable laws, rules, regulations, and ordinances.

6. *Equipment.* Tenant shall use in the Premises only such equipment as is customary for Tenant=s use and shall not overload the floors or electrical circuits of the Premises or Building or alter the plumbing or wiring of the Premises or Building. Landlord must approve in advance the location of and manner of installing any wiring or electrical, heat generating or communication equipment or exceptionally heavy articles.

7. *Exterior Signs and Devices.* No signs, awnings, antennas, or other apparatus shall be painted on or attached to the exterior or common areas of the Building, nor shall anything be placed on any window of the Premises or positioned so as to be visible from outside the Premises, by Tenant without the prior written approval of the District.

8. *Utilities and Services.* Landlord will furnish connection to the public power system and the central heating system during regular business hours. The Premises do not have air conditioning. Interruption of services or utilities shall not be an eviction or disturbance of Tenant=s use and possession of the Premises, render the District liable to Tenant for damages, or relieve Tenant from performance of Tenant=s obligations under this Agreement. Tenant shall provide its own surge protection for power furnished to the Premises. Landlord will provide janitorial service for the common areas of the Building but not to the Premises. The District may impose a surcharge for utility usage exceeding normal office or classroom use.

9. *Maintenance and Repair.* Tenant shall maintain and repair the interior walls, floors and ceilings; the doors, windows, and related hardware; the light fixtures, switches and wiring; and, all other repairs to the interior of Premises, reasonable wear and tear excepted. Repair of damage to the Premises or the Building caused by negligent or intentional acts or breach of this Agreement by Tenant, its employees, or invitees, shall be at Tenant=s expense. Landlord may erect scaffolding and other apparatus necessary for maintenance and repair. Landlord shall have no liability for interference with Tenant=s use because of maintenance and repair. Landlord shall not unreasonably interfere with tenant=s use because of maintenance and repair. Tenant shall have no claim against Landlord for any interruption or reduction of services or interference with Tenant=s occupancy, and no such interruption or reduction shall be construed as a constructive or other eviction of Tenant. Tenant shall not make any improvements,

additions or alterations to the Premises, change the color of the interior, or install any wall or floor covering without prior written approval from the District.

10. *Improvements.* Tenant may, at its expense, make such improvements to the Premises as it deems necessary from time to time for its operations with the prior written approval of the District. At the end of the Term or earlier termination of the tenancy, Tenant shall remove its equipment and improvements and will restore the Premises to substantially the condition existing on the Start Date, except for ordinary wear and tear.

11. *Access.* The District shall have the right to enter upon the Premises at any time to determine Tenant's compliance with this Agreement, to perform necessary services, maintenance and repairs or alterations to the Building or the Premises. Except in case of emergency, such entry shall be upon one calendar day's advance notice and at such times and in such manner as to minimize interference with the reasonable use of the Premises by Tenant.

12. *Compliance with Laws.* Tenant shall substantially comply with all applicable laws relating to its possession and use of the Premises.

13. *Hazardous Substances.* Tenant shall not cause or permit any Hazardous Substance to be brought upon, spilled, leaked, disposed of, or otherwise released on or under the Premises. Tenant shall defend, indemnify and hold District harmless from any and all claims threatened or made in any way related to Hazardous Substances attributable to Tenant.

14. *Insurance Policies.* Tenant shall procure and thereafter during the Term of the Lease shall continue to carry insurance at Tenant's cost or shall alternatively maintain self-insurance funds in such an amount that is acceptable to Landlord. If Tenant elects to purchase insurance it shall be comprehensive general liability insurance from a responsible company approved by Landlord with limits of not less than \$2,000,000 CSL in a Commercial General Liability Policy (occurrence version). Such insurance or self-insurance fund shall cover all risks arising directly or indirectly out of Tenant's activities on the premises and shall name Landlord as an additional insured if applicable. Certificates or other proof evidencing such insurance or self-insurance fund and bearing endorsements requiring 30 days written notice to Landlord prior to any change or cancellation shall be furnished to Landlord at all times during the Term of this Lease.

15. *Security.* The District shall have no obligation to provide security service or to adopt security measures regarding the Premises, and Tenant shall cooperate with all security measures adopted by the District.

16. *Regulations.* The District shall have the right but shall not be obligated to make, revise and enforce regulations or policies consistent with this Agreement for the purpose of promoting safety, health, order, harmony, economy, cleanliness, and good service to all tenants of the Building, including moving, use of common areas, prohibition of smoking and other matters of public health, safety and quiet enjoyment. All such regulations and policies shall be complied with as if part of this Agreement. Without waiving or limiting the generality of the foregoing, Tenant will comply with the District's Policy and Standard Practice statement governing Community Use of School Facilities, as amended. In the event of a conflict between either the Policy or the Standard Practice and this Agreement, this Agreement shall control.

17. *Default.* Any of the following shall constitute a default by Tenant under this Agreement: (a) Tenant=s failure to pay rent or any other charge under this Agreement within 5 days after it is due, or failure to comply with any other term or condition within 10 days of written notice from District specifying the noncompliance; (b) Tenant=s insolvency or assignment for the benefit of its creditors; (c) Tenant=s commencement of proceedings under any provision of any bankruptcy or insolvency law or failure to obtain dismissal of any petition filed against it under such laws within the time required to answer or the appointment of a receiver for all or any portion of District=s properties or financial records; (d) vacating or abandoning the Premises; or, (e) disturbing the quiet enjoyment of the Building as District may determine in its sole discretion, which is grounds for immediate termination.

18. *Remedies.* In case of default, the District shall have the right to the following remedies which are intended to be cumulative and in addition to any other remedies provided under applicable law: (a) the District may terminate the Agreement without notice to Tenant; (b) the District may retake possession of the Premises and may use or relet the Premises without accepting surrender or waiving the right to damages; (c) the District may recover all damages caused by Tenant=s default; (d) the District may make any payment or perform any obligation which Tenant has failed to perform, in which case the District shall be entitled to recover from Tenant upon demand all amounts so expended, plus interest from the date of the expenditure at the rate of twelve (12.00%) percent each month, which rate shall apply to past due rent.

19. *Surrender.* On termination of this Agreement, Tenant shall deliver all keys to the District and surrender the Premises vacuumed, swept and free of debris and in the same condition as at the commencement of the Term, subject only to reasonable wear from ordinary use. Tenant shall remove all of its furnishings and trade fixtures that remain its property and repair all damage resulting from such removal. Failure to remove shall be an abandonment of the property, and District may dispose of it in any manner without liability. If Tenant fails to vacate the Premises when required, including failure to remove all of its personal property, the hold-over rent rate shall be one-and-one half times the total rent being charged when the right to occupy expires.

20. *Indemnification.* Subject to applicable provisions in the Oregon Constitution and Oregon Tort Claims Act, Tenant shall indemnify and defend Landlord from any claim, loss, or liability arising out of or related to any activity of Tenant on the Premises or any condition of the Premises under the control of Tenant.

21. *Assignment and Subletting.* Tenant may not assign this Agreement or sublet the Premises without District=s prior written consent which the District may withhold at its sole discretion.

22. *Notices.* Notices between the parties relating to this Agreement shall be in writing, effective when delivered, or if mailed, effective on the second day following certified and first class mailing, postage prepaid, to the address for the party stated in this Agreement or to such other address either party may specify by notice to the other. Notice to Tenant may always be delivered to the Premises. Rent shall be payable to the District at the same address and in the same manner, but shall be considered paid only when received.

23. *Litigation Expenses.* If suit or action is instituted in connection with any controversy arising out of this Agreement, the prevailing party shall be entitled to recover its litigation expenses, including attorney fees, the costs of copying, mail, courier services, exhibit preparation, other office expenses, and expert and fact witness expenses, and in addition to costs such sum as the court may adjudge reasonable

as costs and attorney fees, whether at trial, on petition for review, and on appeal.


24. *Interpretation of this Agreement.* This Agreement is made entirely within the state of Oregon and shall be governed by said state=s laws. If any provision of this Agreement shall be invalid or unenforceable in any respect for any reason, the validity and enforceability of any such provision in any other respect and of the remaining provisions of this Agreement shall not be in any way impaired. A provision of this Agreement may be waived only by a written instrument executed by the party waiving compliance. No waiver of any provision of this Agreement shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. Failure to enforce any provision of this Agreement shall not operate as a waiver of such provision or any other provision. Nothing in this Agreement, express or implied, is intended to confer on any person, other than the parties to this Agreement, any right or remedy of any nature whatsoever. If the Tenant is a corporate entity, the person signing this Agreement is authorized to make this Agreement by the entity=s Board. Time is of the essence of this Agreement. The exclusive venue for any disputes shall be in the Clackamas County Circuit Court.

25. *Entire Agreement.* This Agreement sets forth the entire understanding of the parties with respect to the subject matter of this Agreement and supersedes any and all prior written and oral agreements and representations and there are no implied covenants or other agreements between the parties except as expressly set forth in this Agreement. Neither District nor Tenant is relying on any representations other than those expressly set forth herein.

TENANT:
CLACKAMAS COUNTY

NORTH CLACKAMAS SCHOOL DISTRICT NO. 12

By: _____
Cindy Becker
Title Director
Date: _____

By:  _____
Rod Stewart
Title: Asst. Superintendent, Facility Operations
Date: _____

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July 18, 2013

Board of County Commissioner
Clackamas County

Members of the Board:

Approval of a HOME Loan Agreement with
Northwest Housing Alternatives

Purpose/Outcomes	HOME Program funds to assist in the acquisition and moderate rehabilitation of the Ikoï So Terrace Apartments.
Dollar Amount and Fiscal Impact	The loan amount is \$500,000. The project is listed in the Consolidated Plan's 2013-14 Annual Action Plan.
Funding Source	The loan is funded through the federal HOME Investment Partnership Program. The County receives the HOME grant from the US Department of Housing and Urban Development. No County General Funds are involved.
Safety Impact	None.
Duration	The term of the loan is 50 years.
Previous Board Action	Approval of the 2013-14 Annual Action Plan (050213-A1)
Contact Person	Chuck Robbins, Director, Community Development Division, 650-5666.
Contract No.	6328

BACKGROUND:

Northwest Housing Alternatives (NHA), a non-profit organization, is certified as a Community Housing Development Organization under the County's HOME Program. NHA plans to acquire and rehabilitate the Ikoï So Terrace Apartments, an existing 35-unit affordable rental housing complex for seniors located at 1550 SE Oak Grove Blvd in Milwaukie. The apartments were built in 1987 with federal funds that also provided project-based rent subsidies. The original 20-year "Section 8" contract through the federal Department of Housing and Urban Development (HUD) expired in 2007 and the owner has renewed annually since then. NHA plans to acquire and rehabilitate the units and preserve their affordability by applying to HUD for a 20-year project-based rent subsidy contract.

Under the terms of the Agreement, \$500,000 in HOME funds will be made available for the project. The HOME funds represent less than nine percent of project's \$5.8 million total development cost. The HOME loan is in the form of a low-interest deferred-payment loan. The terms are structured to fit the needs of the project and the requirements of the federal Low Income Housing Tax Credit program, the project's primary fund source. The HOME funds will be used for eligible development costs defined in the HOME rule at 24 CFR 92.206. No HOME funds will be disbursed until the owner has closed on the tax credit financing.

The project consists of all one-bedroom units. Six units will be designated as HOME-assisted units with an initial period of affordability of 20 years.

The contract was reviewed and approved by County Counsel on 06/27/13.

RECOMMENDATION:

Healthy Families. Strong Communities.
2051 Kaen Road, Oregon City, OR 97045 • Phone: (503) 742-5300 • Fax: (503) 742-5352
www.clackamas.us/community_health

Staff recommends Board approval of this agreement and authorizes Cindy Becker, H3S Director to sign on behalf of Clackamas County.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Cindy Becker", written in black ink.

Cindy Becker, Director

**LOAN AGREEMENT
CLACKAMAS COUNTY HOME PROGRAM**

Name of Project: IKOI-SO TERRACE APARTMENTS

This Loan Agreement ("**Agreement**") is entered into between Northwest Housing Alternatives, Inc., an Oregon non-profit corporation ("**NHA**" or "**Owner**"), and CLACKAMAS COUNTY ("**County**"), a Participating Jurisdiction under the HOME Program.

This Agreement includes the following attachments:

- | | |
|-----------------------------|--|
| A. Legal Description | E. HOME Affordability Requirements |
| B. Sources and Uses | F. Affirmative Marketing and MBE/WBE Outreach Requirements |
| C. Schedule of Tasks | G. Project Completion documentation |
| D. HOME Match Contributions | |

The parties, in consideration of the mutual promises and obligations set forth below, agree as follows:

1. **DEFINITIONS.** Capitalized terms in this Agreement and in the other Loan Documents have the following definitions:
- a. **Annual Income.** Annual income as defined at 24 CFR 5.609.
 - b. **Affordability Requirements.** The Affordability Requirements refer to the restrictions on rents and tenant incomes set forth in Section 10 below.
 - c. **HOME-Assisted Units or HOME Unit.** HOME-Assisted units (HOME units) are those units in the Project which were partially or totally rehabilitated, constructed, or otherwise assisted with the use of HOME Funds. The HOME-Assisted units are designated in Section 2.b below.
 - d. **HOME Funds.** HOME Funds means the total amount of HOME Program dollars being provided by the County to the Project under this Agreement. See Section 2 below.
 - e. **HOME Program and HOME Regulations.** The federal HOME Investment Partnership Program (HOME Program) is authorized under Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990. HUD's regulations and requirements for the HOME Program are located in 24 CFR Part 92. Should anything in this Agreement or the other Loan Documents conflict with the HOME regulations, the HOME regulations shall prevail.
 - f. **HUD.** The United States Department of Housing and Urban Development
 - g. **Loan Documents.** The Loan Documents are this Agreement, the Promissory Note, the Trust Deed, and the Declaration of Land Use Restrictive Covenants, all of which are incorporated into this Agreement by reference.
 - h. **Low-Income and Very Low-Income.** A Low-Income household is one whose total income does not exceed 80% of the County's median income. A Very Low-Income household is one whose total income does not exceed 50% of the County's median income.
 - i. **Median Income.** Median Income means the median income for Clackamas County, adjusted for family size, as published by HUD, from time to time.
 - j. **Owner** includes the current Owner and any subsequent Project owner, subject to the County consenting to any transfer under Section 30 below.
 - k. **Period of Affordability.** See Section 9 below.
 - l. **Project.** The project involves the acquisition and moderate rehabilitation of the Ikoi-So Terrace Apartments, an existing 35-unit multi-family rental housing project located at 1550 SE Oak Grove Blvd. in Milwaukie, Oregon 97267. The legal description of the property is set forth in **Attachment A**.
 - m. **Project Completion Date.** The later of the date when (a) the rehabilitation work is completed, (b) the final HOME drawdown has been disbursed to the Project, and (c) the County has entered the project completion information into HUD's disbursement and information system. County must enter the project

completion information into the HUD system, or otherwise provide it to HUD, within 120 days following the final project drawdown.

2. HOME FUNDS; LOAN TERMS

- a. **Amount and Purpose:** County shall loan HOME funds in the amount of **\$500,000** to the **Owner** for the Project.
- b. **Loan Terms:**
 - i. The HOME Funds will be provided as a **2.75 % interest deferred payment loan**.
 - ii. The loan shall be repaid in full upon the earlier of **50 years** from the Project Completion Date; the sale, assignment or other transfer of title to the Property without the County's consent; or the date Owner or its agents or subcontractors is otherwise in default under any of the Loan Documents (including but not limited to the failure to meet the Affordability Requirements of Section 10 below). Exceptions: A sale pursuant to the NHA's buyout option and right of first refusal will not cause the Loan to be due and payable. A transfer or assignment of a limited partner's interest in Owner shall not cause the Loan to be due and payable.
- c. **Loan Documents:** The loan shall be evidenced by this Agreement, a Promissory Note, a Trust Deed, and a Declaration of Land Use Restrictive Covenants, all of which together are incorporated by reference into this Agreement and are referred to collectively as the "**Loan Documents**."
- d. **Recording Requirement:** The Owner agrees to record the Trust Deed and the Declaration of Land Use Restrictive Covenants, promptly after signing.
- e. The loan shall begin to accrue interest on the Project Completion Date.

3. PAYMENT OF OBLIGATION.

- a. Payments of principal and interest shall be made until the loan is paid in full. All payments on the loan shall be applied first to the interest due on the loan and then the remaining amount shall be applied to the principal. No late fees will be charged.
- b. Payments shall be made at such place as County may designate in writing and shall be in the manner and amount as is described in the Promissory Note between the parties relating to this project.

4. HOME-ASSISTED UNITS

- a. **Six (6) units in the project are HOME-Assisted units**, as follows:

Bedroom Size	TOTAL UNITS	Low-Home Units	High Home Units	Total Units HOME-Assisted
1-bedroom tenants' unit:	34	6	0	6
1-bedroom (manager's) unit:	1	0	0	0
TOTALS	35	0	0	6

- b. **Fixed/Floating:** The HOME-Assisted units are designated as **FLOATING** HOME units as defined at 24 CFR 92.252.
- c. See Section 10 below and **Attachment E** for rent and income limits for the HOME-Assisted Units.
- d. **Special Needs Set-aside.** Six units will be set aside for persons with special needs to comply with the County's requirement.

5. SOURCES AND USES OF FUNDS; SCHEDULE OF TASKS

- a. All sources and uses of funds for the acquisition phase of the Project are set forth in **Attachment B**. The Uses Statement shall specify by line item the source of funds for each such line item. Owner certifies that (i) it has, or will obtain, commitments of the funds from each of the sources identified, (ii) the sources of funds are sufficient to fund the project in full, and (iii) HOME funds shall only be used for HOME-eligible costs (see 24 CFR 92.206 and 92.214).
- b. The Schedule of Tasks to be undertaken in order to complete the Project is set forth in **Attachment C**.

6. **MATCH REQUIREMENT**

Attachment D documents the Project-related eligible sources of matching contributions as allowed by 24 CFR 92.218 through 92.222.

7. **HOME REGULATIONS**

The Owner agrees to comply with the HOME Regulations and with the other requirements of the Loan Documents.

8. **ENVIRONMENTAL REVIEW**

- a. The environmental effects of each activity carried out with HOME funds must be assessed in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA) and the related authorities in 24 CFR Parts 50 and 58.
- b. The County is responsible for environmental review, decision-making, and action for each activity that it carries out with HOME funds, in accordance with 24 CFR part 58. The County will not commit any HOME funds toward construction of the Project before completion of the environmental review and approval of the request for release of funds and related certification, except as authorized by 24 CFR Part 58.
- c. HOME Funds cannot be used for acquisition or construction in identified special flood hazard areas unless the Project is subject to the mandatory purchase of flood insurance as required by Section 102(a) of the Flood Disaster Protection Act of 1973.
- d. In the event that changes or modifications to the approved HOME activities are necessary, the Owner must, prior to any additional commitment or expenditure of funds, submit all necessary supplemental environmental review information and data to the County for the purpose of updating the environmental review record.

9. **PERIOD OF AFFORDABILITY**

- a. **The Initial Period of Affordability is the HUD-required Period of Affordability. It shall be 15 years,** without regard to the term of the loan or the transfer of ownership, except as noted in subsection d. below. The Initial Period of Affordability begins on the Project Completion Date.
- b. The **Extended Period of Affordability** begins at the end of the INITIAL Period of Affordability and continues until such time as the loan is paid in full.
- c. Unless specified otherwise, the Period of Affordability includes both the Initial and the Extended Periods of Affordability.
- d. **Termination of Period of Affordability.** In accordance with 24 CFR 92.252(e), the Period of Affordability may be terminated upon foreclosure or transfer in lieu of foreclosure, but shall be revived according to the original terms if during the original Period of Affordability, the owner of record before the foreclosure or deed in lieu of foreclosure, or any entity that includes the former owner or those with whom the former owner has or had family or business ties, obtains an ownership interest in the project or property.

10. **AFFORDABILITY REQUIREMENTS (RENTS AND TENANT INCOMES)**

- a. To ensure compliance with the HOME "Program Rule", at initial occupancy all of the HOME-Assisted Units must be rented to tenants whose incomes at the time of the tenant's initial occupancy, are less than or equal to 60% of the median income.
- b. **Low-HOME Units.** If the number of HOME-Assisted Units is 5 or more, at least 20% of the HOME-assisted units must be occupied initially and throughout the Period of Affordability by tenants, who at the time of their initial occupancy are very-low-income tenants and the initial rents for those units must not exceed the Low HOME rents shown in **Attachment E**. These rents are subject to periodic adjustment by HUD. If the unit receives federal or state project-based rental assistance, the Low-HOME rent shall not exceed the allowable rent under the rental assistance program.
- c. **High-HOME Units.** After initial occupancy as indicated in paragraph (a) above, the remaining HOME-Assisted Units must be rented during the Period of Affordability to tenants, who at the time of their initial occupancy are low-income tenants and the initial rents for these units must not exceed the High HOME rents shown in **Attachment E**. These rents are subject to periodic adjustments by HUD.
- d. Increases in Tenant's Income.

- i. Low-HOME rent units
 1. If the income of a tenant in a Low-HOME rent unit rises above 50% of median income, but does not exceed 80% of median income, then the next available HOME-Assisted Unit (for fixed-unit projects) or the next available comparable unit (for floating-unit projects) must be rented to a very-low-income tenant. The unit occupied by the tenant whose income increased becomes a High-HOME unit and the High-HOME rent must be charged, provided that in no event shall the rent of a tenant of a HOME-assisted unit that has been allocated federal low-income housing tax credits ("LIHTC") increase beyond the maximum applicable LIHTC rent for such unit.
 2. The rent for the unit occupied by the tenant whose income has increased above 80% of median income will be set in accordance with subparagraph iii below.
 - ii. High-HOME rent units
 1. The income of a tenant in a High-HOME rent unit can increase to 80% of median income with no change in the status as a HOME-Assisted Unit or in the tenant's rent.
 2. If the income of a tenant in a High-HOME rent unit rises above 80% of median income, then the next available HOME-Assisted Unit (for fixed-unit projects) or the next available comparable unit (for floating-unit projects) must be rented to a tenant whose income does not exceed 80% of median income.
 3. The rent for the unit occupied by the tenant whose income has increased above 80% of median income will be set in accordance with subparagraph iii below.
 - iii. Project-based rent subsidy: In accordance with 24 CFR 92.252(b)(2), if the unit receives federal or state project-based rental subsidy, the maximum rent is the rent allowable under the federal or state project-based rental subsidy program.
 - iv. Over-income Tenants: In accordance with 24 CFR 92.252(i), a tenant who no longer qualifies as a low-income household must pay as rent 30 percent of the household's adjusted gross income, except that:
 1. In no event shall the tenant of a HOME-assisted unit that has been allocated federal low-income housing tax credits ("LIHTC") be charged rent in excess of the maximum applicable LIHTC rent for such unit.
 2. If the HOME-assisted unit is a floating unit, a tenant who no longer qualifies as a low-income household is not required to pay as rent an amount that exceeds the market rent for a comparable unassisted unit in the neighborhood.
- e. Certification and Recertification of Tenant Income: The Owner must certify each tenant's household income, and must recertify such income annually in accordance with HOME regulations.

11. TENANT SELECTION CRITERIA; LEASE REQUIREMENTS

- a. The Owner must adopt written tenant selection policies and criteria, which must be approved by the County. The criteria must be consistent with the purpose of providing housing for very-low-income and low-income households, must be reasonably related to program eligibility and the applicant's ability to perform the lease obligations, must provide for the selection of tenants from a written waiting list in the chronological order of their application, insofar as practicable, and must give prompt written notification to any rejected applicant of the grounds for any rejection.
- b. Tenants must be offered renewable lease agreements with an initial duration of at least one year, unless a shorter time period is mutually agreed upon by the tenant and the landlord.
- c. In compliance with 24 CFR 92.252(d), the owner cannot discriminate against rental assistance subsidy holders.
- d. Tenant leases may not contain any of the following provisions:
 - i. Agreement by the tenant to be sued or to have a judgment entered in favor of Owner;
 - ii. Except as allowed by Oregon law, agreement by the tenant to allow Owner to take, hold, or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties.
 - iii. Agreement by the tenant not to hold Owner liable for any action or failure to act.

- iv. Agreement by the tenant that Owner may institute a lawsuit without notice to the tenant.
 - v. Agreement by the tenant that Owner may evict tenant without instituting court proceedings in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties.
 - vi. Agreement by the tenant to waive any right to a trial by jury, to waive the tenant's right to appeal, or otherwise challenge in court, a court decision in connection with the lease;
 - vii. Agreement by the tenant to pay attorney fees or costs even if the tenant wins in a court proceeding against the Owner. The tenant may however be obligated to pay costs and attorney fees if the tenant loses.
- e. The Owner may not terminate the tenancy or refuse to renew the tenant's lease except for serious or repeated violation of the terms of the lease, for violation of law, for completion of the tenancy period for transitional housing, or for other good cause. To terminate or refuse to renew tenancy, Owner must serve written notice on the tenant specifying the grounds for the eviction at least 30 days before the termination of the tenancy.

12. PROPERTY STANDARDS

- a. The Project must meet all of the applicable Property Standards in 24 CFR 92.251 or be susceptible of meeting all such standards within a reasonable time following acquisition by Owner. It is understood that the project is being acquired for the purposes of renovation. County staff will inspect the Project to assure compliance with the Property Standards.
- b. Upon project completion and throughout the Period of Affordability, the Project must be maintained so that it continues to meet the property standards set forth in 24 CFR 92.251.

13. INDEMNIFICATION AND INSURANCE

Owner agrees to indemnify, defend and hold harmless the County and its officers, agents and employees against all liability, loss and costs arising from actions, suits, claims or demands, except when due to the County's sole negligence or intentional misconduct, arising from performance of this agreement.

Owner shall maintain all-risk property insurance in the amount of the full replacement value of the property, commercial general liability insurance in the minimum amount of \$ 1,000,000.00, and Rent Loss insurance in an amount equal to 12 months rental income. Owner shall provide County proof of insurance in the required amounts upon execution of this loan document, and again upon request of the County. Owner shall give county no less than 30 days notice if there is a cancellation, nonrenewal or material change of Owner's insurance. See paragraph 1.12 of the Trust Deed for additional insurance requirements.

14. EVENTS OF DEFAULT

An event of default under the Loan Documents includes, but is not limited to, the following; provided that the party declaring a default has first provided to the other party thirty days written notice specifying the alleged default and giving such other party the opportunity to cure the alleged default during that 30 day period, or during such longer period as is agreed to by the non-defaulting party in writing.

- a. Securing all Funding. The Owner must secure all fund sources identified in Attachment B within 12 months from the Effective Date identified in Section 32.
- b. Availability of the Project's HOME-assisted housing units. Within 24 months from the Effective Date identified in Section 32, the HOME-assisted units funded under this Agreement must be available for occupancy.
- c. Noncompliance with the Affordability Requirements at any time during the term of this Loan.

15. REMEDIES FOR DEFAULT

- a. In the event of default, either party may pursue any legal or equitable remedy available to it. Without limiting the foregoing, County may (i) declare the entire amount of the Loan due and payable at once, or (ii) extend the Period of Affordability for a period equal to the length of the period during which noncompliance with the Affordability Requirements existed.

- b. The County and any tenant or applicant who meets the income limitation applicable under 24 CFR 92 (whether prospective, present or former occupant) shall be entitled, for any breach of the provisions hereof, and in addition to all other remedies provided by law or in equity, to enforce specific performance by the Owner of its obligations under this Agreement in state court.

16. AFFIRMATIVE MARKETING

If the Project contains five or more HOME-Assisted Units, the Owner must implement and follow the adopted Affirmative Marketing Plan of the County, Attachment F. The Owner must maintain records evidencing compliance with the Plan.

17. MINORITY/WOMEN'S BUSINESS

In accordance with Executive Orders 11625 and 12432 (concerning Minority Business Enterprise), and 12138 (concerning Women's Business Enterprise), the County has adopted procedures and requirements for HOME projects for the purpose of encouraging the use of minority and women's business enterprises. The Owner certifies that it will follow and implement the adopted procedures and requirements in **Attachment F**.

18. NON-DISCRIMINATION

- a. The Owner must comply with all applicable federal, state, and local laws prohibiting discrimination on the basis of age, sex, marital status, familial status, religion, race, creed, color, sexual orientation, nationality, the presence of any sensory, mental or physical handicap, or other protected class. These requirements apply to both employment opportunities and the provision of housing and are specified in
 - i. Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 200d et seq.);
 - ii. Title VI; Civil Rights Act of 1968, Title VIII, as amended;
 - iii. Equal Employment Opportunity, Executive Order 11246, as amended;
 - iv. Section 3 of the Housing and Urban Development Act of 1968;
 - v. Section 504 of the Rehabilitation Act of 1973;
 - vi. The Fair Housing Act of 1988 (42 U.S.C. 3601-3620);
 - vii. Equal Opportunity in Housing (Executive Order 11063, as amended by Executive Order 12259);
 - viii. Age Discrimination Act of 1975, as amended (42 U.S.C. 6101); and
 - ix. Americans with Disabilities Act of 1990 (42 U.S.C. 12131; 47 U.S.C. 155, 201, 218, and 225).
- b. The Owner must maintain data on the extent to which each racial and ethnic group and single-headed household (by gender of head of household) have applied for and rented units in the Project.

19. DISBURSEMENT OF FUNDS

- a. The Owner agrees to request funds under this Agreement only when they are needed for payment of specific allowable costs and only in amounts needed to pay such costs. The payment request must be accompanied by source documentation for actual expenses.
- b. The County shall verify requested amounts for satisfactory completion prior to payment. Payments shall be based upon work completed and approved by the County.
- c. County will not disburse any HOME funds until all the Loan Documents are signed and the following documents are received:
 - i. Copy of the Management Agreement;
 - ii. Copy of HOME tenant lease; and
 - iii. Copy of the written tenant selection criteria.
- d. Five percent (5%) of HOME funds will be withheld until the Owner provides the County with the documentation outlined in **Attachment G**.
- e. The Owner must submit Form HUD-40097 (Project Completion Report - Part C, household characteristics for each HOME-assisted unit) within 120 days of the request for final disbursement.

20. CONTRACTOR DEBARMENT AND SUSPENSION

In order to comply with the requirements of 24 CFR Part 24, the Owner must obtain a certification guaranteeing that no participants in lower tier covered transactions, having to do with the Project financed in whole or in part by the HOME Funds, are currently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in federal projects.

21. SECTION 3 REQUIREMENTS

Section 3 of the Housing and Urban Development Act of 1968, as amended, applies to:

- Projects for which HUD's share of the project cost exceeds \$200,000; and
- Contracts and subcontracts awarded on projects for which HUD's share of project costs exceeds \$200,000 and the contract or subcontract exceeds \$100,000.

Section 3 requires that to the greatest extent feasible opportunities for training and employment in connection with planning and carrying out the Project be given to low-income residents of the project area, and contracts for work in connection with the Project be awarded to business concerns, including but not limited to individuals for firms doing business in the field of planning, consulting, design, architecture, building construction, rehabilitation, maintenance, or repair, which are located in or owned in substantial part by persons residing in the project area.

22. LEAD BASED PAINT

For all units in the Project (not just HOME-Assisted Units) and for common areas, the Owner must comply with the HUD Lead-Based Paint Regulations (24 CFR Part 35 and 24 CFR 982.401(j)) issued pursuant to the Lead-Based Paint Poisoning Prevention Act (42 USC Sections 4831 et. seq.) requiring prohibition of the use of lead-based paint whenever HOME Funds are used directly or indirectly for construction, rehabilitation, or modernization of residential structures; elimination of immediate lead-based paint hazards in residential structures; and notification of the hazards of lead-based paint poisoning to purchasers and tenants of residential structures constructed prior to 1978.

23. DISPLACEMENT, RELOCATION, ACQUISITION, AND REPLACEMENT

The Owner must comply with all the regulations and laws regarding displacement, relocation, acquisition and replacement of housing, including those contained in 24 CFR 92.353 and the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 USC 4601-4655).

24. CONFLICT OF INTEREST

Unless an exception is granted by the County pursuant to 24 CFR 92.356(f)(2), no developer, owner or sponsor of the Project, or officer, employee, agent or consultant of the owner, developer or sponsor, may occupy a HOME-Assisted Unit in the Project. This section does not apply to an employee or agent who occupies a HOME-Assisted Unit as the project manager or maintenance worker.

25. FAITH BASED ACTIVITIES

- a. Organizations that are directly funded under the HOME program may not engage in inherently religious activities, such as worship, religious instruction, or proselytizing as part of the assistance funded under this part. If an organization conducts such activities, the activities must be offered separately, in time or location, from the assistance funded under this part, and participation must be voluntary for the beneficiaries of the assistance provided.
- b. An organization that participates in the HOME program shall not, in providing program assistance, discriminate against a program beneficiary, or prospective program beneficiary, on the basis of religion or religious belief.
- c. HOME funds may not be used for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used for inherently religious activities. HOME funds may be used for the acquisition, construction, or rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under this part.

26. RECORDS

- a. The Owner must keep such records as are necessary to demonstrate compliance with all parts of this Agreement, including but not limited to the affordability requirements, tenant lease provisions, property

standards, affirmative marketing, anti-discrimination, Section 3, MBE/WBE, environmental review, relocation/displacement/property acquisition, labor requirements, lead-based paint, conflict of interest, debarment and suspension and intergovernmental review.

b. Owner must annually provide tenant eligibility records to the County.

c. Record Retention Periods

- i. Except as stated in this subparagraph, records must be retained for five years following the Project Completion Date.
 - ii. Owner must maintain records pertaining to each tenant's income verifications, project rents and project inspections for at least the most recent five year period, until five years after the Period of Affordability has expired.
 - iii. Written agreements must be retained for five years after the agreement terminates.
 - iv. Records covering displacement and acquisition must be retained for five years after the date by which all persons displaced from the Property and all persons whose property is acquired for the Project have received the final payment to which they are entitled under 24 CFR 92.353.
 - v. If any litigation, claim, negotiation, audit, monitoring, inspection or other action has been started before the expiration of the required record retention period, records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the required period, whichever is later.
- d. Access to Records. HUD, the Comptroller General of the U.S., the County, and any of their representatives, have the right of access to any pertinent books, documents, papers or other records, in order to make audits, examinations, excerpts or transcripts, or otherwise determine compliance with HOME regulations.
- e. Any duly authorized representative of the Secretary of HUD or the Comptroller General of the United States or the County shall at all reasonable times have access to and the right to inspect, copy audit, and examine all books, records and other documents relating directly to the Owner's receipt and disbursement of the HOME Funds, as well as access to the Project. Upon request, the Owner must assist the County by serving notice to affected tenants, as required under Oregon Law.

27. MONITORING

- a. Within 60 days of acquisition, the county staff will make an on-site visit to monitor compliance with the HOME rent and occupancy standards.
- b. The County will monitor the performance of the Owner to assure compliance with the requirements of this Agreement. During the INITIAL Period of Affordability, the monitoring will be conducted in accordance with 24 CFR 92.504)c)(5)(d) and will include on-site inspections and a review of all records required in Section 26 above.

28. ATTORNEY FEES

If a suit, action, or other proceeding of any nature whatsoever (including any proceeding under the Bankruptcy laws of the United States) is instituted in connection with any controversy arising out of this Agreement or any of the other Loan Documents, or to interpret or enforce the terms and provisions of this Agreement or any of the other Loan Documents, the prevailing party shall be entitled to recover its attorneys' fees and all other costs, and expenses actually incurred and reasonably necessary in connection therewith, as determined by the court at trial or on any appeal or review, in addition to all other amounts provided by law.

29. WAIVER

Failure by either party to enforce any right under this Agreement shall not be deemed to be a waiver of that right or of any other right.

30. SUCCESSORS AND ASSIGNS

This Agreement shall be binding on and inure to the benefit of the heirs, successors, and assigns of each party, provided that written consent is obtained from the other party.

31. AUTHORITY TO SIGN

Each party signing this Agreement, and the other Loan Documents, represents that it has full power and authority to enter into this Agreement, and the persons signing this Agreement for such party, if such party is not an individual, have full power and authority to sign for such party and to bind it to this Agreement, and to sell, transfer and convey all right, title, and interest in and to the Property in accordance with the Loan Documents. No further consent of any partner, shareholder, creditor, investor, judicial or administrative body, governmental authority, or other party is required.

32. EFFECTIVE DATE

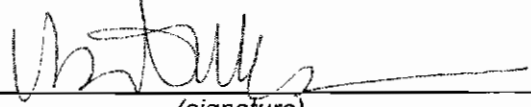
The Effective Date of this Agreement is the date it is signed by all parties.

PROJECT OWNER:

Name: Northwest Housing Alternatives, Inc.

Address: 2316 SE Willard Street
Milwaukie, OR 97222

By:



(signature)

Printed Name: Martha McLennan
Title: Executive Director
Phone: (503) 654-1007
Fax: (503) 654-1319
Federal ID# 93-0814473

7/16/13

Date

CLACKAMAS COUNTY

Chair: John Ludlow
Commissioner: Jim Bernard
Commissioner: Paul Savas
Commissioner: Martha Schrader
Commissioner: Tootie Smith

Signing on Behalf of BCC:

(signature)

Printed Name: Cindy Becker
Title: Director, Health Housing and Human Services

Date

Attachment A. Legal Description

A parcel of land being part of Block 38 of the plat of OAK GROVE, as situated in the Northwest one-quarter of the Northeast one-quarter of Section 11, Township 2 South, Range 1 East of the Willamette Meridian, in the County of Clackamas and State of Oregon. Said parcel of land being more particularly described as follows:

Commencing at a point at the Northeast corner of Block 38 of said OAK GROVE; said point being located at the intersection of the South boundary of Oak Grove Boulevard (Central Avenue) with the West boundary of said River Road; thence West along the North boundary of said Block 38, a distance of 294.99 feet to the true point of beginning of the parcel of land herein described; thence South parallel to the East boundary of said Block 38, a distance of 340.00 feet to a point on the South line of said Block 38; thence West along the South boundary of said Block 38, a distance of 25.31 feet to the Southeast corner of that certain tract of land conveyed to Clairene S. Weaver, as recorded July 3, 1984, in Instrument No. 84- 22642, Clackamas County Records of Deeds; thence North along the East line of said Weaver tract a distance of 50.00 feet to the Northeast corner of said Weaver tract; thence West along the North boundary of said Weaver tract a distance of 181.40 feet to the Southeast corner of that certain parcel of land conveyed to Donn E. Plumlee and Barbara T. Plumlee as recorded April 12, 1984, in Instrument 84-12151, Clackamas County Records of Deeds, said Southeast corner being East 138.9 feet from the West boundary of said Block 38; thence North parallel to the West boundary of said Block 38 a distance of 190.00 feet to the Northeast corner of that certain parcel of land conveyed to Balyss T. Hobgood and Roslie Hobgood by Quit Claim Deed recorded August 6, 1981 in Instrument 81-27529, Clackamas County Records of Deeds; thence West a distance of 113.90 feet to the East line of Laurie Avenue; thence North along the East line of said Laurie Avenue, a distance of 100.00 feet to a point on the North boundary of said Block 30; thence East along the North boundary of said Block 38 a distance of 320.61 feet to the true point of beginning of the parcel of land herein described.

Attachment B. Sources and Uses of Funds

Acquisition & Rehabilitation

Funding Sources*

LIHTC Equity	3,119,493
OHAf Green Grant	25,000
OHCS Trust fund	200,000
LI Weatherization Program	50,000
Permanent Loan	1,800,000
Clackamas County HOME	500,000
Deferred Development Fee	72,076
Cashflow during rehab	25,000
TOTAL FUND SOURCES	5,791,569

*Tentative

Uses of Funds

Acquisition Costs	1,955,000
Rehab Costs	2,117,500
Development Costs	1,719,069
TOTAL PROJECT COST	5,791,569
Developers Fee Percentage	13.54%

Attachment C. Schedule of Tasks

	PROPOSED DATE (month/year)*	REVISED DATE (month/year)*	COMPLETED DATE (month/year)*
SITE			
Option/Contract executed			June 2012
Site Acquisition	December 2013		
Zoning Approval			
Site Analysis			
Building Permits & Fees	November 2013		
Off-site Improvements			
PRE-DEVELOPMENT			
Plans Completed (permit)	July 2013		
Final Bids	November 2013		
Contractor Selected	February 2013		
FINANCING			
CONSTRUCTION LOAN:			
Proposal	May 2013		
Firm Commitment (submittal)	August 2013		
Closing/Funding of Loan	December 2013		
PERMANENT LOAN			
Proposal	May 2013		
Firm Commitment	August 2013		
Closing/funding of Loan	December 2013		
DEVELOPMENT			
Syndication Agreement	November 2013		
Construction Begins	December 2013		
Construction Completed	September 2014		
Certificate Of Occupancy	September 2014		
Lease Up Completed			
MARKETING			
Lease up begins	July 2014		
Lease up completed	December 2014		
Absorption (units per month)	7		

**Attachment D.
Home Match Contribution Form**

PROJECT: IKOI-SO TERRACE APARTMENTS

Total number of units in project: 35
Number of HOME-assisted units: 6 17.1%
Applicable match credit percentage*: 17.1%

MATCH SOURCE*	ELIGIBLE MATCH TYPE	ELIGIBLE MATCH AMOUNT	MATCH CREDIT
OHAF Green Grant**	1	\$25,000	4,275
OHCS Trust fund**	1	200,000	34,200
LI Weatherization Program**	1	50,000	8,550

Eligible forms of match as defined in 24 CFR 92.220(a):

- (1) Cash Contribution from Nonfederal Source
- (2) Foregone Taxes, Fees and Charges
- (3) Donated Land or Other Real Property
- (4) On-site or Off-site Infrastructure
- (5) Proceeds from Affordable Housing Bonds
- (6) Donated Site Preparation and Construction Materials
- (7) Donated Site Preparation and Construction Equipment
- (8) Donated or Voluntary Labor or Professional Services
- (9) Sweat Equity (homeownership only)
- (10) Supportive Services (for rental projects only)
- (11) Homebuyer Counseling Services (for acquisitions under 24 CFR 92.254(a))

*24 CFR 92.219 states that 100% of the matching contribution can be recognized if "at least 50 percent of the housing units in the project are HOME-assisted."

** Tentative

Attachment E. HOME Affordability Requirements

1. HOME Rent Schedule

US Department of Housing and Urban Development
PMSA: Portland-Vancouver, OR-WA
Effective Date: April 2013

	Low HOME	High HOME
1 Bedroom	\$684	\$773

Notes:

- **Utility Allowance:** The gross rents must be reduced if the tenant pays for any utilities besides telephone. The utility allowances prepared by the County Housing Authority shall be used when adjusting rents. Utility adjustments may be proposed by Owner for the Project, but must be approved by the County.
- **Throughout the Period of Affordability** rents plus utility standards for the Project will not be set at amounts less than those shown in this initial table.

2. HOME Tenant Income Limits

US Department of Housing and Urban Development
Effective Date: 2013

HOUSEHOLD SIZE	50% OF MEDIAN	60% OF MEDIAN	80% OF MEDIAN
1 Person	\$24,300	\$29,160	\$38,850
2 People	\$27,800	\$33,360	\$44,400

Note: This schedule will be updated from time to time when adjustments are provided by HUD.

ATTACHMENT F.

AFFIRMATIVE MARKETING

For housing containing five or more HOME-assisted units, the HOME regulations at 24 CFR Part 92.351 require project Owners to provide information and otherwise attract eligible persons from all racial, ethnic, and gender groups in the housing market area to the available housing.

The project owner must:

- 1) Display the Equal Housing Opportunity statement or logo on all project signs.
- 2) Use the Equal Housing Opportunity statement or logo on all advertisements and publications. *Advertising media may include newspapers of general circulation, radio, television, brochures, or flyers.*
- 3) Display a Fair Housing Poster in a place visible to tenants and prospective tenants and in common area(s) of housing assisted with HOME funds.
- 4) Solicit applications for vacant units from persons in the housing market who are least likely to apply for the HOME-assisted housing without the benefit of special outreach efforts.

In general, persons who are not of the race/ethnicity of the residents of the neighborhood in which the newly constructed or rehabilitated building is located shall be considered those least likely to apply.

For outreach purposes, the owner may utilize the housing authority, community action agencies, community development corporations, other community organizations, places of worship, employment centers, fair housing groups, housing counseling agencies, Clackamas County's Social Services' Information and Referral, the Community Connections website, or medical service centers to publicize unit vacancies or otherwise provide information to potential tenants.

- 5) Maintain file records containing all marketing efforts including, but not limited to, copies of newspaper advertisements, file memorandums documenting phone inquiries, copies of inquiry letters and related responses, etc. *These records shall be made available to County for inspection during normal working hours.*

During the rent-up and initial marketing phase, CCCDD will assess the efforts of owners through the use of certifications of compliance by the owner. Thereafter, CCCDD will annually assess the efforts and the success of the affirmative marketing actions by the project owner.

In the event an owner fails to comply with the affirmative marketing requirements, CCCDD will require corrective actions which include, but are not limited to, requiring the owner to conduct extensive outreach efforts on all future vacancies using appropriate contacts such as those outlined above in order to achieve occupancy goals. CCCDD may impose other sanctions as deemed necessary.

**OUTREACH TO MINORITY-OWNED AND WOMEN-OWNED
BUSINESSES ENTERPRISES (MBE/WBE)**

Clackamas County Community Development Division (CCCDD) will take the following steps to ensure, to the maximum extent possible, that small and minority-owned business enterprises and women-owned business enterprises (MBE/WBE) are used whenever possible and economically feasible:

- ◆ Include language in all notices and advertisements related to the HOME Program which states that MBE/WBE are encouraged to apply for such funds and to participate as suppliers, contractors, professional service providers, etc. on projects assisted with HOME funds. All informational and documentary materials will also include this language.
- ◆ Include qualified MBE/WBE on any contractor or solicitation lists.
- ◆ Coordinate with the Oregon Office of Minority, Women and Emerging Small Business to maintain a list of eligible MBE/WBE. This list will be made available to HOME recipients.
- ◆ When necessary and appropriate, utilize the services and assistance of the US Department of Commerce's Small Business Administration and Minority Business Development Agency.
- ◆ Through contractual agreement, ensure that recipients of HOME program funds solicit MBE/WBE whenever they are potential sources.
- ◆ When feasible, divide total requirements into smaller tasks or quantities to permit maximum participation by MBE/WBE.
- ◆ When feasible, establish delivery schedules which will encourage participation by MBE/WBE.
- ◆ In conjunction with HOME-Assisted Projects, CCCDD will:
 - ◆ Encourage project sponsors, developers and owners to include, to the maximum extent feasible, the use of MBE/WBE in providing supplies, professional and construction services.
 - ◆ Request that project sponsors/developers maintain statistical data and identify jobs which have been bid by MBE/WBE. CCCDD may inspect the project site to confirm the percentage of minority and women laborers working at the site.

Monitor project sponsors, developers and owners to determine their compliance efforts in promoting the use of MBE/WBE in specific procurement areas, i.e. supplies, professional services, and construction services.

ATTACHMENT G.

REPORTING REQUIREMENTS FOR ACQUISITION AND REHABILITATION

1. **Monthly Progress Reports.**

During the rehabilitation phase, the owner must submit a progress report each month that describes:

- a. Work completed during the reporting period; and
- b. Any decisions that have been made in the field, including changes to the scope of work, schedule and resolution to problems or disputes.

2. **Final disbursement of HOME Funds at Project Completion.**

Five percent of HOME funds will be withheld until:

- a. The County inspects the completed project to verify that the HOME-Assisted Units meet the property standards set for at 24 CFR 92.251; and
- b. The owner submits the following documentation:
 - i. Documentation that relocation (if any) was conducted in accordance with Section 24 of this Agreement.
 - ii. Certification statement that the completed project meets the accessibility requirements of 24 CFR 92.251(a)(3).
 - iii. Certificate of Occupancy.
 - iv. Final Sources and Uses or Cost Certification that identifies the actual cost and funding source of each line item on the development budget.
 - v. Documentation for each source of match.
 - vi. Contractor information.
 - (1) Copy of construction contract between Owner and General Contractor.
 - (2) Certification that neither the General Contractor nor participants in lower tier covered transactions having to do with the project are currently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in federal projects.
 - (3) Forms and Assurances from General Contractor:
 - (a) Affidavit of Payment of Debts and Claims;
 - (b) Affidavit of Release of Liens from General Contractor and all Subcontractors;
 - (c) Consent of Surety Company to Final Payment (if bonded);
 - (d) Section 3 Summary Report (form HUD-60002);
 - (e) Minority- and Woman-Owned Business Enterprise Activity (form HUD-40107); and
 - (f) Contractor/Subcontractor Activity form (form HUD-2516).
 - vii. Copy of the Management Agreement;
 - viii. Copy of HOME tenant lease; and
 - ix. Copy of the written tenant selection criteria.
 - x. Form HUD-40097 (Project Completion Report - Part C, household characteristics for each HOME-Assisted Unit) must be submitted within 120 days of the request for final disbursement.



10 COPY

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

DEVELOPMENT SERVICES BUILDING

150 BEAVERCREEK ROAD | OREGON CITY, OR 97045

July 18, 2013

Board of Commissioners
Clackamas County

Members of the Board:

**Approval of Intergovernmental Agreement No. 27929
with Oregon Department of Transportation for Right of Way Services for the
Pudding River (Whiskey Hill Road) Bridge Project**

Purpose/Outcomes	Defines the roles and responsibilities of the County and ODOT relating to acquiring right of way for the Pudding River (Whiskey Hill Rd) Bridge project.
Dollar Amount and Fiscal Impact	Not to exceed \$10,000
Funding Source	County Road Fund
Safety Impact	N/A
Duration	Upon execution through December 31, 2014
Previous Board Action	4/14/11 – BCC Approval of Agreement No. 27472 for design of the subject project
Contact Person	Joel Howie, Project Manager 503-742-4658

BACKGROUND:

As part of the Highway Bridge Program (HBP), Clackamas County has received funding for the design and has been awarded funding for the construction of the Pudding River (Whiskey Hill Rd) Bridge. This project will design and construct a replacement for the existing bridge with a new structure which meets current design standards.

This agreement is to define the roles and responsibilities of the County and ODOT relating to acquiring right of way for the project. This is a customary step in the project delivery process for federally funded projects. Normally on a federally funded project, ODOT retains responsibility for all right of way negotiations and acquisitions. Through this agreement, and as part of the Local Agency Certification Program, ODOT is allowing County staff to take on some of this responsibility. This agreement results in no additional cost to the County above budgeted staff and consultant costs that would be incurred through the regular course of the project.

Clackamas County is currently participating in the Local Agency Certification Program addressed in Master Agreement No. 24,688. This project is one of the required test projects for Local Agency Certification.

This IGA has been reviewed and approved by County Counsel.

RECOMMENDATION:

Staff respectfully recommends that the Board of County Commissioners approve the attached Intergovernmental Agreement for Right of Way Services for the Pudding River (Whiskey Hill Road) Bridge project.

Respectfully submitted,



Mike Bezner, PE

Transportation Engineering Manager

For information on this issue or copies of attachments
please contact Joel Howie at 503-742-4658

**INTERGOVERNMENTAL AGREEMENT
FOR RIGHT OF WAY SERVICES**
Pudding River (Whiskey Hill Road) Bridge Project

THIS AGREEMENT is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "State"; and the CLACKAMAS COUNTY, acting by and through its elected officials, hereinafter referred to as "Agency," both herein referred to individually or collectively as "Party" or "Parties."

RECITALS

1. By the authority granted in Oregon Revised Statute (ORS) 190.110, 283.110, 366.572 and 366.576, state agencies may enter into agreements with units of local government or other state agencies for the performance of any or all functions and activities that a Party to the agreement, its officers, or agents have the authority to perform.
2. By the authority granted in ORS 366.425, State may accept deposits of money or an irrevocable letter of credit from any county, city, road district, person, firm, or corporation for the performance of work on any public highway within the State. When said money or a letter of credit is deposited, State shall proceed with the Project. Money so deposited shall be disbursed for the purpose for which it was deposited.
3. That certain Whiskey Hill Road and Pudding River Bridge are County facilities under the jurisdiction and control of Agency and Agency may enter into an agreement for the acquisition of real property.
4. n/a, is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission (OTC).
5. This Agreement shall define roles and responsibilities of the Parties regarding the real property to be used as part of right of way for road, street or construction of public improvement. The scope and funding may be further described in Local Agency Certification Agreement No. 24688, Supplemental Project Agreement number 27472. Hereinafter, all acts necessary to accomplish services in this Agreement shall be referred to as "Project."

NOW THEREFORE, the premises being in general as stated in the foregoing Recitals, it is agreed by and between the Parties hereto as follows:

TERMS OF AGREEMENT

1. Under such authority, State and Agency agree to perform certain right of way activities shown in Special Provisions - Exhibit A, attached hereto and by this reference made a part hereof. If the State performs right of way services on behalf of the Agency, under

no conditions shall Agency's obligations for said services exceed a maximum of \$10,000, including all expenses, unless agreed upon by both Parties.

2. The work shall begin on the date all required signatures are obtained and shall be completed no later than December 31, 2014, on which date this Agreement automatically terminates unless extended by a fully executed amendment.
3. The process to be followed by the Parties in carrying out this Agreement is set out in Exhibit A.
4. It is further agreed both Parties will strictly follow the rules, policies and procedures of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35 and the "State Right of Way Manual".

STATE OBLIGATIONS

1. State shall perform the work described in Special Provisions - Exhibit A.
2. With the exception of work related to appraisals, State shall not enter into any subcontracts for any of the work scheduled under this Agreement without obtaining prior written approval from Agency.
3. If the State performs right of way services on behalf of the Agency, State shall perform the service under this Agreement as an independent contractor and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement including, but not limited to, retirement contributions, workers compensation, unemployment taxes, and state and federal income tax withholdings.
4. State's right of way contact person for this Project is Georgine Gleason, Right of Way Agent, 455 Airport Road SE, Building A, Salem, Oregon 97301-5397; telephone (503) 986-2604; email georgine.n.gleason@odot.state.or.us, or assigned designee upon individual's absence. State shall notify the other Party in writing of any contact changes during the term of this Agreement.

AGENCY OBLIGATIONS

1. Agency shall perform the work described in Special Provisions - Exhibit A.
2. Agency certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within Agency's current appropriation or limitation of current budget. Agency is willing and able to finance all, or its pro-rata share of all, costs and expenses incurred in the Project up to its maximum.
3. Agency may utilize its own staff or subcontract any of the work scheduled under this Agreement provided Agency receives prior written approval of any staff, consultant or contractor by the State's Region Right of Way office.

4. Agency represents that this Agreement is signed by personnel authorized to do so on behalf of Agency.
5. Agency's right of way contact person for this Project is Kath Rose, Right of Way, Clackamas County Department of Transportation and Development, 150 Beaver Creek Road, Oregon City, Oregon 97045; telephone (503) 742-4713, or assigned designee upon individual's absence. Agency shall notify the other Party in writing of any contact information changes during the term of this Agreement.

PAYMENT FOR SERVICES AND EXPENDITURES:

1. In consideration for the services performed by State (as identified in the attached Exhibit A), Agency agrees to pay or reimburse State a maximum amount of \$10,000. Said maximum amount shall include reimbursement for all expenses, including travel expenses. Travel expenses shall be reimbursed to State in accordance with the current Oregon Department of Administrative Services' rates. Any expenditure beyond federal participation will be from, or reimbursed from, Agency funds. Payment in Agency and/or federal funds in any combination shall not exceed said maximum, unless agreed upon by both Parties.
2. Agency agrees to reimburse salaries and payroll reserves of State employees working on Project, direct costs, costs of rental equipment used, and per-diem expenditures.

GENERAL PROVISIONS:

1. This Agreement may be terminated by either Party upon thirty (30) days' notice, in writing and delivered by certified mail or in person, under any of the following conditions:
 - a. If either Party fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
 - b. If either Party fails to perform any of the other provisions of this Agreement or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice fails to correct such failures within ten (10) days or such longer period as may be authorized.
 - c. If Agency fails to provide payment of its share of the cost of the Project.
 - d. If State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.
 - e. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or State is prohibited from paying for such work from the planned funding source.

2. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
3. Agency acknowledges and agrees that State, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of Agency which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after final payment. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by State.
4. Agency shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the provisions of ORS 279B.220, 279B.225, 279B.230, 279B.235 and 279B.270 incorporated herein by reference and made a part hereof. Without limiting the generality of the foregoing, Agency expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
5. All employers, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required workers' compensation coverage unless such employers are exempt under ORS 656.126. Employers Liability insurance with coverage limits of not less than \$500,000 must be included. Both Parties shall ensure that each of its subcontractors complies with these requirements.
6. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against State or Agency with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.
7. With respect to a Third Party Claim for which State is jointly liable with Agency (or would be if joined in the Third Party Claim), State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Agency in such proportion as is appropriate to reflect the relative fault of State on the one hand and of Agency on the other hand in connection with the events which resulted in such

expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of State on the one hand and of Agency on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if State had sole liability in the proceeding.

8. With respect to a Third Party Claim for which Agency is jointly liable with State (or would be if joined in the Third Party Claim), Agency shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by State in such proportion as is appropriate to reflect the relative fault of Agency on the one hand and of State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Agency on the one hand and of State on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Agency's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.
9. The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
10. If federal funds are involved in this Agreement, Exhibits B and C are attached hereto and by this reference made a part of this Agreement, and are hereby certified to by Agency.
11. If federal funds are involved in this Agreement, Agency, as a recipient of federal funds, pursuant to this Agreement with the State, shall assume sole liability for Agency's breach of any federal statutes, rules, program requirements and grant provisions applicable to the federal funds, and shall, upon Agency's breach of any such conditions that requires the State to return funds to the Federal Highway Administration, hold harmless and indemnify the State for an amount equal to the funds received under this Agreement; or if legal limitations apply to the indemnification ability of Agency, the indemnification amount shall be the maximum amount of funds available for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount received under this Agreement.
12. The Parties hereto agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be invalid, unenforceable, illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected,

and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

13. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
14. This Agreement and attached exhibits constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision.

THE PARTIES, by execution of this Agreement, hereby acknowledge that their signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

Signature Page to Follow

CLACKAMAS COUNTY, by and through
elected officials

By _____
Chair

Date _____

By _____
Recording Secretary

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By _____
County Legal Counsel

Date 7/3/13

Agency Contact:

Joel Howie, P.E.
Civil Engineering Supervisor
Clackamas Co. DOT and Development
150 Beaver Creek Road
Oregon City, Oregon 97045

State Contact:

Brian Nicholas, Local Agency Liaison
ODOT Region 2
455 Airport Road SE, Building B
Salem, Oregon 97301-5395
(503) 986-2650
Brian.nicholas@odot.state.or.us

STATE OF OREGON, by and through
its Department of Transportation

By _____
State Right of Way Manager

Date _____

APPROVAL RECOMMENDED

By _____
Region 2 Right of Way Manager

Date _____

By _____
Region 2 Manager

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By n/a
Assistant Attorney General

Date _____

APPROVED

(If Litigation Work Related to Condemnation
is to be done by State)

By n/a
Chief Trial Counsel

Date _____

SPECIAL PROVISIONS EXHIBIT A
Right of Way Services

THINGS TO BE DONE BY STATE OR AGENCY

1. Pursuant to this Agreement, the work performed on behalf of the Agency can be performed by the Agency, the Agency's consultant, or a State Flex Services consultant. The work may be performed by Agency staff or any of these representatives on behalf of Agency individually or collectively provided they are qualified to perform such functions and after receipt of approval from the State's Region 2 Right of Way Manager. Said approval must be obtained, in writing, prior to the performance of said activities.
2. With the exception of work related to appraisals, State shall not enter into any subcontracts for any of the work scheduled under this Agreement without obtaining prior written approval from Agency.
3. Both Parties will strictly follow the rules, policies and procedures of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35 and the "State Right of Way Manual".

Instructions: Insert either: State, Agency, or N/A on each line.

A. Preliminary Phase

1. Agency shall provide preliminary cost estimates.
2. Agency shall make preliminary contacts with property owners.
3. Agency shall gather and provide data for environmental documents.
4. Agency shall develop access and approach road list.
5. Agency shall help provide field location and Project data.

B. Acquisition Phase

1. General:
 - a. When doing the Acquisition work, Agency shall provide State with a status report of the Project monthly.
 - b. Title to properties acquired shall be in the name of the Agency.
 - c. Prior to the initiation of acquisitions, if title to the properties is to be acquired in the name of the Agency, the Agency shall adopt a resolution of intention and determination of necessity in accord with ORS 35.235 and ORS 35.610, authorizing acquisition and condemnation. If the Oregon Department of Justice

is to handle condemnation work, prior approval evidenced by Chief Trial Counsel, Department of Justice, signature on this Agreement is required; and authorization for such representation shall be included in the resolution adopted by the Agency. Prior approval by Oregon Department of Justice is required.

2. Legal Descriptions:

- a. Agency shall provide sufficient horizontal control, recovery and retracement surveys, vesting deeds, maps and other data so that legal descriptions can be written.
- b. Agency shall provide construction plans and cross-section information for the Project.
- c. Agency shall write legal descriptions and prepare right of way maps. If the Agency acquires any right of way on a State highway, the property descriptions and right of way maps shall be based upon centerline stationing and shall be prepared in accordance with the current "State Right of Way & Rail/Utility Coordination Manual", "Contractor Services Guide" and the "Right of Way Engineering Manual". The preliminary and final versions of the property descriptions and right of way maps must be reviewed and approved by the State.
- d. Agency shall specify the degree of title to be acquired (e.g., fee, easement).

3. Real Property and Title Insurance:

- a. Agency shall provide preliminary title reports, if State determines they are needed, before negotiations for acquisition commence.
- b. Agency shall determine sufficiency of title (taking subject to). If the Agency acquires any right of way on a State highway, sufficiency of title (taking subject to) shall be determined in accordance with the current "State Right of Way Manual" and the "Contractor Services Guide". Agency shall clear any encumbrances necessary to conform to these requirements, obtain Title Insurance policies as required and provide the State copies of any title policies for the properties acquired.
- c. Agency shall conduct a Level 1 Hazardous Materials Study within project limits to detect presence of hazardous materials on any property purchase, excavation or disturbance of structures, as early in the project design as possible, but at a minimum prior to property acquisition or approved design.
- d. Agency shall conduct a Level 2 Site Investigation of sufficient scope to confirm the presence of contamination, determine impacts to properties and develop special provisions and cost estimates, if the Level 1 Corridor study

indicates the potential presence of contamination that could impact the properties.

- If contamination is found, a recommendation for remediation will be presented to State.

- e. Agency shall be responsible for arrangement of any necessary remediation.
- f. Agency shall conduct asbestos, lead paint and other hazardous materials surveys for all structures that will be demolished, renovated or otherwise disturbed. Asbestos surveys must be conducted by an AHERA (asbestos hazard emergency response act) certified inspector.

4. Appraisal:

- a. Agency shall conduct the valuation process of properties to be acquired.
- b. Agency shall perform the Appraisal Reviews.
- c. Agency shall recommend Just Compensation, based upon a review of the valuation by qualified personnel.

5. Negotiations:

- a. Agency shall tender all monetary offers to land-owners in writing at the compensation shown in the appraisal review. Conveyances taken for more or less than the approved Just Compensation will require a statement justifying the settlement. Said statement will include the consideration of any property trades, construction obligations and zoning or permit concessions. If State performs this function, it will provide the Agency with all pertinent letters, negotiation records and obligations incurred during the acquisition process.
- b. State and Agency shall determine a date for certification of right of way and agree to cosign the State's Right of Way Certification form. State and Agency agree possession of all right of way shall occur prior to advertising of any construction contract, unless appropriate exceptions have been agreed to by Agency and State.
- c. Agency agrees to file all Recommendations for Condemnation at least seventy (70) days prior to the right of way certification date if negotiations have not been successful on those properties.

6. Relocation:

- a. Agency shall perform any relocation assistance, make replacement housing computations, and do all things necessary to relocate any displaced parties on the Project.
- b. Agency shall make all relocation and moving payments for the Project.
- c. Agency shall perform the relocation appeal process.

C. Closing Phase

1. Agency shall close all transactions. This includes drawing of deeds, releases and satisfactions necessary to clear title, obtaining signatures on release documents, and making all payments. If Agency is handling the closing, State shall submit all signed Final Report packets, information required by the Uniform Act, and agreements to the Agency.
2. Agency shall record conveyance documents, only upon acceptance by appropriate agency.

D. Property Management

1. Agency shall take possession of all the acquired properties. There shall be no encroachments of buildings or other private improvements allowed upon the State highway right of way.
2. Agency shall dispose of all improvements and excess land.

E. Condemnation

1. Agency may offer mediation if the parties have reached an impasse.
2. Agency shall perform all administrative functions in preparation of the condemnation process, such as preparing final offer and complaint letters.
3. Agency shall perform all legal and litigation work related to the condemnation process. (If State agrees to handle legal and litigation work, prior approval evidenced by Chief Trial Counsel, Department of Justice, signature on this Agreement is required. Where it is contemplated that property will be obtained for Agency for the Project, such approval will be conditioned on passage of a resolution by Agency substantially in the form attached hereto as Exhibit D, and by this reference made a part hereof, specifically identifying the property being acquired.)
4. Where State shall perform legal or litigation work related to the condemnation process, Agency acknowledges, and agrees and undertakes to assure that no member of Agency's board or council, nor Agency's mayor, when such member or mayor is a practicing attorney, nor Agency's attorney nor any member of the law firm of Agency's attorney, board or council member, or mayor, will represent any party, except Agency, against the State of Oregon, its employees or contractors, in

any matter arising from or related to the Project which is the subject of this Agreement.

F. Transfer of Right of Way to State

If applicable, Agency agrees to transfer to the State all right of way acquired on the State highway which was acquired in the Agency's name. The specific method of conveyance will be determined by the Agency and the State at the time of transfer and shall be coordinated by the State's Region Right of Way Manager. Agency agrees to provide the State all information and file documentation the State deems necessary to integrate the right of way into the State's highway system. At a minimum, this includes: copies of all recorded conveyance documents used to vest title in the name of the Agency during the right of way acquisition process, and the Agency's Final Report or Summary Report for each acquisition file that reflects the terms of the acquisition and all agreements with the property owner(s).

G. Transfer of Right of Way to Agency

If applicable, State agrees to transfer and Agency agrees to accept all right of way acquired on the Agency's facility which was acquired in the State's name. The specific method of conveyance will be determined by the State and the Agency at the time of transfer and shall be coordinated by the State's Region Right of Way Manager. If requested, State agrees to provide Agency information and file documentation associated with the transfer.

For purposes of Exhibits B and C, references to Department shall mean State, references to Contractor shall mean Agency, and references to Contract shall mean Agreement.

EXHIBIT B (Local Agency or State Agency)

CONTRACTOR CERTIFICATION

Contractor certifies by signing this Contract that Contractor has not:

- (a) Employed or retained for a commission, percentage, brokerage, contingency fee or other consideration, any firm or person (other than a bona fide employee working solely for me or the above Contractor) to solicit or secure this Contract,
- (b) agreed, as an express or implied condition for obtaining this Contract, to employ or retain the services of any firm or person in connection with carrying out the Contract, or
- (c) paid or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above Contractor), any fee, contribution, donation or consideration of any kind for or in connection with, procuring or carrying out the Contract, except as here expressly stated (if any):

Contractor further acknowledges that this certificate is to be furnished to the Federal Highway Administration, and is subject to applicable State and Federal laws, both criminal and civil.

DEPARTMENT OFFICIAL CERTIFICATION

Department official likewise certifies by signing this Contract that Contractor or his/her representative has not been required directly or indirectly as an expression of implied condition in connection with obtaining or carrying out this Contract to:

- (a) Employ, retain or agree to employ or retain, any firm or person or
- (b) pay or agree to pay, to any firm, person or organization, any fee, contribution, donation or consideration of any kind except as here expressly stated (if any):

Department official further acknowledges this certificate is to be furnished to the Federal Highway Administration, and is subject to applicable State and Federal laws, both criminal and civil.

Exhibit C
Federal Provisions
Oregon Department of Transportation

CERTIFICATION OF NONINVOLVEMENT IN ANY DEBARMENT AND SUSPENSION

Contractor certifies by signing this Contract that to the best of its knowledge and belief, it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal department or agency;
2. Have not within a three-year period preceding this Contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery falsification or destruction of records, making false statements or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
4. Have not within a three-year period preceding this Contract had one or more public transactions (federal, state or local) terminated for cause or default.

Where the Contractor is unable to certify to any of the statements in this certification, such prospective participant shall submit a written explanation to Department.

List exceptions. For each exception noted, indicate to whom the exception applies, initiating agency, and dates of action. If additional space is required, attach another page with the following heading: Certification Exceptions continued, Contract Insert.

EXCEPTIONS:

Exceptions will not necessarily result in denial of award, but will be considered in determining Contractor responsibility. Providing false information may result in criminal prosecution or administrative sanctions.

The Contractor is advised that by signing this Contract, the Contractor is deemed to have signed this certification.

II. INSTRUCTIONS FOR CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS- PRIMARY COVERED TRANSACTIONS

1. By signing this Contract, the Contractor is providing the certification set out below.
2. The inability to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The Contractor shall explain why he or she cannot provide the certification set out below. This explanation will be considered in connection with the Department determination to enter into this transaction. Failure to furnish an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the Department determined to enter into this transaction. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government or the Department may terminate this transaction for cause of default.
4. The Contractor shall provide immediate written notice to the Department if at any time the Contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms "covered transaction", "debarred", "suspended", "ineligible", "lower tier covered transaction", "participant", "person", "primary covered transaction", "principal", and "voluntarily excluded", as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the Department's Program Section (Tel. (503) 986-3400) to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The Contractor agrees by entering into this Contract that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transactions with a person who is debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction, unless authorized by the Department or agency entering into this transaction.
7. The Contractor further agrees by entering into this Contract that it will include the Addendum to Form FHWA-1273 titled, "Appendix B--Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions", provided by the Department entering into this covered transaction without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List published by the U. S. General Services Administration.
9. Nothing contained in the foregoing shall be construed to require establishment of a system of records to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government or the Department, the

Department may terminate this transaction for cause or default.

III. ADDENDUM TO FORM FHWA-1273, REQUIRED CONTRACT PROVISIONS

This certification applies to subcontractors, material suppliers, vendors, and other lower tier participants.

- Appendix B of 49 CFR Part 29 -

Appendix B--Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions

Instructions for Certification

1. By signing and submitting this Contract, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this Contract is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction", "debarred", "suspended", "ineligible", "lower tier covered transaction", "participant", "person", "primary covered transaction", "principal", "proposal", and "voluntarily excluded", as used in this clause, have the meanings set out in the Definitions and Coverage sections of the Rules implementing Executive Order 12549. You may contact the person to which this Contract is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this Contract that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this Contract that it will include this clause titled, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transaction", without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the nonprocurement list.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction

originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions

- a. The prospective lower tier participant certifies, by entering into this Contract, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency.
- b. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall submit a written explanation to Department.

IV. EMPLOYMENT

1. Contractor warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Contract and that he has not paid or agreed to pay any company or person, other than a bona fide employee working solely for Contractors, any fee, commission, percentage, brokerage fee, gifts or any other consideration contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranting, Department shall have the right to annul this Contract without liability or in its discretion to deduct from the Contract price or consideration or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.
2. Contractor shall not engage, on a full or part-time basis or other basis, during the period of the Contract, any professional or technical personnel who are or have been at any time during the period of this Contract, in the employ of Department, except regularly retired employees, without written consent of the public employer of such person.

3. Contractor agrees to perform consulting services with that standard of care, skill and diligence normally provided by a professional in the performance of such consulting services on work similar to that hereunder. Department shall be entitled to rely on the accuracy, competence, and completeness of Contractor's services.

V. NONDISCRIMINATION

During the performance of this Contract, Contractor, for himself, his assignees and successors in interest, hereinafter referred to as Contractor, agrees as follows:

1. Compliance with Regulations. Contractor agrees to comply with Title VI of the Civil Rights Act of 1964, and Section 162(a) of the Federal-Aid Highway Act of 1973 and the Civil Rights Restoration Act of 1987. Contractor shall comply with the regulations of the Department of Transportation relative to nondiscrimination in Federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are incorporated by reference and made a part of this Contract. Contractor, with regard to the work performed after award and prior to completion of the Contract work, shall not discriminate on grounds of race, creed, color, sex or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. Contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices, when the Contract covers a program set forth in Appendix B of the Regulations.
 2. Solicitation for Subcontractors, including Procurement of Materials and Equipment. In all solicitations, either by competitive bidding or negotiations made by Contractor for work to be performed under a subcontract, including procurement of materials and equipment, each potential subcontractor or supplier shall be notified by Contractor of Contractor's obligations under this Contract and regulations relative to nondiscrimination
- on the grounds of race, creed, color, sex or national origin.
3. Nondiscrimination in Employment (Title VII of the 1964 Civil Rights Act). During the performance of this Contract, Contractor agrees as follows:
 - a. Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex or national origin. Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notice setting forth the provisions of this nondiscrimination clause.
 - b. Contractor will, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex or national origin.
 4. Information and Reports. Contractor will provide all information and reports required by the Regulations or orders and instructions issued pursuant thereto, and will permit access to his books, records, accounts, other sources of information, and his facilities as may be determined by Department or FHWA as appropriate, and shall set forth what efforts he has made to obtain the information.
 5. Sanctions for Noncompliance. In the event of Contractor's noncompliance with the nondiscrimination provisions of the Contract, Department shall impose such agreement sanctions as it or the FHWA may determine

to be appropriate, including, but not limited to:

- a. Withholding of payments to Contractor under the agreement until Contractor complies; and/or
 - b. Cancellation, termination or suspension of the agreement in whole or in part.
6. Incorporation of Provisions. Contractor will include the provisions of paragraphs 1 through 6 of this section in every subcontract, including procurement of materials and leases of equipment, unless exempt from Regulations, orders or instructions issued pursuant thereto. Contractor shall take such action with respect to any subcontractor or procurement as Department or FHWA may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event Contractor becomes involved in or is threatened with litigation with a subcontractor or supplier as a result of such direction, Department may, at its option, enter into such litigation to protect the interests of Department, and, in addition, Contractor may request Department to enter into such litigation to protect the interests of the State of Oregon.

VI. DISADVANTAGED BUSINESS ENTERPRISE (DBE) POLICY

In accordance with Title 49, Code of Federal Regulations, Part 26, Contractor shall agree to abide by and take all necessary and reasonable steps to comply with the following statement:

DBE POLICY STATEMENT

DBE Policy. It is the policy of the United States Department of Transportation (USDOT) to practice nondiscrimination on the basis of race, color, sex and/or national origin in the award and administration of USDOT assist contracts. Consequently, the DBE requirements of 49 CFR 26 apply to this Contract.

Required Statement For USDOT Financial Assistance Agreement. If as a condition of assistance the Agency has submitted and the

US Department of Transportation has approved a Disadvantaged Business Enterprise Affirmative Action Program which the Agency agrees to carry out, this affirmative action program is incorporated into the financial assistance agreement by reference.

DBE Obligations. The Department and its Contractor agree to ensure that Disadvantaged Business Enterprises as defined in 49 CFR 26 have the opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds. In this regard, Contractor shall take all necessary and reasonable steps in accordance with 49 CFR 26 to ensure that Disadvantaged Business Enterprises have the opportunity to compete for and perform contracts. Neither Department nor its contractors shall discriminate on the basis of race, color, national origin or sex in the award and performance of federally-assisted contracts. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of such contracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as Department deems appropriate.

The DBE Policy Statement and Obligations shall be included in all subcontracts entered into under this Contract.

Records and Reports. Contractor shall provide monthly documentation to Department that it is subcontracting with or purchasing materials from the DBEs identified to meet Contract goals. Contractor shall notify Department and obtain its written approval before replacing a DBE or making any change in the DBE participation listed. If a DBE is unable to fulfill the original obligation to the Contract, Contractor must demonstrate to Department the Affirmative Action steps taken to replace the DBE with another DBE. Failure to do so will result in withholding payment on those items. The monthly documentation will not be required after the DBE goal commitment is satisfactory to Department.

Any DBE participation attained after the DBE goal has been satisfied should be reported to the Departments.

DBE Definition. Only firms DBE certified by the State of Oregon, Department of Consumer & Business Services, Office of Minority, Women & Emerging Small Business, may be utilized to satisfy this obligation.

CONTRACTOR'S DBE CONTRACT GOAL

DBE GOAL 0 %

By signing this Contract, Contractor assures that good faith efforts have been made to meet the goal for the DBE participation specified in the Contract for this project as required by ORS 200.045, and 49 CFR 26.53 and 49 CFR, Part 26, Appendix A.

VII. LOBBYING

The Contractor certifies, by signing this agreement to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with this agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into.

Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor also agrees by signing this agreement that he or she shall require that the language of this certification be included in all lower tier subagreements, which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

FOR INQUIRY CONCERNING
DEPARTMENT'S DBE PROGRAM
REQUIREMENT CONTACT OFFICE OF
CIVIL RIGHTS AT (503)986-4354.

RESOLUTION EXERCISING THE POWER OF EMINENT DOMAIN EXHIBIT D
Right of Way Services

WHEREAS Clackamas County may exercise the power of eminent domain pursuant to Clackamas County's charter (statutes conferring authority) and the Law of the State of Oregon generally, when the exercise of such power is deemed necessary by Clackamas County's governing body to accomplish public purposes for which Clackamas County has responsibility;

WHEREAS Clackamas County has the responsibility of providing safe transportation routes for commerce, convenience and to adequately serve the traveling public;

WHEREAS the project or projects known as Pudding River (Whiskey Hill Road) Bridge Project have been planned in accordance with appropriate engineering standards for the construction, maintenance or improvement of said transportation infrastructure such that property damage is minimized, transportation promoted, travel safeguarded; and

WHEREAS to accomplish the project or projects set forth above it is necessary to acquire the interests in the property described in "Exhibit A," attached to this resolution and, by this reference incorporated herein; now, therefore

BE IT HEREBY RESOLVED by Clackamas County's Board of Commissioners

1. *The foregoing statements of authority and need are, in fact, the case. The project or projects for which the property is required and is being acquired are necessary in the public interest, and the same have been planned, designed, located, and will be constructed in a manner which will be most compatible with the greatest public good and the least private injury;*
2. The power of eminent domain is hereby exercised with respect to each of the interests in property described in Exhibit A. Each is acquired subject to payment of just compensation and subject to procedural requirements of Oregon law;
3. Clackamas County's staff and Clackamas County's Attorney are authorized and requested to attempt to agree with the owner and other persons in interest as to the compensation to be paid for each acquisition, and, in the event that no satisfactory agreement can be reached, to commence and prosecute such condemnation proceedings as may be necessary to finally determine just compensation or any other issue appropriate to be determined by a court in connection with the acquisition. This authorization is not intended to expand the jurisdiction of any court to decide matters determined above or determinable by Clackamas County.
4. Clackamas County expressly reserves its jurisdiction to determine the necessity or propriety of any acquisition, its quantity, quality, or locality, and to change or abandon any acquisition.

DATED this ____ day of _____, 20__



DEVELOPMENT SERVICES BUILDING
150 BEAVERCREEK ROAD | OREGON CITY, OR 97045

July 18, 2013

Development Agency Board
Clackamas County

Members of the Board:

Approval of a Disposition and Development Agreement with BD82Boyer, LLC

Table with 2 columns: Category (Purpose/Outcomes, Dollar Amount and Fiscal Impact, Funding Source, Safety Impact, Duration, Previous Action, Contact Person, Contract No.) and Description.

BACKGROUND:

The Development Agency acquired land in 1988 in order to construct Boyer Road from 82nd Avenue to 85th Avenue. Portions not used for right-of-way were made available for development. Some property was sold, but a small parcel with an irregular shape remained.

A developer approached the Development Agency with the proposal to acquire the property from the Agency in order to construct and operate a small business.

The Disposition Agreement, which the Board is being asked to approve today, is the result of preceding negotiations and is contingent on subsequent terms. Terms of the Disposition Agreement dictate purchase for the appraised value of \$345,000.00, consistency with the conceptual development proposal, and reversionary elements related to performance.

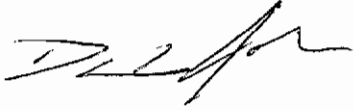
RECOMMENDATION:

Staff respectfully recommends that the Board, as the governing body of the Clackamas County Development Agency, move by consent to:

- Approve the Disposition Agreement with the BD82Boyer, LLC.
• Delegate authority to the Chair to execute the Agreement and any other necessary documents on behalf of the Development Agency Board.

- Delegate staff authority to act on behalf of the Agency at closing.
- Record the Disposition Agreement in the Deed Records of Clackamas County at no cost to the Development Agency.

Respectfully submitted,



Dan Johnson
Development Agency Manager

For information on this issue or copies of attachments, please contact
Dan Johnson @ 503-742-4325

DISPOSITION AND DEVELOPMENT AGREEMENT

THIS DISPOSITION AND DEVELOPMENT AGREEMENT (this "Agreement") is entered into as of the ____ day of _____, 2013 ("Effective Date") by and between the CLACKAMAS COUNTY DEVELOPMENT AGENCY, the Urban Renewal Agency of Clackamas County, a corporate body politic (the "Agency"), and BD82BOYER, LLC, an Oregon Limited Liability Company (the "Developer"). The Agency and the Developer hereby agree as follows:

ARTICLE 1: SUBJECT OF AGREEMENT

Section 1.1: Purpose of Agreement.

The purpose of this Agreement is to effectuate the Clackamas Town Center Urban Renewal Plan ("Plan") by providing for the disposition of certain real property and the development of the "Developer Improvements" on the "Property" (as such terms are hereinafter defined). The Agency has found that the development of the Property pursuant to this Agreement, and the fulfillment generally of this Agreement, are in the vital and best interests of the County of Clackamas, Oregon (the "County"), the Plan and the health safety, morals and welfare of its residents, and in accord with the public purposes and provisions of applicable federal, state and local laws and requirements.

Section 1.2: The Plan.

The Plan was approved and adopted on December 30, 1980 by Resolution and Order No. 80-2685 of the Clackamas County Commission, as amended from time to time, and the Plan, together with such amendments are incorporated herein by this reference. This Agreement is subject to the provisions of the Plan. Any further amendment to the Plan, which changes the uses or development permitted on the Property (as hereinafter defined), or otherwise changes the restrictions or controls that apply to the Property, or otherwise affects the Developer's obligations or rights with respect to the Property, shall require the written consent of Developer. Agency represents and warrants that the Plan, as it presently exists, is in full force and effect and that this Agreement, and the obligations of Agency set forth in this Agreement, are all in accordance with the Plan. A copy of the Plan is on file in the Clackamas County Department of Transportation and Development.

Section 1.3: The Property.

The "Property" consists of certain real property owned by the Agency located in Clackamas County, shown on the map attached hereto as **Exhibit "A"** and more particularly described in the legal description attached hereto as **Exhibit "B"**.

Section 1.4: The Project or Developer Improvements.

The term "Project" or "Developer Improvements" shall mean the improvements required to be constructed by Developer on the Property pursuant to this Agreement.

Section 1.5: The Agency.

The Agency is a corporate body politic of the State of Oregon, as the duly designated Urban Renewal Agency of Clackamas County, Oregon, exercising governmental functions and powers and organized and existing under Oregon Revised Statutes, Chapter 457. The term "Agency" as used in this Agreement includes the Urban Renewal Agency of Clackamas County, Oregon and any assignee of or successor to its rights, powers, duties and responsibilities. The principal offices and mailing address of the Agency for purposes of this Agreement is:

Clackamas County Development Agency
c/o Development Agency Manager
150 Beaver Creek Road
Oregon City, OR 97045

Section 1.6: The Developer.

The Developer is BD82BOYER, LLC, an Oregon Limited Liability Company. The term "Developer" as used in this Agreement is BD82BOYER, LLC. and any permitted assignee of or successor to its rights, powers, duties and responsibilities. The principal office and mailing address of the Developer for purposes of this Agreement is:

BD82BOYER, LLC
8153 S.W. Liz Place
Beaverton, Oregon 97007-6250
Attn: Gary Dent

Section 1.7: Prohibition Against Change in Ownership, Management and Control of Developer.

The qualifications and identity of Developer and its Manager are of particular concern to Agency and were essential to the selection of Developer by Agency for development of the Property. No voluntary or involuntary successor in interest of Developer shall acquire any rights or powers under this Agreement, except as expressly set forth herein. Developer shall not assign all or any part of this Agreement without the prior written consent of Agency or as otherwise permitted as set forth below. Agency consent shall not be unreasonably withheld, conditioned or delayed.

Subject to the notice and opportunity to cure provisions set forth below, this Agreement may be terminated by Agency at its option if there is any change (voluntary or involuntary) in the ownership, management or control of Developer or any successor-in-interest of Developer not consistent with this Agreement.

The restrictions contained in this section shall cease and terminate upon completion of Developer Improvements on the Property, as herein provided, and upon the issuance of a final "Certificate of Completion" (as hereinafter defined).

ARTICLE 2: ASSEMBLY OF THE SITE

The Agency owns fee title to the Property subject only to those title exceptions set forth in **Exhibit "C"** ("Permitted Exceptions").

ARTICLE 3: DISPOSITION OF PROPERTY

Section 3.1: Sale and Purchase.

In accordance with, and subject to all the terms, covenants, and conditions of this Agreement, the Agency agrees to sell to Developer, and Developer agrees to purchase from Agency, the Property, for the amount of **THREE HUNDRED FORTY-FIVE THOUSAND and 00/100 DOLLARS (\$345,000.00)** (the "Purchase Price") in the manner as hereinafter provided.

Section 3.2: Conveyance.

Conveyance of the Property shall be made on or before the date established in the Schedule of Performance, as set forth in **Exhibit "D,"** attached hereto and incorporated herein, in an escrow account at Oregon Title Insurance Company (the "Title Company"), 1515 SW Fifth Avenue, Portland, Oregon, established by the Agency. The Developer agrees, upon satisfaction of the conditions precedent for conveyance of the Property, to accept conveyance of the Property and pay to Agency at the close of escrow the Purchase Price for the Property in the amount set forth above in the form of cash or immediately available funds. The Agency and the Developer agree to perform all acts necessary for conveyance of title in sufficient time for title to be conveyed in accordance with the foregoing provisions and will execute escrow instructions consistent with this Agreement and close the transaction as provided herein. The escrow shall close and the conveyance of the Property shall be made within thirty (30) days after written request of conveyance by the Developer after satisfaction or written waiver of the conditions precedent to conveyance contained in this Agreement and on or before the date set forth in the Schedule of Performance attached hereto as **Exhibit "D"**.

Possession of the Property shall be delivered to the Developer concurrently with the conveyance of title. The Developer shall accept title and possession on or before the dates established therefore in the Schedule of Performance.

Section 3.3: Developer's Due Diligence.

The Developer shall have up to sixty (60) days after receiving the results of the Level 2 Assessment, as defined below (the "Due Diligence Period"), to complete its due diligence of the subject property. During the Due Diligence Period, the Agency will provide Developer access the Property as is reasonably necessary to complete its due diligence. The Developer hereby indemnifies and holds the Agency and the County, and their elected officials, officers, agents and employees harmless from any injury or damages arising out of any activity of Developer, its agents, employees and contractors performed and conducted on the Property for the purposes of completing its due diligence. Agency shall provide Developer with copies of all relevant reports (i.e. level one assessments, etc.) prior to commencement of the Due Diligence Period.

During the (60) day Due Diligence Period, Buyer may, at its expense, engage consultants, surveyors or engineers of Buyer's choosing to conduct environmental studies, soil analyses, surveys, and appraisals of and on the Property as Buyer in its sole discretion deems necessary. Within ten (10) days after the Effective Date, Seller shall deliver to Buyer a copy of all reports, studies, CAD files, analyses or information known relating to the Property and surrounding area within its possession or control. Buyer or its agents shall have the right to enter the Property at reasonable times during the Due Diligence Period to make such tests, inspections, soil analyses, studies, surveys, appraisals and other investigations as Buyer may require, at Buyer's sole discretion. Seller shall cooperate with Buyer in making such tests and studies. Any area disturbed by such tests and studies shall be restored by Buyer, at Buyer's expense, to its pre-inspection condition.

Seller conducted a Level 1 Environmental Assessment (the "Assessment") on the Property at Seller's expense. Seller notified Buyer of the results of the Assessment and Buyer determined a Level 2 Environmental Assessment (the "Level 2 Assessment") is necessary. Buyer will conduct the Level 2 Assessment and, subsequently, Seller and Buyer will engage in discussions to determine the most appropriate division of costs of the Level 2 Assessment upon completion.

If Buyer notifies Seller prior to the end of the Due Diligence Period that Buyer cannot accept the Property due to the results of its investigation under this section, Seller and Buyer shall meet to address the results of the investigation. If, at the end of twenty-one (21) business days from such notice, Buyer and Seller have not reached an agreement regarding the items disclosed in the investigation, then Buyer may, at its option, and upon written notice to Seller, terminate this Agreement of Purchase and Sale, in which case the Escrow Deposit and accrued interest shall be refunded to Buyer.

Section 3.4: Conditions Precedent to Agency's Obligation to Convey.

Agency's obligation to convey the Property is subject to satisfaction or occurrence of the following conditions precedent to the satisfaction of the Agency. Such satisfaction shall not be unreasonably withheld, conditioned or delayed. The Developer must satisfy the following conditions precedent or obtain waiver of them within ninety (90) days of entering into this Agreement:

3.4.1 Design Drawings (as defined in Section 4.2) for the Developer Improvements have been prepared and submitted by Developer in accordance with the terms of this Agreement and have been reviewed and approved by Agency as being in accordance with the Plan and this Agreement, and have been reviewed and approved by the Clackamas County Design Review Committee. Such approval shall not be unreasonably withheld, conditioned or delayed.

3.4.2 The Developer has provided Agency evidence, satisfactory to Agency, that Developer has the financial capacity to cause the Developer Improvements to be constructed. Such satisfaction shall not be unreasonably withheld, conditioned or delayed.

3.4.3 A request for conveyance of the Property has been made by Developer.

3.4.4 The Purchase Price required for conveyance of the Property has been tendered to the Title Company to Agency's satisfaction. Such satisfaction shall not be unreasonably withheld, conditioned or delayed.

3.4.5 The Developer has provided the Agency with satisfactory proof of insurance. Such satisfaction shall not be unreasonably withheld, conditioned or delayed.

Section 3.5: Deed Form.

The Agency shall convey to Developer fee simple title to the Property in the condition provided in Section 3.6 of this Agreement, and subject to the covenants described in Article 5, by Bargain and Sale Deed, duly executed, acknowledged and delivered in the form of **Exhibit "E"** attached hereto and incorporated herein (the "Deed"). Conveyance of title to the Property to Developer shall establish compliance by Developer with all conditions precedent to the conveyance of the Property as contained herein.

Section 3.6: Condition of Title.

The Agency shall convey to the Developer fee simple title to the Property free and clear of all liens and encumbrances except:

3.6.1 The Permitted Exceptions, as defined in Article 2; and

3.6.2 Such regulations and controls, covenants and restrictions that may be imposed on the Property by the Developer and Agency consistent with this Agreement or land use approvals obtained by Developer for development of the Property and the Developer Improvements.

Section 3.7: Title Insurance, Property Taxes and Closing Costs.

3.7.1 The Agency shall be responsible for obtaining title insurance for the Property.

3.7.2 The Developer shall be responsible for recording costs.

3.7.3 Real property taxes for the current year (if any) shall be prorated as of the date of the delivery of the Deed to the Developer. All real property taxes subsequently assessed and levied against the Property shall be paid by Developer. Agency shall be responsible for any and all real property taxes for the period of time prior to the recording of the Deed and the Developer subsequent thereto. Escrow fees, and any excise or conveyance tax that may be imposed, shall be shared equally by Developer and the Agency.

Section 3.8: Conditions of the Property.

The Developer acknowledges that it is purchasing the Property "As Is," except as provided otherwise herein.

Section 3.9: Security Deposit.

3.9.1 Developer has, simultaneously with the execution of this Agreement, delivered into escrow a Security Deposit of cash, a certified check, or an irrevocable letter of credit, satisfactory to the Agency in an amount equal to ten percent (10%) of the Purchase Price of the Property as security for the performance of the obligations of the Developer to be performed in accordance with this Agreement. Any cash delivered as the Security Deposit shall be deposited in an insured, interest-bearing account in a bank or other financial institution selected by the Escrow Agent. Any interest earned upon the Security Deposit will be paid to the Developer on return of the Security Deposit.

3.9.2 In the event the Developer has not satisfied the conditions described in Section 3.4 of this Agreement, and the transaction does not close, as provided herein, Developer shall forfeit the Security Deposit to Agency as liquidated damages and this Agreement shall be of no further effect and neither Developer nor Agency shall have any further obligation to the other. If the transaction closes and the Property is conveyed to Developer as provided herein, the Agency shall continue to hold the Security Deposit until completion of the Developer Improvements and the issuance of a Certificate of Completion with respect to the Developer Improvements as provided in Section 4.12 hereof. In the event Developer fails to complete the Developer Improvements as provided herein, the Developer shall forfeit the Security Deposit to Agency as liquidated damages and the Agency shall have such additional remedies as are available in law and equity.

3.9.3 In the event that the conditions described in Section 3.4 of this Agreement are not satisfied or waived, after the Developer has made a reasonable effort to satisfy such conditions, and in the event the transaction does not close, through no fault of Developer, the Security Deposit and any accrued interest shall be paid to the Developer.

3.9.4 If Agency fails to deliver the Deed after all conditions precedent in favor of Agency have been met or if Agency otherwise fails to consummate the transaction, the Security Deposit (and any interest earned thereon) shall be refunded to Developer.

ARTICLE 4: DEVELOPMENT OF THE PROPERTY

Section 4.1: Scope of Development.

The Property shall be developed by Developer in accordance with and within the limitations specified in **Exhibit "F,"** "Scope of Development," attached hereto and made a part hereof and plans approved by the Agency pursuant to this Agreement ("the Developer Improvements"). The Developer Improvements shall be developed within the time limits set forth in the Schedule of Performance. The Developer agrees, at its own cost and expense, to install or construct, or cause to be installed or constructed, the required Developer Improvements in accordance with the terms of this Agreement and with the specifications, standards and codes and requirements of the County and the State of Oregon.

Section 4.2: Design Drawings and Related Documents.

The Developer shall prepare and submit to the Agency Design Development drawings for the Developer Improvements ("Design Drawings") for Agency review and written approval prior to construction of the Developer Improvements involved. The Design Drawings shall be generally consistent with the Preliminary Plans submitted by the Developer, as described in the Scope of Development as set forth in **Exhibit "F"**. The Design Drawings and such other plans

and documents as may be required shall be submitted to the Clackamas County Design Review Committee and other appropriate County Agencies for the purposes of compliance with all codes, regulations and other requirements of the County in connection with the construction of the Developer Improvements. Agency shall diligently, in good faith, review the Design Drawings to determine whether they are in substantial conformance with the Scope of Development, as set forth in **Exhibit "F,"** as proposed by the Developer and shall issue its decision within twenty (20) business days of receipt of same. Failure of Agency to notify Developer within such period of time shall be deemed to be approval by Agency. If Agency does not approve the Design Drawings, Agency shall specify, in writing, its specific objections to same. Agency approval shall not be deemed approval by the Clackamas County Design Review Committee or any other agency or department.

Section 4.3: Construction Schedule.

Developer shall begin and complete all construction and development of the Developer Improvements within the time specified in the Schedule of Performance as set forth in **Exhibit "D,"** except as otherwise permitted herein.

Section 4.4: Indemnification During Construction; Bodily Injury and Property Damage Insurance.

From and after conveyance of the Property and until issuance of a Certificate of Completion in accordance with this Agreement, Developer shall indemnify and hold Agency, County, and their elected officials, officers, agents and employees, harmless from:

- i. All damages to the Property, or any portion thereof;
- ii. Injuries to or death of any person or persons, including employees or agents of the Agency or County; and
- iii. Any and all claims, demands, workers' compensation claims; in any way resulting from acts or omissions of Developer, its employees, agents, contractors or subcontractors, except for any such damage or injury as a result of the gross negligence or wrongful acts or omissions of the Agency, County or their elected officials, officers, agents or employees. Agency and County shall provide prompt notice to Developer of any claim to be asserted against Developer under this indemnification provision.

As a condition to conveyance of the Property by Agency, Developer shall obtain, at its sole cost, a policy or policies of liability insurance or a certificate of such insurance, satisfactory to the legal counsel for the Agency, naming the Agency and the County, their officers, agents and employees as insured or additional insureds, provided in the form of a comprehensive general liability insurance policy against liability for any and all claims and suits for damages or injuries to persons or property from or arising out of operations of Developer, its officers, agents

or employees. Said policy or policies of insurance shall provide coverage on a current basis for both bodily injury and property damage in not less than One Million Dollars (\$1,000,000) combined single limit or its equivalent and with a deductible not in excess of \$10,000 per occurrence. Said policy or policies shall also contain a provision that no termination, cancellation, or change of coverage of insured shall be effective until after thirty (30) days' notice thereof has been given in writing to the Agency. Developer shall provide a certificate of insurance to the Agency and shall maintain the policy above for the period ending on the date when a Certificate of Completion is issued in accordance with this Agreement. Developer shall give to Agency prompt and timely notice of claim made or suit instituted arising out of Developer's operations hereunder.

Coverage provided hereunder by the Developer shall be primary insurance and not contributing with any insurance maintained by the Agency or County, and the policy shall contain such an endorsement. The insurance policy or the certificate of insurance shall contain a waiver of subrogation for the benefit of the Agency and the County. The required certificate shall be furnished by the Developer to Agency on or at Closing.

Section 4.5: Governmental Permits.

Before commencement of construction or development of any buildings, structures or other works or improvements in connection with the Developer's Improvements upon the Property, the Developer shall, at its own expense, secure or cause to be secured, any and all land use, construction, and other permits which may be required by any governmental agency. The Agency shall cooperate with the Developer and permitting agencies in obtaining the necessary permits.

Section 4.6: Local, State and Federal Laws.

Developer shall carry out the construction of the Developer Improvements in conformity with all applicable local, state and federal laws.

Section 4.7: Taxes, Assessments, Encumbrances and Liens; Right to Cure.

Developer shall pay, prior to delinquency, all real estate taxes and assessments properly assessed and levied on the Property after conveyance by the Agency. Developer shall hold the Agency harmless from and against any liability or claim with respect to real estate taxes or assessments in connection with the Property accruing after the Agency's conveyance. Prior to issuing a Certificate of Completion pursuant to Section 4.12, the Developer shall not place or allow to be placed on the Property, or any part thereof, any mortgage, trust deed, encumbrance or lien, unless specifically pre-approved in writing by the Agency. The Developer has removed or shall remove any levy, lien or attachment made on the Property, or any part thereof, or assures the satisfaction therein within a reasonable time, but in any case no later than thirty (30) days of such levy, lien or attachment coming into existence without permission, such permission shall

not be unreasonably withheld, conditioned or delayed. Nothing herein shall be deemed to prohibit or limit the Developer from contesting or challenging the validity or amounts of any real property tax or any encumbrance or lien, including construction liens. Developer may contest or challenge the validity or amount of any such lien or encumbrance provided such challenge or contest is taken in accordance with applicable law and within a reasonable time, so long as Developer provides security satisfactory to Agency protecting the Agency's interests, or (in the case of construction liens) bonds against the liens as permitted by statute.

After the conveyance of title, but prior to the issuance of a Certificate of Completion, and after the Developer has had written notice and has failed after a reasonable time to challenge, cure, adequately bond against, or satisfy any liens or encumbrances on the Property that are not otherwise permitted under this Agreement, the Agency shall have the right, but no obligation, to satisfy any such liens or encumbrances; provided, however, that nothing in this Agreement shall require the Developer to pay or make provision for the payment of any tax, assessment, lien or charge so long as the Developer in good faith shall contest the validity or amount thereof, and so long as such delay in payment shall not subject the Property to forfeiture or sale. In the event Agency satisfies any such lien or encumbrance, Agency shall have a right to be reimbursed by Developer in the amount of the payment by the Agency plus interest in the amount of ten (10) percent per annum. Any such payment by Agency shall not remedy a default otherwise provided under this Agreement for failure of Developer to satisfy such lien or encumbrance.

Section 4.8: Prohibition Against Transfer of the Property and the Buildings or Structures Thereon.

Prior to the issuance by the Agency of a final Certificate of Completion, the Developer shall not, without the prior approval of the Agency, make any total or partial sale, transfer, conveyance, assignment or lease of the whole or any part of the Property or the buildings or structures on the Property, as to which a Certificate of Completion has not been issued. Notwithstanding the foregoing, this prohibition shall not apply to:

4.8.1 The transfer of the Property subsequent to the issuance of a Certificate of Completion of construction of the Developer Improvements thereon.

4.8.2 The leasing of space in the Developer Improvements, provided that without prior written approval from the Agency, the tenant shall not be permitted to conduct business in the leased space prior to the issuance of a Certificate of Completion, with respect to the Developer Improvements involved, except the tenant shall be allowed access to the leased space for the purpose of performing work to the interior portions thereof.

4.8.3 The sale of the Property at foreclosure (or to conveyance thereof in lieu of foreclosure) pursuant to foreclosure thereof by a lender. At the time of any permitted or approved transfer, the transferee must have agreed, either in the instrument conveying title, or by separate recorded instrument to construct or to cause to be constructed the

Developer Improvements upon the Property, as provided in the Scope of Development, as set forth in **Exhibit "F,"** unless the construction has been completed, or no construction is required.

In the event the Agency approves a transfer, the Agency shall be entitled to require such conditions to the transfer as it deems necessary or proper to ensure that the Property will be developed in accordance with the terms of this Agreement and that there is no profit on the transfer of the Property or speculation in the Property. Any increase in the Purchase Price under a permitted transfer or sale in foreclosure or bankruptcy shall accrue to and be paid to the Agency. In the absence of specific written agreement by the Agency, no such transfer assignment or approval by the Agency shall be deemed to relieve the Developer or any other subsequent party from any obligations under this Agreement until completion of the Development Improvements as evidenced by a Certificate of Completion.

Section 4.9: Holder Not Obligated to Construct Improvements.

Notwithstanding Section 4.8, mortgages, deeds of trust, assignment of leases and rents for security purposes, or any other form of conveyance required for any reasonable method of financing (collectively "Mortgage(s)"), are permitted before issuance of a Certificate of Completion for the construction of the Developer Improvements, but only for the purpose of securing loans of funds to be used for financing the acquisition of the Property, for the construction of Developer Improvements thereon, and for any other expenditures necessary and appropriate to develop the Property under this Agreement. The holder of any Mortgage authorized by this Agreement, a purchaser at foreclosure, in bankruptcy, or by deed in lieu thereof, and their successors or assigns ("Holder"), shall not be obligated by the provisions of this Agreement to construct or complete the improvements or to guaranty such construction or completion, unless there is a subrogation. Nothing in this Agreement, however, shall be deemed to construe, permit or authorize any such Holder to devote the Property or any part thereof to any uses, or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Agreement and the holder shall hold such Property subject to any covenants, conditions and restrictions imposed upon and relating to the development, maintenance and use of the Property.

Section 4.10: Notice of Default to Holders.

Unless otherwise provided herein, the terms, conditions, covenants, restrictions and reservations of this Agreement shall be binding and effective against the Holder of any such Mortgage or any owner of the Property or any part thereof, whose title thereto is acquired by foreclosure, trustee sale or otherwise.

Section 4.11: Right of Agency to Cure Mortgage Default.

In the event of a Mortgage default or breach by the Developer, and Developer fails to cure default pursuant to Section 4.7, prior to the completion of the construction of the Developer Improvements on the Property, the Agency may elect to retake title to the property subject to the Mortgage.

Section 4.12: Certificate of Completion.

Promptly after an Agency determination of substantial completion of all material elements of construction of the Developer Improvements required by this Agreement to be completed by the Developer on the Property, the Agency shall furnish Developer with a Certificate of Completion upon written request therefore by the Developer. Upon completion of all Developer Improvements on the Property and the issuance of the Certificate of Completion, Developer shall be fully relieved of all obligations under this Agreement, except as provided in Article 5. Such Certificate of Completion shall be a conclusive determination of satisfactory completion of the construction required by this Agreement as to the Property and such Certificate shall so state. After recordation of the Certificate of Completion, any party then owning or thereafter purchasing, leasing or otherwise acquiring any interest therein shall not (because of such ownership, purchase, lease or acquisition) incur any obligation or liability under this Agreement with respect to the Property, except as provided in Article 5 of this Agreement. After issuance of the Certificate of Completion, neither Agency nor any other person shall have the rights, remedies or controls with respect to the Property covered by the Certificate of Completion that it would otherwise have or be entitled to exercise under this Agreement and such control shall cease.

The Certificate of Completion shall be in such form as to permit it to be recorded in the Offices of the County Clerk in Clackamas County, Oregon. If the Agency refuses or fails to furnish the Certificate of Completion, the Agency shall, within fifteen (15) business days after written request from Developer, provide the Developer with a written statement of the reasons the Agency refused or failed to furnish such Certificate of Completion. The statement shall also contain Agency's opinion of the actions the Developer must take to obtain such Certificate of Completion. No Certificate of Completion shall constitute evidence of compliance with or satisfaction of any obligation of the Developer to any Holder of any mortgage, or any insurer of mortgage securing money loans to financing improvements or any part thereof, nor shall it constitute a certificate of occupancy or evidence thereof under the building permit or codes of Clackamas County, Oregon.

ARTICLE 5: USE OF THE PROPERTY

Section 5.1: Uses.

The Developer covenants and agrees for itself, its successor, its assigns and every successor-in-interest to the Property or any part thereof (an "Owner") that, during construction

and thereafter, the Owner shall devote the Property to uses consistent with this Agreement and such other uses as from time to time are permitted under the Plan and applicable zoning ordinances, and shall maintain any and all improvements existing on the site including the buildings, parking areas and landscaping in a safe, clean and attractive condition (such condition to be in compliance with applicable codes and to be consistent with how similar facilities in the Portland metropolitan area are maintained) for a period of twenty (20) years commencing with the date of the issuance of the Certificate of Completion.

Section 5.2: Discrimination.

The Developer covenants for itself and its successors and assigns that it will not discriminate against any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, ancestry or disability, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property. The foregoing covenant shall run with the land.

Section 5.3: Effect of Covenants.

The covenants established in this Agreement shall, without regard to technical classification and designation, be binding on and for the benefit of the Agency, the County, Developer and Developer's successors and assigns, and further successors-in-interest to the Property or any part thereof. After issuance of the Certificate of Completion pursuant to Section 4.12, all of the terms, covenants, agreements and conditions set forth in this Agreement shall cease and terminate with respect to such Development Parcel, except for Sections 5.1 (which shall remain in effect for the period set forth therein) and Sections 5.2 and 5.3, which shall remain in effect in perpetuity.

Section 5.4: Breach of Covenants.

In the event the Developer or an Owner, or their lessee, licensee, agent or other occupant, uses the Property in a manner inconsistent with Article 5 of this agreement, the Agency may bring all appropriate legal and equitable actions.

ARTICLE 6: DEFAULTS AND REMEDIES

Section 6.1: Default/General.

Subject to the extensions of time set forth in Section 7.4, and subject to the notice and opportunity to cure provisions contained in this Agreement, the failure or delay by any party to perform any term or provision of this Agreement constitutes a default under this Agreement.

The injured party shall give written notice of default to the party in default, specifying the default and allowing party in default a reasonable time to cure, but in any case no longer than thirty (30) days from such notice of default. The injured party may not institute proceedings, whether judicial or otherwise, against the party in default until thirty (30) days after giving such notice. Any failure or delay by any party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default or of any rights or remedies to enforce a term or provision of this Agreement.

Section 6.2: Institution of Legal and Equitable Actions.

Subject to the provisions of Section 6.1 hereof, in addition to its other rights or remedies, either party may institute any legal or equitable action (including, without limitation, an action for specific performance) to cure, correct or remedy any default, to recover any damages for any default, or to obtain any other remedy consistent with the purpose of this Agreement. Such legal actions must be instituted in the Circuit Court of the State of Oregon, for the County of Clackamas, or in the United States District Court for the District of Oregon Main Office in Portland, Oregon.

Section 6.3: Applicable Law.

The law of the State of Oregon shall govern the interpretation and enforcement of this Agreement, without giving effect to the conflicts of law provision thereof.

Section 6.4: Acceptance of Service of Process.

In the event that any legal or equitable action is commenced by the Developer against the Agency, service of process on the Agency shall be made by personal service on the Manager of the Agency, or in such other manner as may be provided by law.

In the event that any legal or equitable action is commenced by the Agency against the Developer, service of process on the Developer shall be made in such manner as may be provided by law.

Section 6.5: Rights and Remedies Are Cumulative.

Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by any party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different time, of any other rights or remedies for the same default or any other default by the other party.

Section 6.6: Termination by Agency Prior to Conveyance.

In the event that any of the following occur prior to the conveyance of title to the Property, then this Agreement, and any rights of the Developer, or any assignee or transferee, in

this Agreement, or the Property, or any portion thereof, shall, at the option of the Agency, be terminated by the Agency, in which event the Security Deposit shall be retained by the Agency as liquidated damages and as its property without any deduction, offset or recoupment whatsoever, and neither the Developer nor the Agency shall have further rights against or liability to the other under this Agreement:

6.6.1 Developer (or any successor in interest thereto) assigns or attempts to assign this Agreement or any rights therein, or to the Property, in violation of this Agreement;

6.6.2 There is a change in the ownership of the Developer contrary to the provisions of Section 1.7 hereof;

6.6.3 The Developer does not submit Design Drawings as required by this Agreement in the manner and by the dates respectively provided in this Agreement therefore;

6.6.4 If Developer has been unable to obtain financing as provided in Section 3.4.2; or

6.6.5 The Developer does not tender the Purchase Price or take title to the Property on tender of conveyance by the Agency pursuant to this Agreement after Developer has satisfied or obtained waiver of all conditions precedent set forth in Section 3.4.

Section 6.7: Termination by Agency After Conveyance and Prior to Completion of Developer Improvements

The Agency shall have the right at its option, to terminate this Agreement and to reenter and take possession of the Property with all improvements thereon and to terminate Developer's interest and revest in the Agency the estate conveyed to the Developer, and to forfeit to Agency the Security Deposit as liquidated damages ("Right to Reversion"), if after completion of conveyance of title to the Property and, prior to the issuance of the Certificate of Completion for the Property, the Developer (or its successors in interest):

6.7.1 Fails to obtain all of the final permits and approvals necessary to construct the Developer Improvements, including any right to construct on any additional property required for completion of the Project, within ninety (90) days;

6.7.2 Fails to commence construction of the Developer Improvements on the Property as required by this Agreement within a reasonable period, but in no event longer than of six (6) months after conveyance of title from the Agency, except as may be extended pursuant to Section 7.4;

6.7.3 Abandons or substantially suspends construction of the Developer Improvements on the Property for an unreasonable period of time, but in no event longer than six (6) months, except as may be extended pursuant to Section 7.4;

6.7.4 Assigns this Agreement, or any rights herein, or transfers, or suffers any involuntary transfer of the Property, or any part thereof, in violation of this Agreement, and such violation shall not be cured within thirty (30) days after the date of receipt of written notice thereof by the Agency to the Developer;

6.7.5 Fails to pay real estate taxes or assessments on the Development Parcel, place thereon any encumbrance or lien not authorized by this Agreement, or suffer any levy or attachment to be made, or any construction lien or any other unauthorized encumbrance or lien to attach that is not challenged or contested pursuant to this Agreement, or makes any assignment for the benefit of creditors or materially fails or adhere to the Schedule of Performance or the Scope of Development;

6.7.6 Otherwise defaults under any mortgage, trust deed or other encumbrance authorized by this Agreement and secured by the Property; or

6.7.7 Otherwise defaults under this Agreement, which default is not cured within the applicable time frame set forth in this Agreement.

The Right to Reversion shall be subject and subordinate to, and be limited by, the rights and interests of a Holder and shall not defeat, render invalid or limit any Mortgage or other security instrument or conveyance for financing permitted by this Agreement or any rights or interest provided in this Agreement for the protection of a Holder.

ARTICLE 7: GENERAL PROVISIONS

Section 7.1: Attorneys Fees.

The parties shall bear their own costs and attorney fees in the event an action is brought to enforce, modify or interpret the provisions of this Agreement.

Section 7.2: Notice, Demands and Communications Between the Parties.

Formal notices, demands and communications between the Agency and the Developer shall be in writing to the addresses shown in Section 1.5 and Section 1.6 of this Agreement and to the attention of the person indicated.

Section 7.3: Nonliability of Officials and Employees.

No member, official or employee of any of the parties shall be personally liable to the other party or any successor-in-interest thereto, in the event of any default or breach by either party or for any amount that may become due to either party or its successor, or any obligations under the terms of this Agreement.

Section 7.4: Unavoidable Delay; Extension of Time of Performance.

In addition to specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, lockouts, labor disputes, riots, volcanoes, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemic, and quarantine restrictions. In the event of such delay, the party delayed shall give written notice of the delay and the reason therefore to the other party within thirty (30) days after the delayed party learns of the delaying event. An extension of time for any such cause shall be for the period of duration of the cause.

Section 7.5: Merger.

None of the provisions of this Agreement are intended to or shall be merged by reason of any deed referred to herein and any such deed shall not be deemed to affect or impair the provisions and covenants of this Agreement, but shall be deemed made pursuant to this Agreement.

Section 7.6: Headings.

Any title of the several parts and sections of this Agreement are inserted for convenience or reference only and shall be disregarded in construing or interpreting any of its provisions.

Section 7.7: Time of Essence.

Time is of the essence of this Agreement. All obligations of the Agency and the Developer to each other shall be due at the time specified by the Agreement, or as the same may be extended by mutual agreement of the parties in writing.

Section 7.8: Severability.

Except for the provisions of Article 5, if any clause, sentence or any other portion of the terms and conditions of this Agreement become illegal, null or void for any reason, or held by any court of competent jurisdiction to be so, the remaining portion will remain in full force and effect.

Section 7.9: No Partnership.

Neither anything in this Agreement, nor any acts of the parties hereto, shall be deemed or construed by the parties hereto, or any of them, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or of any association between any of the parties to this Agreement.

Section 7.10: Nonwaiver of Government Rights.

Subject to the terms and conditions of this Agreement, by making this Agreement, the Agency is specifically not obligating itself, the County, or any other agency with respect to any discretionary action relating to the acquisition of the Property or development, operation and use of the improvements to be constructed on the Property, including, but not limited to, condemnation, comprehensive planning, rezoning, variances, environmental clearances or any other governmental agency approvals that are or may be required.

Section 7.11: Entire Agreement; Waivers.

This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto and supersedes all negotiations or previous agreements between the parties or the predecessors in interest with respect to all or any part of the subject matter hereof. All waivers of the provisions of this Agreement must be in writing by the appropriate authorities of the Agency and the Developer, and all amendments thereto must be in writing by the appropriate authorities by the Agency and the Developer.

Section 7.12: Counterparts

This Agreement may be executed in counterparts.

Section 7.13: Non-Foreign Persons.

The parties agree to comply with the terms of Internal Revenue Code Section 1445 and upon the conveyance of the Property, Agency shall execute and deliver to Developer a non-foreign person affidavit in form mutually acceptable to the Parties. Agency is not a "foreign person" as that term is used in Internal Revenue Code Section 1445 and Agency agrees to furnish Developer with any necessary documentation to that effect.

ARTICLE 8: SUCCESSOR INTEREST

This Agreement shall be binding upon and inure to the benefit of the parties, their successors and assigns.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

"AGENCY"

CLACKAMAS COUNTY DEVELOPMENT AGENCY, a corporate body politic

By: _____
Chair

"DEVELOPER"

BD82BOYER, LLC, an Oregon Limited Liability Company

By: _____
Gary Dent, Manager

STATE OF OREGON)
) ss.
County of Clackamas)

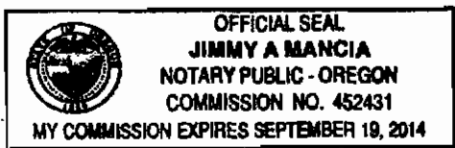
On this ____ day of _____, 2013, before me the undersigned, a notary public in and for such state, personally appeared _____, personally known to be (or proved to me on the basis of satisfactory evidence) to be the person who executed the within instrument as the Chair of the Clackamas County Development Agency, a corporate body politic, and acknowledged to me that said Agency executed the within instrument.

NOTARY PUBLIC FOR OREGON
My Commission Expires: _____

STATE OF OREGON)
) ss.
County of Washington)

On this 3rd day of July, 2013, before me the undersigned, a notary public in and for such state, personally appeared Gary Dent, personally known to be (or proved to me on the basis of satisfactory evidence) to be the person who executed the within instrument as the Manager of BD82Boyer, LLC, and acknowledged to me that said company executed the within documents.

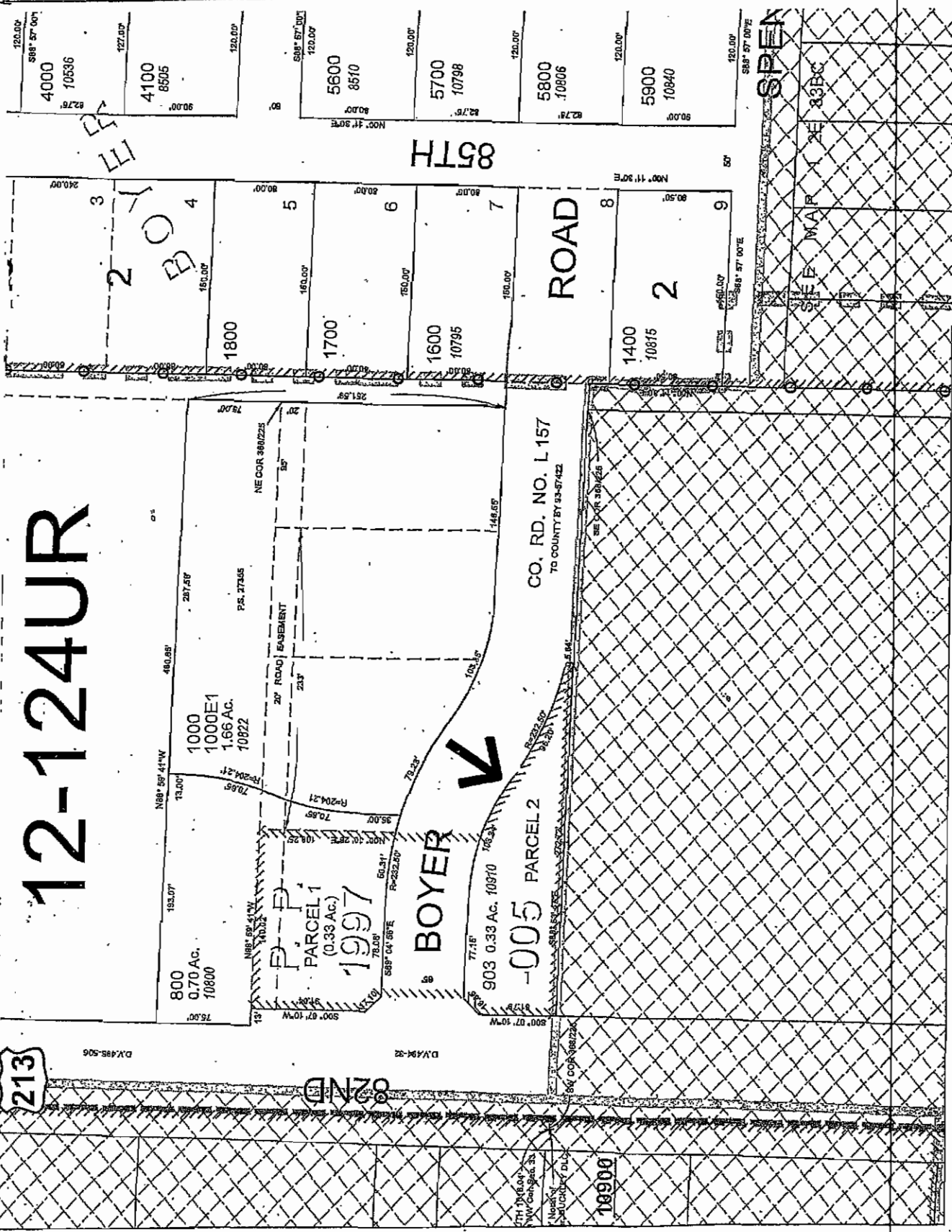
NOTARY PUBLIC FOR OREGON
My Commission Expires: September 19, 2014



LIST OF EXHIBITS

EXHIBIT A	Map
EXHIBIT B	Legal Description - Property
EXHIBIT C	Exceptions to Title as Contained in Preliminary Title Report
EXHIBIT D	Schedule of Performance
EXHIBIT E	Form of Bargain and Sale Deed
EXHIBIT F	Scope of Development

12-124UR



85TH

ROAD

CO. RD. NO. L157
TO COUNTY BY 33-57-422

BOYER

PARCEL 2
-005

213

82ND

18900

SPEA

SEE MAP C 33BC

TH D16.04
WV Ch. 33
County D.C.

EXHIBIT B

LEGAL DESCRIPTION

Parcel 2 of Partition Plan No. 1997-5, Clackamas County Survey Plat Records, located in the W.S. Buckley D.L.C No. 65 N.W.1/4 Section 33,T.1S., R.2E., W.M., Clackamas County, Oregon.

EXHIBIT C

Except for the items properly cleared through closing, the proposed policy or policies will not insure against loss or damage which may arise by reason of the following:

STANDARD EXCEPTIONS:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public record; proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.
2. Any facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.
3. Easements, claims of easements, or encumbrances not shown by the public records, reservations or exceptions in patents or in acts authorizing the issuance thereof; water rights, claims or title to water.
4. Any encroachment (of existing improvements located on the subject land onto adjoining land or of existing improvements located on adjoining land onto the subject land), encumbrance, violation, variation, or adverse circumstance affecting the title that would be disclosed by an accurate and complete land survey of the subject land.
5. Any lien, or right to lien, for unemployment taxes, workmen's compensation, services, labor, equipment rental or material heretofore or hereafter furnished, imposed by law and not shown by the public records.

SPECIAL EXCEPTIONS:

6. The subject property is under public, charitable, fraternal, or religious organization ownership and is exempt from ad valorem taxation. Any change in ownership prior to delivery of the assessment roll may result in tax liability.

Tax Account No. : 01740815

7. Regulations, levies, liens, assessments, rights of way and easements of Clackamas County Service District No. 1. We find none as of May 17, 2013.

Preliminary Title Report

8. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Granted to : Portland General Electric Company
Purpose : Anchor
Recording Date : February 16, 1959
Recording No. : B 551; P 293
9. Restrictions, but omitting restrictions, if any, based upon race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry, source of income, gender, gender identity, gender expression, medical condition or genetic information, as set forth in applicable state or federal laws, except to the extent that said restriction is permitted by applicable law, as shown on the plat of Partition Plat No. 1997-005.
10. Existing leases and tenancies, if any, and any interests that may appear upon examination of such leases.

END OF EXCEPTIONS

PROPOSED SCHEDULE OF DEVELOPMENT

Submit a proposed Schedule of Development indicating the dates for the following:

1. Completion and submission to the Agency of final construction plans for development.
 - a. Within 45 days of Clackamas County approving BD82BOYER, LLC to purchase the property.

2. Completion and submission of construction financing for development.
 - a. May 1, 2013 and will be updated within 10 business days of completion of Phase II.

3. Commencement of development of Project.
 - a. Within 30 days of Clackamas County Planning and Zoning Division approving developer's plans.

4. Completion of construction of Project.
 - a. Within 90 days after Developer receives building permits.

<p><u>GRANTOR:</u> Clackamas County Development Agency Development Services Building 150 Beavercreek Road Oregon City, OR 97045</p> <p><u>GRANTEE:</u> BD82BOYER, LLC 8153 SW Liz Place Oregon City, OR 97045</p> <p>After Recording Return To: BD82BOYER, LLC 8153 SW Liz Place Beaverton, OR 97007-6250</p> <p>Until a change is requested, all tax statements shall be sent to: BD82BOYER, LLC 8153 SW Liz Place Beaverton, OR 97007-6250</p> <p>Consideration: \$345,000.00 (three hundred forty five thousand dollars) and Grantee's other obligations</p>	<p>Agenda No.: INSERT BOARD OF COUNTY COMMISSIONERS PROCEEDING IDENTIFIERS HERE</p>
---	---

WARRANTY DEED

CLACKAMAS COUNTY DEVELOPMENT AGENCY, the URBAN RENEWAL AGENCY OF CLACKAMAS COUNTY, a corporate body politic (the "Grantor"), in consideration of the performance of covenants and conditions of the Disposition Agreement between Grantor and BD82BOYER, LLC (the "Grantee"), dated INSERT DATE OF DISPOSITION AGREEMENT HERE and recorded on INSERT DATE THE DISPOSITION AGREEMENT WAS RECORDED HERE as Recorder's Fee No. INSERT RECORDER'S NUMBER HERE, Clackamas County records, does hereby warrant and convey unto the Grantee and to its successors and assigns, all of the following described real property, with the tenements, hereditaments and appurtenances (the "Property") situated in the County of Clackamas, State of Oregon, to wit:

See Exhibit 1 attached hereto and incorporated herein.

Subject to the following:

See Exhibit 2 attached hereto and incorporated herein.

In the event of a default, failure, violation or other action or inaction by Grantee, its successors or assigns, of the covenants, provisions or agreements of the Disposition Agreement, and failure on the part of the Grantee to remedy, end or abrogate such default, violation, or other action or inaction, within the period and manner specified in the Disposition Agreement, Grantor, at its option, may exercise any of the remedies provided for in the Disposition Agreement.

This Grant is made by Grantor pursuant to powers exercised by it under Oregon Revised Statutes Chapter 457 for the purpose of carrying out an urban renewal plan for the Clackamas Town Center Development which Plan was approved by the Clackamas County Commission on December 30, 1980 and which Plan has been amended and, as amended of June 16, 2005, is incorporated herein and by this reference made a part hereof.

It is intended that the delivery of this Deed shall not effect a merger of the provisions of the Disposition Agreement which terms are intended to continue after the delivery of this Deed.

TO HAVE AND TO HOLD the same and to the said Grantee and then to its successors and assigns forever.

The true and actual consideration for this conveyance is three hundred and forty five thousand dollars (\$345,000.00) and Grantee's obligation to construct the improvements on the Property and to use the Property in accordance with the terms of the Disposition Agreement.

"BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010."

IN WITNESS WHEREOF, the Clackamas County Development Agency, the Urban Renewal Agency of Clackamas County has caused this instrument to be executed by duly elected officials this _____ day of _____, 2013.

Board of County Commissioners Acting as the Governing Body of the Clackamas County Development Agency

By: _____
Chair

STATE OF OREGON)
) ss
County of Clackamas)

This instrument was acknowledged before me on June _____, 2013 by John Ludlow as the Chair of the Board of County Commissioners Acting as the Governing Body of the Clackamas County Development Agency.

Notary Public for Oregon

Development Concept Narrative
for proposed
Black Rock Coffee Bar
SE 82nd Avenue and SE Boyer Drive
(10910 SE 82nd Avenue)

Finding a use and a design for this site that works well is challenging. Besides the small size of the lot, and it's unusual shape, there is no real choice in the location of automobile access. These three factors tend to drive the available range of solutions, making it extremely difficult to fit any commercial use onto the property.

Site Access:

Available access to this site is limited. 82nd Avenue is under ODOT jurisdiction, and both ODOT and the County require a site with two street frontages to be accessed from the lower-classification street, which means that access must be from Boyer Drive. ODOT has conveyed to the County's traffic engineering department that they want any new access on Boyer to be as far from the signalized intersection as is practicable. Even without these restrictions, the first 200 feet of the Boyer frontage is simply not desirable for a site access, as it would see potential interference from several sources: cars moving eastbound on Boyer, cars westbound on Boyer queued in the left turn storage lane, cars entering or exiting the western drive of the center across the street, cars negotiating the curve of Boyer Drive, bicycle traffic, and pedestrians. Safety for car, bicycle, and pedestrian traffic dictates the need for an access well separated from these disruptions.

The proposed plan locates the drive at the point on Boyer farthest from the signal with adequate onsite depth for a driveway, 228 feet from the intersection with 82nd Avenue. Feedback from the County's engineering team at the Preapplication Conference indicated that this location is ideal, both from their standpoint and ODOT's.

Developable Area:

The site area available for development presents a considerable hardship. The maximum developable width, at the western part of the site, is just 64 feet. This is barely wide enough for a conventional parking lot, i.e. a drive aisle with 90-degree parking on either side. On top of that, the parking lot would be a dead end. Without a way for delivery or garbage trucks and emergency vehicles to drive through the site, a significant amount of extra space would need to be allocated for these large vehicles to turn around. That space would necessarily be at the expense of both building area and parking stalls. Combining the dead end with the small size of the parking lot, a customer who enters and cannot readily find a parking stall would need to perform a Y-turn, an undesirable maneuver from a safety standpoint, and then exit the lot, an undesirable situation for any business. A successful commercial development with a dead end layout would ideally provide both extra maneuvering room and a generous number of customer parking stalls to alleviate this last issue. However, there is no extra width available for a wider drive aisle, and adding parking stalls would reduce the available space left for a building. Therefore, the site will only support uses that combine a very small building size, a very small required parking stall count, and have space remaining for large vehicles to maneuver.

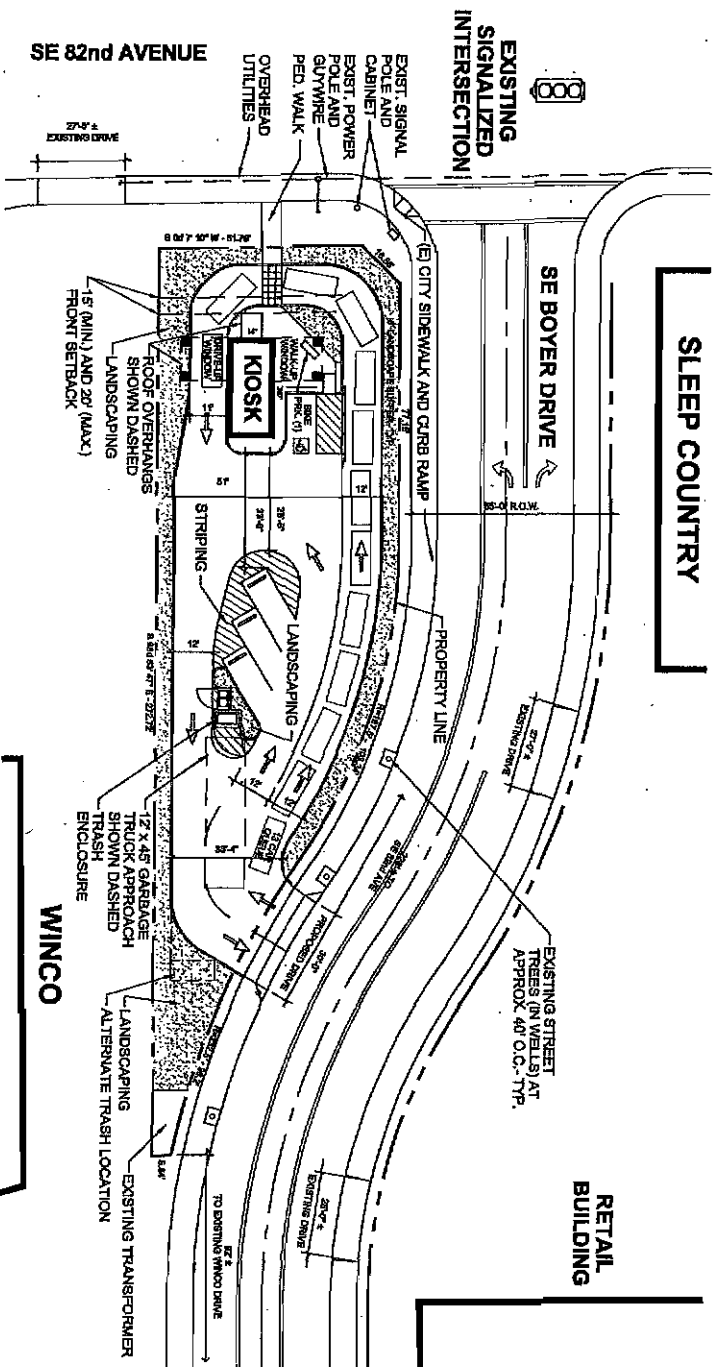
Developable Area, continued:

The proposed drive-through coffee use requires only four parking stalls. With peak hour (morning) car queuing, as shown on the plan, there is enough room for a one-way drive loop, allowing easy circulation through the site that minimizes potential conflicts. Using off-peak (after 11 am) scheduling for deliveries and garbage pickup, service vehicles have sufficient space to maneuver at the north and west of the paved area to also utilize the one-way loop circulation.

Building Location:

With the drive access required to be at the far eastern end of the site, a building is effectively forced to the western half. Building location is required by County code to be toward the "front" of the site, which is defined as 82nd Avenue. This is favorable, as it is the widest part of the site, has good visibility from 82nd, and allows for a rectangular building. However, the minimum front building setback is 15 feet, as opposed to 5 feet for drives or parking. Leaving 15 feet of such a small site unusable for buildings, parking, or drives reduces the developable square footage by about 8 percent, and it's depth by 10 feet.

The proposed plan permits the site to be better utilized by bringing a drive through lane around the site perimeter, while still allowing the building to be easily visible from the street. This meets the setback requirement for the building, allows for a planted area around the entire site perimeter, provides adequate vehicle circulation and queuing, and allows easy access to the kiosk walk-up window by pedestrians.



PROPOSED SITE PLAN

1/32" = 1'-0"

SITE DATA		LANDSCAPING:		PARKING	
STREET ADDRESS	10910 SE 82ND AVE HAPPY VALLEY, OR. 97086	MINIMUM:	1,480 S.F. (10% COVERAGE)	MINIMUM:	4 STALLS (8.0 PER 1,000 S.F.)
PARCEL NUMBER	01740816	PROPOSED:	3,600 S.F.	MAXIMUM:	5 STALLS (12.4 PER 1,000 S.F.)
SITE AREA	14,871 S.F., 0.339 ACRES	NATURAL FEATURES	NONE KNOWN	PROVIDED:	4 STALLS 1 VAN ACCESSIBLE (9'-0" X 20'-0") 3 STANDARD (8'-0" X 18'-0") 0 COMPACT 0 CARPOOL/VANPOOL
BUILDING	420 S.F. (14' X 30' KIOSK)	TOPOGRAPHY	NONE KNOWN		
EASEMENTS	NONE KNOWN	APPROX. FLAT-2 FOOT +/- ELEVATION CHANGE			
SETBACKS	FRONT (92'-0") 15 MIN. 20' MAX.				
	SIDE & REAR NO RECT.				

BLACK ROCK COFFEE BAR
SE 82nd AVENUE AND BOYER DRIVE
HAPPY VALLEY, OREGON 97086
CLACKAMAS COUNTY

TILAND /
6 CHMID T
ARCHITECTS PC
3000 NE 20TH AVE
PORTLAND, OR 97211
PHONE: 503.255.4500
FAX: 503.255.4501

PROJECT NO.
2786

DATE:
10/11/11

SCALE:
AS SHOWN

DESIGNED BY:
CHECKED BY:

SP
03



Beyond clean water.

12

Water Quality Protection
Surface Water Management
Wastewater Collection & Treatment

Michael S. Kuenzi, P.E.
Director

June 18, 2013

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of Intergovernmental Agreement Between Clackamas County Service District No. 1 and Metro for the Award of a Nature in the Neighborhoods Grant for the Rock Creek Confluence Restoration Project

Purpose/Outcomes	Board approval of an IGA between Clackamas County Service District No. 1 and Metro for Award of a Nature in the Neighborhoods (NIN) grant for the <i>Rock Creek Confluence Restoration project</i> .
Dollar Amount and Fiscal Impact	Grant = \$209,000 (requires financial match of \$311,160) <i>total District cash match</i> . Additional funding via partners: CRBC \$30,000 and Nature Conservancy \$25,000 will off-set the required District match.
Funding Source	WES Surface Water FY2013-14 funds - no County General Funds are involved.
Safety Impact	None.
Duration	Effective July 1, 2013 and terminates on June 30, 2016
Previous Board Action/Review	Approval to apply for the grant was provided by the Board of County Commissioners on January 29, 2013
Contact Person	Carol Murdock – Water Environment Services – 503-742-4581
Contract No.	N/A.

BACKGROUND:

The Rock Creek Confluence Restoration Project will enhance the resiliency of a major Clackamas River tributary. Rock Creek supports one of the largest remaining populations of salmon in the urban area. Pending development in the upper watershed (East Happy Valley expansion area) will adversely impact Rock Creek via significant increases in stormwater runoff and associated pollutant loads.

The Board of County Commissioners approved the WES application for the Metro grant on January 29, 2013. The original grant application was for \$150,000 with at 2:1 match requirement. Metro has elected to award the project a total of \$209,000 due to level of protection and enhancement the project will provide to Rock Creek. Since the original grant application was submitted, WES partners (the Nature Conservancy and Clackamas River Basin Council) have contributed an additional \$55,000 to the project which will off-set the County's cash match requirement. Total County cashmatch requirement will be \$256,160.

RECOMMENDATION:

Staff recommends the Board of County Commissioners approve the Intergovernmental Agreement between Clackamas County Service District No. 1 and Metro for Award of a Nature

in the Neighborhoods Grant for the Rock Creek Confluence Restoration Project and authorize the WES Director to accept the grant on behalf of the District.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'MK', written in a cursive style. The signature is positioned above the printed name 'Mike Kuenzi, Director'.

Mike Kuenzi, Director

Project: Rock Creek Confluence Restoration

INTERGOVERNMENTAL AGREEMENT
Natural Areas Bond Measure
Capital Grant Award

This Intergovernmental Agreement (this "Agreement"), entered into under the provisions of ORS chapter 190 and effective on the date the Agreement is fully executed (the "Effective Date"), is by and between Metro, a metropolitan service district organized under the laws of the state of Oregon and the Metro Charter, located at 600 N.E. Grand Avenue, Portland, Oregon 97232-2736, and Clackamas County Service District No. 1, located at 150 Beaver Creek Road, Oregon City, Oregon 97045 ("Grant Recipient").

RECITALS

WHEREAS, the electors of Metro approved Ballot Measure 26-80 on November 7, 2006, authorizing Metro to issue \$227.4 million in bonds to preserve natural areas, clean water, and protect fish and wildlife (the "Measure");

WHEREAS, the Measure allocated \$15 million from bond proceeds to the Nature in Neighborhoods Capital Grants Program to complement the regional and local share portions of the Measure by providing opportunities for the community to actively protect fish and wildlife habitat and water quality in areas where people live and work;

WHEREAS, Metro has determined to make a grant award to Grant Recipient to fund Rock Creek Confluence Restoration Project (the "Project") as more specifically identified within the Scope of Work attached hereto as Exhibit A (the "Work");

WHEREAS, this Agreement between Metro and Grant Recipient is now needed to satisfy the terms and conditions of the Nature in Neighborhoods Capital Grants Program as provided for in the Measure; and

WHEREAS, except as specifically provided in this Agreement, including the scope of work attached hereto as Exhibit A, and otherwise notwithstanding any statements or inferences to the contrary, Metro neither intends nor accepts any (1) direct involvement in the Project (2) sponsorship benefits or supervisory responsibility with respect to the Project; or

4. Limitations on Use of the Capital Asset That Results from the Project

Throughout the term of this Agreement, Grant Recipient shall maintain and operate the capital asset that results from the Project in a manner consistent with one or more of the following intended and stated purposes of the Measure (the “Nature in Neighborhood Approved Purposes”):

- To safeguard water quality in local rivers and streams;
- To protect and enhance fish and wildlife habitats;
- To promote partnerships that protect and enhance nature in neighborhoods; and
- To increase the presence of ecological systems and plant and animal communities in nature deficient and other disadvantaged neighborhoods;

Grant Recipient may not sell, use, or authorize others to use such capital asset in a manner inconsistent with such purposes.

Notwithstanding the foregoing, secondary uses that arise as a result of such capital asset being used primarily in accordance with the Nature in Neighborhood Approved Purposes will be permitted, but only to the extent such secondary uses affect a *de minimis* portion of such capital asset or are necessary in order to facilitate the primary Nature in Neighborhood Approved Purposes. For example, if, as part of a land use review proceeding initiated to obtain the necessary approvals to operate such capital asset consistent with the Nature in Neighborhood Approved Purposes, a portion of such capital asset was required to be dedicated as a road, such road dedication would be a permitted secondary use.

5. Funding Recognition

Grant Recipient shall recognize in any publications, media presentations, or other presentations referencing the Project produced by or at the direction of Grant Recipient, including, without limitation, any on-site signage, that funding for the Project came from the Metro Natural Areas Bond Measure’s Nature in Neighborhoods Capital Grants Program. Such recognition shall comply with the recognition guidelines detailed in the Measure. The Grant Recipient shall place at or near the Project’s location signage that communicates that funding for the Project came from the Metro Natural Areas Bond Measure’s Nature in Neighborhoods Capital Grants Program.

8. Joint Termination for Convenience

Metro and Grant Recipient may jointly terminate all or part of this Agreement based upon a determination that such action is in the public interest. Termination under this provision shall be effective only upon the mutual, written termination agreement signed by both Metro and Grant Recipient.

9. Oregon Constitution and Tax Exempt Bond Covenants

Grant Recipient acknowledges that Metro's source of funds for the Nature in Neighborhoods Capital Grants Program is from the sale of voter-approved general obligation bonds that are to be repaid using ad valorem property taxes exempt from the limitations of Article XI, sections 11, 11b, 11c, 11d, and 11e of the Oregon Constitution, and that the interest paid by Metro to bond holders is currently exempt from federal and Oregon income taxes. Grant Recipient covenants that it will take no actions that would cause Metro not to be able to maintain the current status of the real property taxes imposed to repay these bonds as exempt from Oregon's constitutional property tax limitations or the income tax exempt status of the bond interest under IRS rules. In the event Grant Recipient breaches this covenant, Grant Recipient shall undertake whatever remedies are necessary to cure the default and to compensate Metro for any loss it may suffer as a result thereof, including, without limitation, reimbursing Metro for any Projects funded under this Agreement that resulted in Grant Recipient's breach of its covenant described in this Section.

10. Liability and Indemnification

As between Metro and Grant Recipient, Grant Recipient assumes full responsibility for the performance and content of the Work; provided, however, that this provision is not intended to, and does not, create any rights by third parties. To the extent permitted by Oregon law, and subject to the limitations and conditions of the Oregon Tort Claims Act, ORS chapter 30, and the Oregon Constitution, Grant Recipient shall indemnify, defend, and hold Metro and Metro's agents, employees, and elected officials harmless from any and all claims, demands, damages, actions, losses, and expenses, including attorney's fees, arising out of or in any way connected with the performance of this Agreement by Grant Recipient or Grant Recipient's officers, agents, or employees. Grant Recipient is solely responsible for paying Grant Recipient's

execution of a contract between Grant Recipient and any contractor or twenty-four (24) hours before services such contract commence, whichever date is earlier.

12. Safety

Grant Recipient shall take all necessary precautions for the safety of employees, volunteers and others in the vicinity of the Work and the Project, and shall comply with all applicable provisions of federal, state and local safety laws and building codes, including the acquisition of any required permits.

13. Metro's Right to Withhold Payments

Metro shall have the right to withhold from payments due Grant Recipient such sums as necessary, in Metro's sole opinion, to protect Metro against any loss, damage or claim which may result from Grant Recipient's performance or failure to perform under this Agreement or the failure of Grant Recipient to make proper payment to any suppliers, contractors or subcontractors. All sums withheld by Metro under this Section shall become the property of Metro and Grant Recipient shall have no right to such sums to the extent that Grant Recipient has breached this Agreement.

14. Project Records, Audits, and Inspections

A. For the term of this Agreement, Grant Recipient shall maintain comprehensive records and documentation relating to the Project and Grant Recipient's performance of this Agreement (hereinafter "Project Records"). Project Records shall include all records, reports, data, documents, systems, and concepts, whether in the form of writings, figures, graphs, or models, that are prepared or developed in connection with any Project.

B. In accordance with Section 2 above, Grant Recipient shall maintain all fiscal Project Records in accordance with GAAP. In addition, Grant Recipient shall maintain any other records necessary to clearly document:

(i) Grant Recipient's performance of its obligations under this Agreement, its compliance with fair contracting and employment programs, and its compliance with Oregon law on the payment of wages and accelerated payment provisions;

G. In the event the Project Records establish that Grant Recipient owes Metro any sum of money or that any portion of any claim made by Grant Recipient against Metro is not warranted, Grant Recipient shall pay all costs incurred by Metro in conducting the audit and inspection.

15. Public Records

All Project Records shall be public records subject to the Oregon Public Records Law, ORS 192.410 to 192.505. Nothing in this Section shall be construed as limiting Grant Recipient's ability to consider real property transactions in executive session pursuant to ORS 192.660(1)(e) or as requiring disclosure of records that are otherwise exempt from disclosure pursuant to the Public Records Law (ORS 192.410 to 192.505) or Public Meetings Law (ORS 192.610 to 192.690).

16. Law of Oregon; Public Contracting Provisions

The laws of the state of Oregon shall govern this Agreement and the parties agree to submit to the jurisdiction of the courts of the state of Oregon. All applicable provisions of ORS chapters 187, 279A, 279B, and 279C, and all other terms and conditions necessary to be inserted into public contracts in the state of Oregon, are hereby incorporated as if such provisions were a part of this Agreement. Specifically, it is a condition of this Agreement that Grant Recipient and all employers working under this Agreement are subject to and will comply with ORS 656.017 and that, for public works subject to ORS 279C.800 to 279C.870 pertaining to the payment of prevailing wages as regulated by the Oregon Bureau of Labor and Industries, Grant Recipient and every contractor and subcontractor shall comply with all such provisions, including ORS 279C.836 by filing a public works bond with the Construction Contractors Board before starting work on the project, unless exempt under that statute.

17. Notices and Parties' Representatives

Any notices permitted or required by this Agreement shall be addressed to the other party's representative(s) as set forth below and shall be deemed received (a) on the date they are personally delivered, (b) on the date they are sent via facsimile, or (c) on the third day after they are deposited in the United States mail, postage fully prepaid, by certified mail return

20. No Waiver of Claims; Modifications

Metro's failure to enforce any provision of this Agreement shall not constitute a waiver by Metro of that or any other provision of this Agreement. This Agreement may be amended only by written instrument signed by both Metro and Grant Recipient and no waiver, consent, or change of terms of this Agreement shall bind either party unless in writing and signed by both parties.

21. Integration of Agreement Documents

All of the provisions of any proposal documents including, but not limited to, Requests for Proposals, Grant Proposals and Scopes of Work that were utilized in conjunction with the award of this Grant are hereby expressly incorporated herein by reference; provided, however, that the terms described in Sections 1 through 21 of this Agreement and in Exhibit A shall control in the event of any conflict between such terms and such other incorporated documents. Otherwise, this Agreement represents the entire and integrated agreement between Metro and Grant Recipient and supersedes all prior negotiations, representations or agreements, either written or oral. The law of the state of Oregon shall govern the construction and interpretation of this Agreement. The Parties, by the signatures below of their authorized representatives, hereby acknowledge that they have read this Agreement, understand it, and agree to be bound by its terms and conditions.

IN WITNESS WHEREOF, the parties hereto have set their hands on the day and year indicated below.

Clackamas County Service District No. 1

METRO

Signature

Martha Bennett
Metro Chief Operating Officer

Print Name: _____

Title: _____

Date: _____

Date: _____

Scope of Work – Exhibit A

Metro Contract No. 932110

CAPITAL GRANTS PROGRAM GRANTS AGREEMENT

Project Title/Project Number: Rock Creek Confluence Restoration Project

Grant Recipient contact: Gail Shaloum
150 Beavercreek Road
Oregon City, Oregon 97045
gshaloum@clackamas.us
503-742-4597

Budget at time of award

Total cost of project:	\$627,590
Grant award	\$209,000
Financial match	\$311,160
In-kind match	\$107,430

Project location Lower 2000 feet of Rock Creek from its mouth with the Clackamas River

Scope of Work

This scope of work sets forth the work and requirements the Grant Recipient shall undertake as part of Metro's Nature in Neighborhood Capital Grants program grant award. The original grant application (see attached Attachment 1) sets forth the scope of work except as modified or added to herein:

- Allowable pre-agreement costs for the consultants to complete 30% design can be increased to \$55,000.
- With Metro's approval, grant funds that are not needed as projected in a budget line item may be applied toward other budget line items described in the budget within Attachment 1.

Project Benchmarks and Deliverables

Benchmark 1: Pre-agreement activities and costs approved in Attachment 1 that will be applied toward matching requirements

Deliverable 1: Provide documentation for pre-agreement expenses which may include non-profit and agency staff time and consultant expenses.

Benchmark 2: Final construction design documents and construction cost estimates

Deliverable 2: Submit documents with a revised budget. The new budget will become the foundation for future grant reimbursements.

Benchmark 3: Construction of fish habitat structures

Scope of Work – Exhibit A

Project Payment and Reimbursement

Metro will reimburse Grant Recipient \$1.00 for every \$3.00 of out-of-pocket costs expended after the effective date of the Intergovernmental Agreement to complete the project, consistent with the original grant application, up to but not exceeding Metro's total grant award of Two Hundred Nine Thousand and 00/100 dollars (\$209,000). In no event shall Grant Recipient request or expect reimbursement from Metro in excess of that amount.

Payments will be processed as reimbursement for costs incurred and paid by the Grant Recipient.

RETAINAGE: Metro will reserve as retainage from any reimbursement payment an amount equal to five (5%) percent of the requested reimbursement amount. The retainage will not be disbursed to Grant Recipient until the Project is fully completed and finally approved by Metro. Following completion of the Project and approval by Metro, Metro will deliver to Grant Recipient the entire retainage as part of the final reimbursement payment.

To request the reimbursement of allowable expenses, Grant Recipient will complete Metro's Reimbursement Request Form and submit an itemized statement of work completed and an accounting of all expenses incurred during the current reimbursement period. A progress report shall accompany all reimbursement requests. The form, statement, and report shall be sent to:

METRO
ATTN: MARY ROSE NAVARRO
600 NE GRAND AVE
PORTLAND OR 97232-2736

Metro will make a reimbursement payment for those items identified in the Scope of Work or subsequent amendments to the Intergovernmental Agreement. Substitutions or changes of elements of the Project that have not been approved by Metro are not eligible for reimbursement.

Payment shall be made by Metro on a Net Thirty (30) day basis upon approval of reimbursement request.

Performance Measures

Grant Recipient shall monitor the Project for three consecutive years following the completion of the Project and report the following information to Metro upon completion of the Project.

- Performance Measure 1
Demonstrate that the project was constructed according to the intent of the design by submitting as-built plans. Develop a long-term monitoring plan that will determine

Scope of Work – Exhibit A



ATTACHMENT 1 GRANT APPLICATION



Metro

Nature in Neighborhoods Capital Grants Metro Contract # 032110
F-1 Cover Sheet

Letter of Interest
 Final Proposal

Project Name	Rock Creek Confluence Restoration Project		
Applicant Organization	Clackamas County Water Environment Services		
Contact Name	Gail Shaloum	Phone	(503) 742-4597
Address	150 Beaver Creek Rd, Oregon City, OR 97045		
Email	gshaloum@clackamas.us		
Public Agency (if different from applicant)			
Contact name		Phone	
Address			
Email			
Site Name	Rock Creek Confluence site	Address or Location	Lower 2,000 feet of Rock Creek from its mouth w/the Clackamas River

Evaluation criteria: ReNature ReGreen Both

Project Summary (50 words or less)

Improve fish and wildlife habitat by 1) installing large woody debris, 2) floodplain reconnection and 3) replacing invasive vegetation with native plants. Leverage existing partnerships and programs to control weeds, plant native vegetation and continue using site for environmental study by local schools in the WES-sponsored Watershed Health Curriculum.

Nature in Neighborhoods Capital Grant funding Request	\$ 150,000	If submitting more than one proposal, please rank this proposal in order of priority.	<input type="checkbox"/>
Total project cost	\$ 627,590		

We, the undersigned, attest that to the best of our knowledge the information in this application is true and that all signatories have authorization to submit this grant application to Metro's Nature in Neighborhoods Capital Grants Program.

Applicant	Organization Name	Clackamas County Water Environment Services (WES)	
	Printed Name	Mike Kuenzi, Director	
	Signature	<i>Mike Kuenzi</i>	Date 1-28-13

Rock Creek Confluence Restoration Project Proposal - Project narrative

I. Project description

Scope of work. Through partnerships between Clackamas County Water Environment Services (WES) and the non-profits Clackamas River Basin Council (CRBC) and SOLVE, the Rock Creek Confluence Restoration will implement resilient ecological enhancements along approximately 2,000 linear feet of stream in Rock Creek near its confluence with the Clackamas River. The improvements will include installing large woody debris, re-grading incised stream banks and replacing invasive vegetation with native plants. This project will provide environmental benefits to enhance fish and wildlife habitats through improved in-stream complexity, reconnection of the stream channel to its floodplain, reduced erosion, improved water quality and restoration of healthy riparian and upland areas. Additionally, this project will connect supportive partner groups and community volunteers during weed management and planting activities at the 9.3-acre site, much of which is covered in invasive understory plants.

WES has conducted a site-specific habitat assessment and hired a consultant to begin work on a 30 percent design. Preliminary design concepts from this effort include:

1. Place several log jams throughout the project area to increase the frequency, depth and quality of pools, provide in-stream habitats and complexity and reduce erosion in the riparian zone.
2. Connect the stream channel to its floodplain, providing opportunities for off-channel habitats and improving stream resiliency to flood events.
3. Grade and/or plant stream banks to reduce landslides triggered by stormwater discharges and stabilize stream banks.
4. Remove non-native invasive plant species in the riparian and upland areas.
5. Plant native vegetation to increase riparian habitat diversity.
6. Maintain accessibility for staff from WES, USGS and other groups that conduct a range of water quality, flow and biological monitoring at the site and for school groups using the site for environmental study.

At this time, WES has a conceptual plan with many elements still to be refined. Please see Attachment A for a preliminary concept plan and Attachment B for photographs of existing conditions. Preliminary quantities (subject to change as design progresses) include:

- Approximately 150 pieces of large woody debris (LWD)
- Approximately 700 cubic yards of material removed from the floodplain both from burying LWD and to provide off-channel habitats
- Approximately 12 acres of area covered by invasive vegetation to be removed
- Approximately 19,000 native trees, shrubs and live stakes to be planted
- Access road/trail for continued pedestrian access to the site
- Approximately 1,800 linear feet of fencing on south property boundary for safety and protecting vegetation
- In addition, costs will be incurred for consultant fees to cover hydrologic and hydraulic analyses, surveying, wetland and archaeological studies, design and permitting assistance. Required permits will include removal-fill permits from Oregon DSL and US Army Corps of Engineers, and local permits from the City of Happy Valley.

We anticipate the project will consist of the following professional services and construction tasks:

Rock Creek “primarily from changes in riparian vegetation and function, limited large wood and complexity in stream channels, and increased sediment delivery.”

Project background. WES prepared the Rock Creek Watershed Action Plan (WAP) in 2009 to help identify and prioritize watershed health activities and to guide investments. High priority stream reaches were identified based on watershed health conditions, potential partnering opportunities and results from an ODFW habitat assessment. This site was rated as one of the highest priority restoration areas by both the WAP and the ODFW assessment. In addition, CRBC’s 2005 Basin Action Plan identifies several high priority actions in the watershed including fish habitat restoration in the lower canyons of Rock Creek.

WES conducted a site-specific habitat assessment in June 2012 to identify detailed site improvements that would enhance fish and wildlife habitat. The resulting Rock Creek Concept Plan provides comprehensive information about the site conditions and priority management actions needed to protect and improve it. WES has also recently hired a consultant to complete a 30% design of the project. Using the Rock Creek Concept Plan and technical guidance from ODFW, CRBC and SOLVE, the following overall goals were identified:

- 1) Improve in-stream and riparian habitats and enhance ecological functions and diversity.
- 2) Provide watershed health awareness, stewardship and educational opportunities to local students.

WES is currently working with the non-profit organization SOLVE and local school groups to manage invasive species, plant native vegetation and improve riparian habitat at the site. WES and SOLVE have been working with students from local schools on the site for two years. Students visit the site as part of their Watershed Health Curriculum, developed for science teachers to use in schools within WES districts. They perform macroinvertebrate monitoring, water quality monitoring and other environmental health and stewardship studies. They also learn to identify native and invasive vegetation, and spend time improving the site by removing invasive species and planting native plants.

Efforts to address existing development not treated by structural stormwater BMPs & requirements for new development: Under the current WES design standards, new development and re-development are required to meet current water quality and flow control standards that meet the Districts’ current DEQ MS4 Permit requirements. Green infrastructure alternative controls are encouraged but not required.

Where feasible, WES constructs regional treatment facilities to improve water quality and flow control treatment in under-served areas. An example of this is the Carli Creek regional facility which is planned for construction in 2014. This facility will serve approximately 700 acres of industrial/commercial land use that currently has very poor water quality treatment due to the age of the existing development. The District continues to look for opportunities to retrofit areas with aging infrastructure to improve water quality in District streams. WES is also working on a proposed update to its stormwater management design standards, which includes Low Impact Development (LID), and is beginning the outreach process.

Community to benefit. Students in the North Clackamas School District (NCS D) engaged in WES’ Watershed Health Curriculum will directly benefit from this project. WES’ Watershed Health Education Program expands the conversation on environmentalism by targeting a socio-economically diverse audience of students by recruiting the teachers that teach science and giving them the tools and financial support to get their students into the field to learn about their watersheds. The students, in turn, will teach their families and the community. Students share their knowledge of watershed health issues through scientific papers, journaling, poetry, art, presentations, and public service announcement-style videos. NCS D students are approximately 67% white, 12%

III. Project feasibility

Design. Following a competitive process, WES has retained Henderson Environmental Design-Build to design up to the 30 percent level. Henderson is a design-build consulting firm with restoration design and construction experience in wetland and riverine habitats within the lower Willamette and Columbia River basins. Since 1997, they have served as either designer or prime contractor on many high profile and successful restoration projects. Their professional staff provides field assessment and analytical capabilities, hydraulic modeling, fluvial design, project communications, stakeholder consensus building and cost-estimating expertise. This firm provides a multi-disciplinary breadth of experience combined with local knowledge gained through previous work in the Clackamas Basin, and the relationships built with field and permitting representatives.

Nick Southall is the project manager for Henderson. He has over 12 years of experience designing and implementing habitat restoration projects throughout the Pacific Northwest. He has recently completed construction of WES's Mt Scott Creek project and is currently designing the Lower Columbia Estuary Partnership's Multnomah & Wankeena Creeks Restoration Project. Mr. Southall's professional experience includes groundwater, high flow and backwater channel creation, fish passage enhancements, wetland habitat design and dam removals. He has worked closely with tribal groups, municipalities, non-profit organizations and private landowners. As an Environmental Scientist, Nick has a diverse skill set, experienced both in the technical aspects of project design and as a project manager. Nick has completed multiple site assessments, topographic surveys, permit applications, developed and drafted construction design documents, erosion control plans and provided construction oversight. Nick has a strong understanding of working with a variety of disciplines and he integrates his fluvial geomorphic and natural resource knowledge into design development. Other team members include Matt Koozer and Shawn Stanley, PE, of Henderson and Matt Brennan, PE, of Herrera.

Future phases of the design may need to be competitively bid according to Clackamas County's local contract review board rules.

WES, its partners and consultant will also be conducting an alternatives analysis as part of the design process. We will consider the likely success of various design schemes as well as comparing those to a No Action alternative. In selecting the final alternative, we will consider a number of factors, such as how well the alternative meets the project goals, cost-effectiveness, logistical considerations, ability to be permitted, level of risk and likelihood of success.

Finally, Henderson is currently conducting scientific and engineering analyses on which to base the final design. These include a wetland assessment, an archaeological assessment, and hydrologic and hydraulic modeling. The modeling results will dictate the construction techniques that are needed to ensure the stability of LWD and any other structures placed in the stream or along the bank. The modeling effort will take into consideration likely future changes to stormwater flows to the creek as the watershed undergoes development.

To address these anticipated changes to stormwater flows, modeling will be performed for a range of conditions, including full build-out of the watershed, and engineers will select a range of values to use in designing the LWD installations. In addition, the LWD installations will likely be designed to extend up the bank a distance to retain resiliency and as a protective measure to address uncertainty as future development occurs.

Implementation plan. The following table shows our anticipated schedule for project implementation.

associated analyses. Following the 30% design, WES and CRBC plan to work together to submit grant applications to secure funds for construction, in addition to funding from WES and in-kind funding provided by the CRBC Shade Our Streams program. In addition to the Nature In Neighborhoods Capital Grants program, WES and CRBC plan to apply for grants from Oregon Watershed Enhancement Board-Restoration Grants and other sources (possibly TNC Salmon Fund and/or Oregon Wildlife Foundation and/or Clackamas Stewardship Partners). We hope to use the Nature in Neighborhoods funding to cover future design and permitting as well as some initial construction activities, weed control and re-vegetation, while the other grants will go toward remaining construction as match.

These organizations make a strong partnership and have the experience, capacity and ability to implement a successful project. WES has recently completed an in-stream restoration project in Mt. Scott Creek at North Clackamas Park and has worked with partners to control weeds and plant native vegetation over many acres during the past several years. WES has partnership agreements with six organizations for such activities. Gail Shaloum, WES Environmental Policy Specialist, will be the project manager for the design activities and be a close partner involved in all subsequent steps. Gail has a bachelor's degree in landscape architecture and a master's degree in environmental science, along with over 20 years of professional work in environmental design and natural resources. Gail is also managing the Mt. Scott Creek NIN grant. WES also has engineering staff available to assist if needed.

CRBC has completed several in-stream and riparian enhancement projects from concept to implementation throughout the Clackamas River watershed, such as the Lower Clear Creek project recently completed in partnership with Oregon Wildlife Heritage on Metro property. Jenny Dezso, CRBC Project Manager, will coordinate the in-stream construction and riparian revegetation portions of the Rock Creek project. Jenny has over 5 years of experience in natural resource management and has worked to plan and implement numerous large and small scale restoration projects on both public and private lands. These projects have included in-stream fish passage projects, in-stream enhancement projects and riparian revegetation projects.

The project team will also hire contractors with experience and expertise in stream restoration. We will work closely as a team and request further input from ODFW to achieve a high quality, long lasting project.

IV. Partnerships

Partners currently on-board include WES, SOLVE, CRBC, ODFW, the City of Happy Valley and one adjacent landowner (verbal agreement). Partners anticipated to be included in the future include adjacent landowners, including residents of the newly developing Windswept Waters subdivision.

Partner	Role	Current or future?
WES	Lead partner in design phase, landowner, provide Watershed Health Curriculum and training to teachers	Both
CRBC	Lead partner for in-stream construction and revegetation	Both
SOLVE	Lead partner in working with schools on site	Both
NCSD	Provide students ecological study and service opportunities, support science teachers using Watershed Health Curriculum	Both
City of Happy Valley	Outreach to property owners, especially residents of adjacent newly developing subdivision	Future
Neighboring residents	Potential volunteer opportunities, potential occasional recreational use.	Future

Rock Creek Confluence Restoration Project Proposal - Budget Documents

1. Budget narrative

WES, CRBC and Henderson LLC have estimated project costs based on recent costs for similar projects and best professional judgment. We have made several assumptions based on a concept plan for the project design at this time. The concept plan was developed by Henderson staff with input from WES, CRBC, SOLVE, ODFW and City of Happy Valley. Further design development will occur in the next few months.

Some of our assumptions are shown in the "Comments" column that we added to the line-item budget form. The costs for mobilization, grading and fish habitat structures were interpolated from costs on the recently completed Mt. Scott Creek Restoration Project and modified to the steeper site conditions and more difficult construction access at Rock Creek. We have tentatively assumed that approximately 150 pieces of LWD will be placed.

We have assumed that WES staff will lead design and permitting and CRBC staff will lead in-stream and revegetation activities. Both partners will work on grant applications.

Revegetation costs including weed removal, planting and maintenance are based on the existing CRBC 'Shade Our Streams' program per acre cost, with planting, maintenance and supply costs appropriate to the specific invasive species at the Rock Creek Confluence site. The revegetation project is focused on getting the plantings to a 'free to grow' state and includes two years of intensive site preparation (starting in summer 2013), high density planting and up to five years of post-planting treatments to ensure the health of new plantings and the removal of invasive species throughout the site. We have shown a total of three years of cost, in line with the granting time frame. While the 'Shade Our Streams' program will fund this work within a 50-foot buffer on each side of the stream, the project includes weed removal, planting and maintenance across the entire 9.3-acre site. If landowner permission is obtained, the project will also include these activities on approximately 2.5 acres of the adjacent site to the west. Both properties currently contain large, open areas of Armenian blackberry, thick ropes of English ivy and many other invasive plants in the existing forested understory or within the floodplain. We will examine the long-term likelihood of keeping invasives out of areas that are regularly inundated in selecting the exact extent of weed removal.

Explanation of key items:

Pre-agreement costs are included for an existing contract with Henderson LLC for background analyses and preliminary design. Also included is agency time for WES, CRBC and SOLVE, from the time between the invitation to submit a full application and the time that we anticipate a signed interagency agreement (IGA) to be signed. We have estimated this date at approximately April 1, 2013.

Post-agreement costs are for costs incurred once an IGA is in place.

Personnel costs include time for staff from WES, CRBC and SOLVE to participate. This time will be used as match and includes the following staff:

2. Line item budget

Please see attached Project budget form.

3. Statement of matching funds

WES and CRBC are close partners on the Rock Creek Restoration Project and plan to provide matching funds as follows:

- Partners will apply for a Restoration Grant through the Oregon Watershed Enhancement Board when next accepting applications, in April 2013. This project meets the Restoration Grant criteria very closely. We anticipate this grant will cover \$112,075 of construction costs.
- WES has already prepared a habitat analysis and concept plan and is currently funding background analyses and work for a consultant to complete a 30% design. The background analyses will include a topographic survey, hydrologic and hydraulic modeling, and an archaeological assessment. This work is planned for completion in June 2013.
- WES plans to budget approximately \$63,335 toward consultant costs and \$5,000 toward partner costs during Fiscal Year 2013-14, and \$150,000 during Fiscal Year 2014-15 toward construction costs. Construction is anticipated for summer 2014.
- Partners are currently exploring other grants to cover the remaining amount of the project costs in case the OWEB grant is not successful. We believe this project is a good match for a few potential sources, such as The Nature Conservancy Salmon Fund, U.S. Forest Service grants and Oregon Wildlife Foundation.
- WES currently funds SOLVE for work in this basin under our Rock Creek Partnership agreement. This site will constitute one of their sites under that agreement, which will cover SOLVE's work with schools.
- CRBC's in-kind contribution of \$30,180 is primarily through the Shade Our Streams revegetation program. Shade Our Streams provides vegetation restoration activities to riparian areas with limited stream shade and will include invasives species treatments, planting, monitoring, maintenance and staff time.

WES and its partners consider this project a high priority and are committed to its successful implementation. Please see the attached Statement of matching funds form.

F2 - Nature in Neighborhoods Capital Grants Match Form

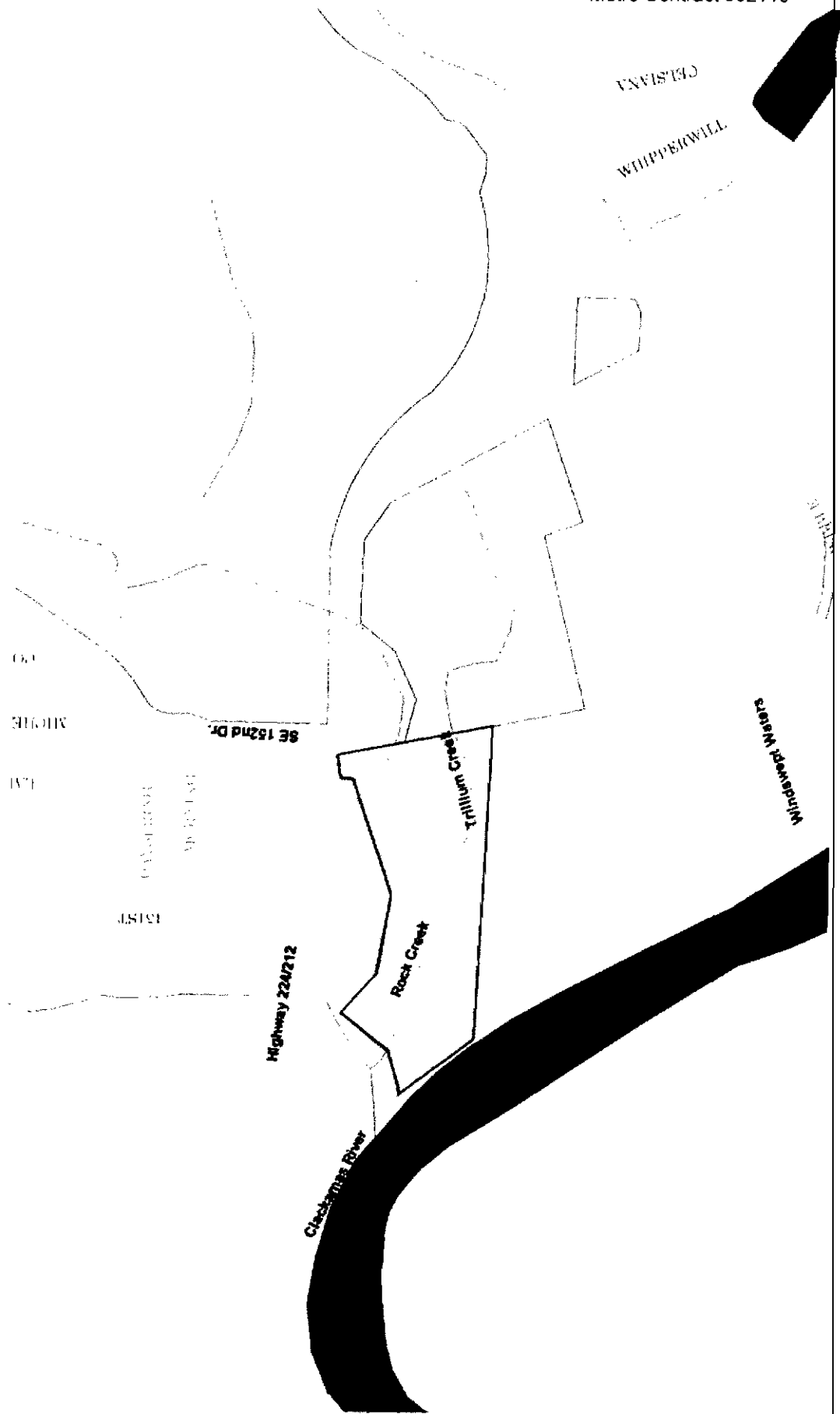
Instructions:

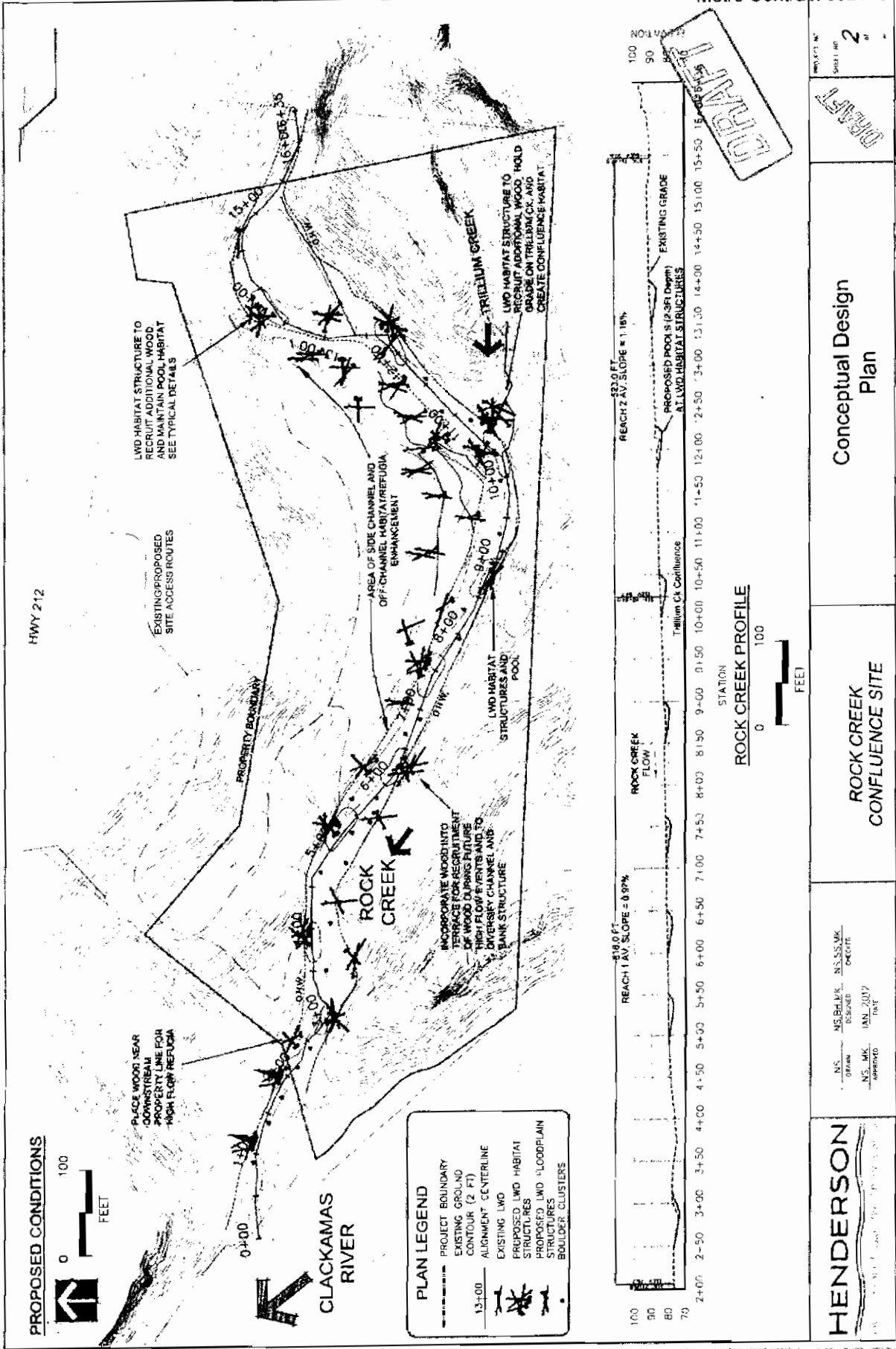
1. If utilizing volunteers, indicate this in the "Match Source" and choose the "In Kind" field and estimate the number of hours the volunteers will be contributing to the project. The "Amount" will be those hours multiplied by the hourly rate found at the Independent Sector website: www.independentsector.org/programs/research/volunteer_time.html.
2. If your "Match Source" is a professional or technical service received as "In Kind," use the market average or actual salary or bid for that individual or service. Use the "Notes" field to document your methodology.

Match Source	Choose One	Choose One	Amount	Notes
WES-funds to SOLVE & CRBC	<input type="radio"/> Financial	<input checked="" type="radio"/> In Kind	\$ 16,500	Secured for 2012-13, to be budgeted in future years (\$10,500-SOLVE, \$6,000-CRBC)
WES staff	<input type="radio"/> Financial	<input checked="" type="radio"/> In Kind	\$ 16,500	
WES-funds to consultant	<input checked="" type="radio"/> Financial	<input type="radio"/> In Kind	\$ 103,335	Secured for 2012-13, to be budgeted in future years
Volunteers	<input type="radio"/> Financial	<input checked="" type="radio"/> In Kind	\$ 40,000	
Agency staff-ODFW & City Happy Valley	<input type="radio"/> Financial	<input checked="" type="radio"/> In Kind	\$ 9,000	\$4K-ODFW, \$5K-Happy Valley
CRBC-Shade Our Streams, staff time & Implementation	<input type="radio"/> Financial	<input checked="" type="radio"/> In Kind	\$ 30,180	CRBC staff, Weed cntrl, planting, maint for 3 years (\$9K staff, \$21,180 implementation)
OWEB and other grant if needed	<input checked="" type="radio"/> Financial	<input type="radio"/> In Kind	\$ 112,075	
WES-funds for construction	<input checked="" type="radio"/> Financial	<input type="radio"/> In Kind	\$ 150,000	To be budgeted in future years
Total			\$ 477,590	

Location map-Rock Creek Restoration Project

Metro Contract 932110





DATE: 1/11/17
 SHEET NO: 2

Conceptual Design
 Plan

ROCK CREEK
 CONFLUENCE SITE

NS, MS, BK, MS, SS, MK
 DESIGNER CHECKER
 NS, MK
 APPROVED DATE: 1/11/17

HENDERSON
 CIVIL & ENVIRONMENTAL ENGINEERS

Attachment C. Cost estimate for post-agreement consultant work

Task 4. 60% Design Presentation, Review, & Revisions

Complete DRAFT 60% Habitat Restoration Plans will be presented to WES and project stakeholders for review. Project stakeholders will include but not be limited to:

- Water Environment Services
- HENDERSON-HERRERA design team
- Clackamas River Basin Council
- SOLVE
- Oregon Department of Fish and Wildlife (ODFW)
- Happy Valley Public Works
- Selected permitting agencies

WES will consolidated all review comments and provide to the HENDERSON for one round of edits. Comments will be incorporated into a FINAL 60% Habitat Restoration Plan Set.

Task 4 Cost \$4,854

Task 5. 60% Design Construction Cost Estimate

At the completion of 60% Designs, HENDERSON will prepare and deliver an Engineer's Construction Cost Estimate.

Task 5 Cost \$1,670

Task 6. Permitting – ALTERNATE IF TASK POSTPONED FROM 30% DESIGN

HENDERSON has a full appreciation for the permitting environment and detail required for grant applications. If selected, our permitting specialists will provide WES with a matrix that identifies project-specific permits required, jurisdictional contacts, and anticipated critical paths and schedules for permit approvals. At the completion of 30% Designs, HENDERSON will initiate preparation of draft permits (USACE, ODSL, City of Happy Valley) for WES approval. A Project Narrative will also be prepared to accompany the permits for review and approval. Once permits are submitted approval progress will be tracked and up to two site visits (total) will be scheduled prior to and/or during permit review.

Assumption: WES is responsible for all associated permit fees.

Deliverable: Permitting Matrix, Project Narrative, and Draft and Final Permit Submittals

Task 6 Cost: \$9,800

DESIGN BUILD TASKS 1-6 SUBTOTAL \$44,856

COMPLETION OF TASKS IF DESIGN-BUILD APPROACH SELECTED

ROCK CREEK CONFLUENCE STREAM RESTORATION PROJECT
1/24/2013



60% Design Cost Estimate/ Final Design Cost Estimate

DESIGN-BUILD/ 60% DESIGN COST ESTIMATE		Quantity	Unit	Cost per Unit	Total Cost
Task 1	Additional Survey Requirements				
	Principal - QA/QC	0	HRS	\$145	\$0
	Senior Water Resources Engineer	2	HRS	\$151	\$302
	Lead Restoration Designer	12	HRS	\$115	\$1,380
	Water Resources Engineer	12	HRS	\$95	\$1,140
	Restoration Ecologist	24	HRS	\$95	\$2,280
	Task Subtotal	50			\$5,102
Task 2	Hydraulic Analysis and Engineering consultation				
	Principal - QA/QC	2	HRS	\$145	\$290
	Senior Water Resources Engineer	12	HRS	\$151	\$1,812
	Lead Restoration Designer	4	HRS	\$115	\$460
	Water Resources Engineer	60	HRS	\$95	\$5,700
	Restoration Ecologist	16	HRS	\$95	\$1,520
	Task Subtotal	128			\$9,782
Task 3	60% Habitat Restoration Design Details				
	Principal - QA/QC	4	HRS	\$145	\$580
	Senior Water Resources Engineer	8	HRS	\$151	\$1,208
	Lead Restoration Designer	16	HRS	\$115	\$1,840
	Water Resources Engineer	40	HRS	\$95	\$3,800
	Restoration Ecologist	60	HRS	\$95	\$5,700
	Administrative - Clerical	8	HRS	\$65	\$520
	Task Subtotal	136			\$13,648
Task 4	60% Design Presentation, Review, & Revisions				
	Principal - QA/QC	2	HRS	\$145	\$290
	Senior Water Resources Engineer	4	HRS	\$151	\$604
	Lead Restoration Designer	8	HRS	\$115	\$920
	Restoration Ecologist	32	HRS	\$95	\$3,040
	Task Subtotal	45			\$4,854
Task 5	60% Design Construction Cost Estimate				
	Principal - QA/QC	2	HRS	\$145	\$290
	Lead Restoration Designer	12	HRS	\$115	\$1,380
	Task Subtotal	14			\$1,670
Task 6	Permitting				
	Principal - QA/QC	12	HRS	\$145	\$1,740
	Lead Restoration Designer	4	HRS	\$115	\$460
	Water Resources Engineer	24	HRS	\$95	\$2,280
	Restoration Ecologist	56	HRS	\$95	\$5,320
	Task Subtotal	96			\$9,800
COMPLETION OF DESIGN-BUILD TASKS				SUBTOTAL	\$44,856
FINAL DESIGN COST ESTIMATE					
Task 7	Final Design				
	Principal - QA/QC	4	HRS	\$145	\$580
	Senior Water Resources Engineer	4	HRS	\$151	\$604
	Lead Restoration Designer	16	HRS	\$115	\$1,840
	Water Resources Engineer	32	HRS	\$95	\$3,040
	Restoration Ecologist	20	HRS	\$95	\$1,900
	Administrative - Clerical	8	HRS	\$65	\$520
	Task Subtotal	84			\$8,484
Task 8	Final Design Bid Package Documentation				
	Principal - QA/QC	8	HRS	\$145	\$1,160
	Senior Water Resources Engineer	4	HRS	\$155	\$620
	Lead Restoration Designer	8	HRS	\$115	\$920
	Water Resources Engineer	12	HRS	\$95	\$1,140
	Restoration Ecologist	48	HRS	\$95	\$4,560
	Task Subtotal	80			\$8,400
Task 9	Final Design Construction Cost Estimate				
	Principal - QA/QC	8	HRS	\$145	\$1,160
	Lead Restoration Designer	16	HRS	\$115	\$1,840
	Task Subtotal	24			\$3,000
Task 10	Contractor Solicitation and Selection				
	Lead Restoration Designer	8	HRS	\$115	\$920
	Restoration Ecologist	16	HRS	\$95	\$1,520
	Task Subtotal	24			\$2,440
COMPLETION OF FINAL DESIGN TASKS				SUBTOTAL	\$22,324
GRAND TOTAL		682	HRS		\$67,180

ENGINEER'S CONSTRUCTION ESTIMATE



24-Jan-2013

PROJECT: ROCK CREEK HABITAT RESTORATION

WES PROJECT MANAGER: Gail Shaloum

Metro Contract 932110

Item #	Description	Quantity	Unit	Rate	Total
0	Construction Oversight-Not included in Construction Contract. Includes staking, oversight, and inspection reporting	1	LS	\$27,000.00	\$27,000
1	Mobilization, Traffic Control, Establish and Maintain Site Access, Material Staging, Equipment Fueling Areas ¹	1	LS	\$15,000.00	\$15,000
3	Work Zone Isolation and Dewatering ²	1	LS	\$25,000.00	\$25,000
4	Work Zone Clearing, Grubbing, and Disposal of Organics / Strippings ³				
5	Rock Creek Work Zone	2.0	AC	\$5,000.00	\$10,000
6	General Excavation				
7	Pool and LWD Habitat Structure Excavation	700	CY	\$48.50	\$33,950
8	Demolition and Reuse of Sustainable Materials (salvaged onsite Woody Debris, cobble, and Plant Materials) ⁴	1.0	LS	\$2,000.00	\$2,000
9	Log Habitat Structures				
	Imported LWD (LWD without Root Weeds)	58	EA	\$500.00	\$29,000
	Imported Logs with Root Weeds	58	EA	\$1,250.00	\$73,750
	Imported Pin Pile LWD	48	EA	\$375.00	\$18,000
	Imported Woody Brush, Slash, and Tree Tops	20	EA	\$200.00	\$4,000
	Ballast Rock	100	TN	\$50.00	\$5,000
	Boulder Ballast	50	EA	\$60.00	\$3,000
	Boulder Habitat Structures (3 boulders)	22	EA	\$300.00	\$6,600
10	Permanent Erosion and Sediment Control				\$0
	Seeding	2.0	AC	\$500.00	\$1,000
	Straw Wattles	3,000	LF	\$2.25	\$6,750
	Straw Mulch over Seed and All Disturbed Areas	3.0	AC	\$2,500.00	\$7,500
	TOTAL				\$267,550
	Contingency 20%				\$53,510
	Grand Total				\$321,060

NOTES:

¹ Includes sediment fence, exclusion zone fencing, tree protection fencing, and other temporary BMPs

² Gravity, Pumped, or bank isolation measures. Contractor to verify.

³ Includes removal of invasive species and hauling to approved dump

⁴ Contractor to salvage all onsite reusable woody debris, sod mats, and native plants at direction of Project Designer.

Rock Creek Confluence- Reveget Costs

Contract Services							Project Breakdown		
Unit	Year	Work Task	Approximate Completion Date/Deadline	Unit Number Units	Unit Cost	Extended Cost	WES- NIN	Shade- CRBC	Emmert- OWEB or NIN
Site Prep- year 1									
T1 & 3	-1	early site prep- mow/cut- BB, RCG, Ivy	August 1, 2013	AC 6.50	\$700.00		3.25	3.25	
T1 & 3	-1	early site prep- spray- BB, RCG	September 30, 2013	AC 6.50	\$4,550.00	\$2,275.00	\$2,275.00	\$2,275.00	
T1 & 3	-1	early site prep- spray- Ivy	December 1, 2013	AC 6.50	\$205.00	\$1,332.50	\$666.25	\$666.25	
T1 & 3	0	Site prep- broadcast seed some areas	March 1st, 2013	hr 8.00	\$205.00	\$1,332.50	\$666.25	\$666.25	
					\$29.00	\$232.00	\$116.00	\$116.00	
					TOTAL	\$7,447.00			
Site Prep- year 2									
T1-4 units	0	Site prep - mow/cut- BB, RCG	July 1, 2014	Ac 11.00	\$385.00	\$4,235.00	\$2,213.75	\$1,251.25	\$770.00
T1-4 units	0	Site prep - backpack area spray	September 30, 2014	Ac 11.00	\$205.00	\$2,255.00	\$1,178.75	\$666.25	\$410.00
T1-4 units	0	early site prep- spray- Ivy	December 1, 2014	Ac 11.00	\$205.00	\$2,255.00	\$1,178.75	\$666.25	\$410.00
					TOTAL	\$8,746.00			
Planting									
P1-4 units	1	Planting - bareroot	March 31, 2015	Ea 18,350.00	\$0.35	\$6,422.50	\$3,622.50	\$2,275.00	\$525.00
P1-4 units	1	Planting - add flags/stakes on 20% of plants	March 31, 2015	Ea 3,670.00	\$0.10	\$367.00	\$201.85	\$128.45	\$36.70
P1-4 units	0-1	Contractor Project Management	March 31, 2015	Hr 10.00	\$75.00	\$750.00	\$412.50	\$262.50	\$75.00
					TOTAL	\$7,539.50			
Maintenance/ Plant Establishment									
T1-4 units	1	Maintenance - row or ring spray- RCG	May 1, 2015	Ac 11.00	\$215.00	\$2,365.00	\$1,229.80	\$709.50	\$425.70
T1-4 units	1	Maintenance - mow/cut- all	August 15, 2015	Ac 11.00	\$315.00	\$3,465.00	\$1,801.80	\$1,039.50	\$623.70
T1-4 units	1	Maintenance - spot spray- BB, Ivy	September 30, 2015	Ac 11.00	\$215.00	\$2,365.00	\$1,229.80	\$709.50	\$425.70
T1-4 units	2	Maintenance - row or ring spray- RCG	May 1, 2016	Ac 9.00	\$215.00	\$1,935.00	\$1,006.20	\$580.50	\$348.30
T1-4 units	2	Maintenance - mow/cut- all	August 15, 2016	Ac 9.00	\$315.00	\$2,835.00	\$1,474.20	\$850.50	\$510.30
T1-4 units	2	Maintenance - spot spray- BB, Ivy	September 30, 2016	Ac 9.00	\$215.00	\$1,935.00	\$1,006.20	\$580.50	\$348.30
T1-4 units	3	Maintenance - row or ring spray- rcg	July 1, 2017	Ac 7.00	\$215.00	\$1,505.00	\$451.50	\$1,063.50	\$1,543.50
T1-4 units	3	Maintenance - mow/cut- bb, ivy, rcg	April 1, 2017	Ac 7.00	\$315.00	\$2,205.00	\$661.50	\$1,543.50	\$1,053.50
T1-4 units	3	Maintenance - spot spray- BB, Ivy	September 30, 2017	Ac 7.00	\$215.00	\$1,505.00	\$451.50	\$1,063.50	\$1,543.50
T1-4 units	2-3	Contractor Project Management	September 30, 2017	Hr 10.00	\$75.00	\$750.00	\$225.00	\$225.00	\$525.00
					TOTAL	\$20,865.00			
Total Contractor Cost							\$20,279.60	\$15,232.70	\$9,084.20

Notes
(acres)
Includes all site areas except for SOLVE volunteer area (0.8 AC)

(acres)

Density: 1800/ac on wes, 2000/ac on Shade, 1500/ac on Emmert

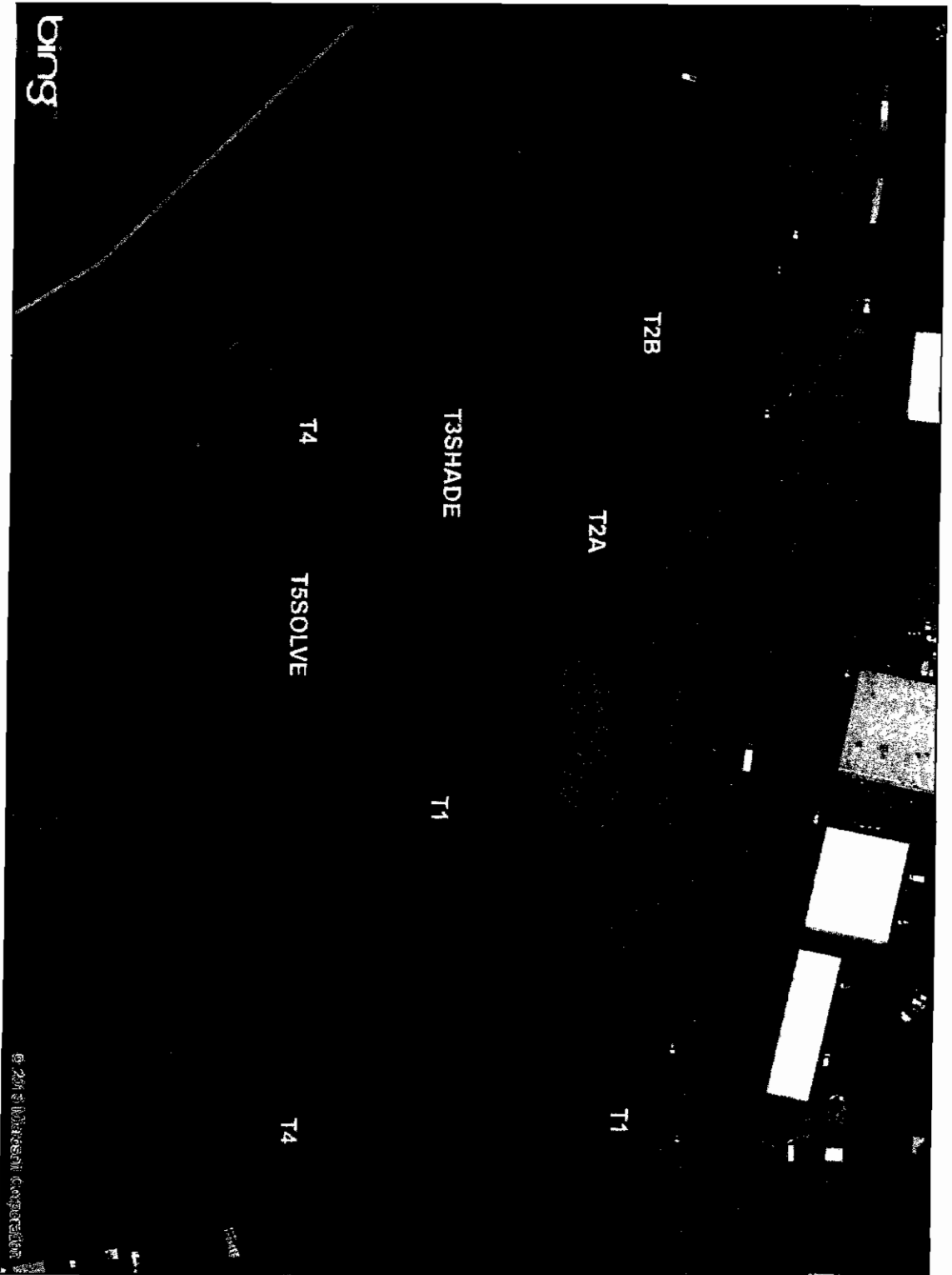
(acres)

Rock Creek Confluence- Reveg Costs

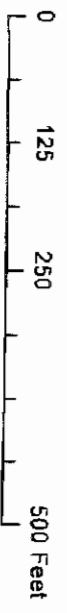
Site	Item	Year	Unit	Number Units	Unit Cost	Extended Cost	Project Breakdown		
							WES- NIN	Shade- CRBC	Emmert- NIN or OWEB
Site Prep & Planning							5.75	3.25	2
all	Design/ Instream JD	-1	Hr	100	\$32.00	\$3,200.00	\$1,664.00	\$960.00	\$576.00
all	Reveg planning JD	-1	Hr	100	\$32.00	\$3,200.00	\$1,664.00	\$960.00	\$576.00
all	Crew Coordination ZB	-1	Hr	50.00	\$26.00	\$1,300.00	\$676.00	\$390.00	\$234.00
	TOTAL					\$7,700.00			
Instream & Planting (2 years)							5.75	3.25	1
all	Instream imp. JD	0	Hr	150	\$32.00	\$4,800.00	\$2,784.00	\$1,536.00	\$480.00
all	Reveg planning JD	0-1	Hr	50	\$32.00	\$1,600.00	\$928.00	\$512.00	\$160.00
all	Crew Coordination ZB	0-1	Hr	50.00	\$26.00	\$1,300.00	\$754.00	\$416.00	\$130.00
	TOTAL					\$7,700.00			
Maintenance/Plant Establishment/Reporting							5.75	3.25	2
all	Project Coordination- JD	1-5	Hr	150.00	\$32.00	\$4,800.00	\$2,496.00	\$1,440.00	\$864.00
all	Crew Coordination- ZB	1-5	Hr	220.00	\$26.00	\$5,720.00	\$2,974.40	\$1,716.00	\$1,029.60
all	Office planning/mtns	1-5	Hr	50.00	\$32.00	\$1,600.00	\$832.00	\$480.00	\$288.00
all	Post monitoring/ reporting	1-5	Hr	50.00	\$32.00	\$1,600.00	\$832.00	\$480.00	\$288.00
	TOTAL					\$13,720.00			
	TOTAL					\$29,120.00	\$15,604.40	\$8,890.00	\$4,625.60

Site	Item	Year	Unit	Number Units	Unit Cost	Extended Cost	WES- NIN	Shade- CRBC	Emmert- OWEB
Site Prep & Planning									
	Travel	-1	Mi	300.00	\$0.57	\$169.50			
	TOTAL					\$169.50			
Instream & Planting (2 years)									
	Travel	0-1	Mi	375.00	\$0.57	\$211.88			
	TOTAL					\$211.88			
Maintenance/Plant Establishment/Reporting									
	Travel	1-5	Mi	600.00	\$0.57	\$339.00			
	TOTAL					\$339.00			
	TOTAL					\$720.38	\$240.13	\$240.13	\$240.13

Rock Creek Treatments



Metro Contract 932110



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Beyond clean water.

13

Water Quality Protection
Surface Water Management
Wastewater Collection & Treatment

Michael S. Kuenzi, P.E.
Director

July 18, 2013

Board of Commissioners
Clackamas County

Members of the Board:

**APPROVAL OF AN INTERGOVERNMENTAL AGREEMENT BETWEEN
NORTH CLACKAMAS PARKS AND RECREATION DISTRICT (NCPRD) AND CLACKAMAS
COUNTY SERVICE DISTRICT NO. 1 (CCSD#1) FOR MAINTENANCE ACTIVITIES ON
DESIGNATED CCSD#1-OWNED RESOURCE PROPERTIES**

Purpose/Outcomes	Agreement between CCSD#1 and NCPRD to furnish management and maintenance services for the Three Creeks natural areas owned by CCSD#1.
Dollar Amount and Fiscal Impact	The maximum contract value is \$56,600. The agreement is budgeted through the CCSD#1 Surface Water Management 2013-2014 operations fund w/ the option to extend.
Funding Source	CCSD#1 Surface Water Operations FY2013-14 Budget - no County General Funds are involved.
Safety Impact	None
Duration	Effective July 1, 2013 and terminates on June 30, 2014
Previous Board Action	N/A
Contact Person	Carol Murdock WES Surface Water Program Manager - 742-4581
Contract No.	N/A

BACKGROUND:

In early 2013, three parcels of property within the Three Creeks area were conveyed to Clackamas County Service District No. 1 (CCSD#1) by the "County" to hold in perpetuity as a natural and watershed management area. Historically, the North Clackamas Parks and Recreation District (NCPRD) and District staff have work together on this site to maintain the natural resources and ensure safe public access. This informal partnership has proven to be a cost effective way to manage and maintain the integrity of the natural areas

Now that the properties are an asset of CCSD#1, staff has proposed that NCPRD enter into an intergovernmental agreement with CCSD#1 to directly manage the day-to-day activities on the sites to protect the Districts interests and support reasonable and safe public access to these properties for passive recreation, environmental restoration, vegetative maintenance and environmental education activities.

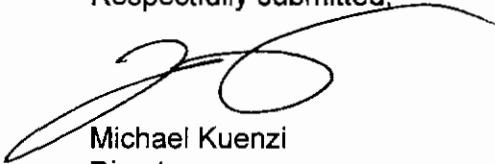
Under the proposed agreement, activities and required funding will be pre-approved by CCSD#1 staff and will be performed by NCPRD staff and reported to CCSD#1. The reports will be used to determine the cost-effectiveness vs. cost incurred. The duration of project will be fiscal year 2013-2014 with an option to extend the agreement in the future should this

arrangement work for both parties. This contract has been reviewed and approved by County Counsel.

RECOMMENDATION:

Staff recommends the Board approve the Intergovernmental Agreement between North Clackamas Parks and Recreation District and Clackamas County Service District No. 1 for Maintenance Activities on Designated CCSD#1-Owned Resource Properties and authorize the WES Director to execute the agreement on behalf of Clackamas County Service District No. 1, and authorize the Director of BCS, to execute the agreement on behalf of the North Clackamas Parks and Recreation District.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Michael Kuenzi', with a long, sweeping flourish extending to the right.

Michael Kuenzi
Director

**INTERGOVERNMENTAL AGREEMENT
BETWEEN
NORTH CLACKAMAS PARKS AND RECREATION DISTRICT
AND
CLACKAMAS COUNTY SERVICE DISTRICT #1**

1. Purpose

- A. This intergovernmental agreement ("Agreement") is entered into between the North Clackamas Parks and Recreation District ("NCPRD") and the Clackamas County Service District #1 ("CCSD#1"), both service districts formed under ORS chapter 451, to ensure the cooperation of these units of local government under the authority of ORS 190.010.
- B. This Agreement provides the basis for a cooperative working relationship for the purpose of undertaking public projects aimed at improving water quality, managing storm water runoff, enhancing natural resource areas, and providing public access for passive recreation and environmental education activities. Specific sites include:

- (1) North Clackamas Park, Owned by the City of Milwaukie and managed by NCPRD
- (2) 3-Creeks Natural Area and adjacent Costco Trail, Owned by CCSD #1
- (3) Rose Creek Natural Area Owned by CCSD #1

NCPRD and CCSD#1 are entering into this Agreement to ensure that past and future investments in these public assets will be protected. The specific projects and obligations of the parties are described in Exhibit 1 attached hereto and are collectively referred to herein as the "Projects."

2. Scope of Cooperation

- A. Each party agrees to complete the work, make payments, provide necessary staff and equipment, and undertake any other steps necessary in order to fulfill their obligations related to the projects as described in Exhibit 1 hereto.
- B. As to all of the Projects, CCSD#1 agrees to:
 - i. Work with NCPRD staff to finalize Projects annual plans and budget.
 - ii. CCSD#1 staff will determine if annual Project deliverables meet the goals and review and provide comments on reporting.
 - iii. Attend public and partner meetings, if appropriate, with NCPRD staff to provide information about Projects and review progress.

- iv. Review and provide feedback, including adaptive management strategies, on all annual plans and budget for the Projects.
 - v. Allow NCPRD reasonable access to or through CCSD#1 property when requested for the purpose of performing work necessary to complete the Projects.
 - vi. Comply with the terms and obligations set forth in Exhibit 1 hereto.
- C. As to all of the Projects, NCPRD agrees to:
- i. Work with CCSD#1 staff to finalize Project annual plans and budget.
 - ii. Manage the Projects work including subcontractors and volunteers, where appropriate, and to complete agreed upon planned annual Project work in partnership with CCSD#1.
 - iii. Ensure that Project deliverables meet goals and that all reporting contains agreed upon details and information.
 - iv. Attend public and partner meetings, if appropriate, with CCSD#1 staff to provide information about Projects and review progress.
 - v. Review and provide feedback, including adaptive management strategies, on all annual plans and budget for the Projects.
 - vi. Comply with the terms and obligations set forth in Exhibit 1 hereto.

3. Compensation

- A. Parties will make payments in the amounts specified in Exhibit 1 attached hereto.
- B. Payments are due to the receiving party within thirty (30) days of issuance of an invoice by the party entitled to the payment.
- C. In the event that, due to unforeseeable circumstances, the Projects cannot be completed with the funds contemplated by this Agreement, NCPRD and CCSD#1 will jointly determine the priorities of the improvements to be made within funding limits.
- D. In the event NCPRD and CCSD#1 agree to increase the funds available for the completion of the Projects, the party providing such funds shall formally notify that increased funds are available.

4. Liaison Responsibility

Liaison from CCSD#1 for the Projects will be:

Carol Murdock
Surfacewater Program Manager
Clackamas County Water Environment Services
150 Beaver Creek Rd. Oregon City, OR 97045
503-742-4581
Carolmur@clackamas.us

Liaison from NCPRD for the Projects will be:

Tonia Burns
150 Beaver Creek Road
Oregon City, OR 97045
503-742-4357
tburns@clackamas.us

5. Other Terms

- A. Compliance with Laws. County and CCSD#1 agree to comply with all applicable local, state, and federal ordinances, statutes, laws and regulations.
- B. No Assignment. This Agreement may not be subcontracted, assigned or transferred by either party without the express written consent of the other party.
- C. Entire Agreement; Amendment. This Agreement and the exhibits hereto constitute the entire agreement between the parties, and may be modified only in writing signed by both parties. This Agreement may be amended at any time with the written agreement of both parties.
- D. Indemnification. Subject to the limitations of the Oregon Tort Claims Act and the Oregon Constitution CCSD#1 agrees to indemnify, defend and hold harmless NCPRD and their officers, agents and employees against all liability, loss and costs arising from actions, suits, claims or demands attributable solely and exclusively to acts or omissions of CCSD#1, and CCSD#1's officers, agents and employees, in performance of this Agreement.

Subject to the limitations of the Oregon Tort Claims Act and the Oregon Constitution, NCPRD agrees to indemnify, defend and hold harmless CCSD#1 and their officers, agents and employees against all liability, loss and costs arising from actions, suits, claims or demands attributable solely and exclusively to acts or omissions of NCPRD, and NCPRD's officers, agents and employees, in performance of this Agreement.

- E. **Insurance.** Prior to beginning any work on CCSD#1 property or using any CCSD#1 property as access to reach construction sites, NCPRD shall obtain, at their expense, and keep in effect during the term of this contract, Commercial General Liability Insurance covering Bodily Injury and Property Damage on an "occurrence" form in the amount of not less than \$1 Million per occurrence/\$2 Million general aggregate for the protection of NCPRD, its officers, commissioners, and employees. Alternatively, NCPRD may maintain self-insurance funding in an amount that is acceptable to CCSD#1. Insurance coverage that is maintained by NCPRD shall include Contractual Liability insurance for the indemnity provided under this Agreement.

This policy(s) or self-insurance fund shall act as the primary insurance with respect to NCPRD. Any insurance or self-insurance maintained by NCPRD shall be excess and shall not contribute to it. Proof of such insurance or self-insurance funds shall be provided to CCSD#1 upon request.

6. **Term of Agreement.** This Agreement becomes effective July 1, 2013 and shall continue through June 30, 2014. The Agreement shall automatically renew on July 1 of each year, unless either party provides written notice to the other party requesting termination of the Agreement under Section 8 below.
7. **Amendment.** This Agreement may be amended as a whole or in part at any time in writing by mutual agreement by the parties.
8. **Termination.** This Agreement may be suspended or terminated prior to the expiration of its term by:
- A. Thirty (30) days written notice without cause by either party; or
 - B. Immediately upon written notice provided by either party resulting from material failure by the other party to comply with any term of this Agreement.

NCPRD

CCSD#1

By: _____

By: _____

Name:

Name:

Title:

Title:

Date: _____

Date: _____

Attest: Recording Secretary

Attest:

Date

Date

Approved as to form

Approved as to form

**EXHIBIT 1
NATURAL AREA PROJECTS**

1. General Projects Description. NCPRD and CCSD#1 have been working to enhance the natural resources at North Clackamas Park, the 3-Creeks Natural Area, and the Rose Creek Natural Area.

3-Creeks: CCSD#1 has recently taken ownership of the 3- Creeks Natural Area tax lot (22E05 00200). As part of the Agreement, NCPRD needs access to this tax lot to complete the work outlined in the budget document following (Table 1). The primary tasks associated with this project for the fiscal year 2013-2014 will be to control illegal uses of the natural area, including the surveying and maintenance of these illegal uses in partnership with the Sherriff's office. In addition, NCPRD will be maintaining priority EDRR invasive species and performing other baseline site restoration functions.

North Clackamas Park: This Agreement will continue the NCPRD and CCSD#1 partnership on the Mount Scott Creek Education and Enhancement project partnership through support of ongoing monitoring and maintenance activities in this project area. CCSD#1 will support the on-going maintenance of the newly planted areas for a period of three years.

Rose Creek Natural Area Project:

This Agreement will continue the NCPRD and CCSD#1 partnership on the Rose Creek Natural Area project partnership through support of ongoing monitoring and maintenance activities in this project area.

2. Compensation. CCSD#1 has agreed to compensate NCPRD not to exceed \$56,600.00 (for staffing, materials and tasks associated with the above described work – as outlined in the attached Agreement budget, Exhibit 2). NCPRD will provide CCSD#1 with a project completion budget summary and any other documentation that is needed to complete the work.

3. Project specific obligations of CCSD#1.

CCSD#1 agrees to:

- a. Obtain all necessary permits for all proposed work in the North Clackamas Park, Rose Creek Trail and the 3-Creeks Natural Area associated with the work Agreement;
- b. Allow NCPRD full access to 3-Creeks Natural Area so that NCPRD can manage natural resource elements within taxlot (22E05 00200);
- c. Provide NCPRD, with as built drawings for the completed improvements in North Clackamas Park; and

- d. Support the on-going enhancement and maintenance of the North Clackamas Park, Rose Creek Trail and the 3-Creeks Natural Area. Such support will be in form of payments to NCPRD not to exceed \$56,600 during Fiscal Year 2013-2014. Payment will be based upon agreed upon invoice cost, unless otherwise agreed to in writing by the parties.

4. Project specific obligations of NCPRD.

NCPRD agrees to:

- a. Provide staffing and complete tasks as outlined in the budget document following (table1);
- b. Work with CCSD#1 to obtain all necessary permits for all proposed work in the North Clackamas Park, Rose Creek Trail and the 3-Creeks Natural Area associated with the work Agreement; and
- c. Provide CCSD#1 with annual written plan and cost estimate for the natural area restoration and maintenance work associated with the North Clackamas Park, Rose Creek Trail and the 3-Creeks Natural Area.

Natural Area Management agreement between NCPRD and CCSD#1

	NRC		NR lead tech		NR Tech		Total
Total cost approx	100,000		70,000		35,360		
	60.0		34.00		20		
Managing** work at 3-creeks (contracted work crews, volunteer events, data management, reporting) (89 ac)	65	\$ 3,900.00	155	\$ 5,270.00	125	\$ 2,500.00	\$ 11,670.00
Implementing** work at 3-creeks (89 ac) (monitoring illegal uses, maintaining signs, correcting impacts)			100	\$ 3,400.00	125	\$ 2,500.00	\$ 5,900.00
Half of Vacation/sick			120	\$ 4,080.00			\$ 4,080.00
NCP Mt Scott Creek Project Maint (5-10 ac)	5	\$ 300.00	50	\$ 1,700.00	50	\$ 1,000.00	\$ 3,000.00
Rose Creek Site Maint (1-2 ac)	10	\$ 600.00	25	\$ 850.00	50	\$ 1,000.00	\$ 2,450.00
	80	\$ 4,800.00	450	\$ 15,300.00	350	\$ 7,000.00	\$ 27,100.00

**Managin and implementing work include trash removal, weeding, and limited planting

- Overhead costs \$ 7,000.00
- Vehicle, gas, equipment \$ 2,000.00
- Misc Contracted Services \$ 9,000.00
- Dump fees (trash) \$ 1,500.00
- Signage \$ 1,500.00
- Supplies and materials (plants, tubes, herbicides, tools etc.) \$ 8,500.00
- \$6,000-plants (about 8,000 plants)
- \$1,750- tubes/stakes
- \$750 herbicides/PPE

Note*with a "normal" planned full scale rehabilitation project we would recommend many more plants per acre, supplies etc. This small request is based on the fact that with limited funding we can use in house staff to slowly work on the site and rehabilitate it over time. Riparian rehabilitation plans typically propose approx 4,500 plants per acre. Due to the fact that 3-creeks, NCP and Sieben have some areas with native vegetation the plants requested will be planted among areas with some native vegetative cover. The interplanting in combination with weed control should help achieve a desired result over time . However, it needs to be reiterated that this effort will only be able to rehabilitate a small portion of these sites and or just complete baseline maintenance needs.

\$ 56,600.00



**WATER
ENVIRONMENT
SERVICES**

Beyond clean water.

14

Water Quality Protection
Surface Water Management
Wastewater Collection & Treatment

Michael S. Kuenzi, P.E.
Director

June 18, 2013

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of a Construction Services Contract between Clackamas County Service District No. 1 and T. Edge Construction Inc., for the Echo Valley Meadows Wetlands Restoration Project

Purpose/Outcomes	Approval of a construction contract for the Echo Valley Meadows Wetland Restoration project.
Dollar Amount and Fiscal Impact	CCSD#1 will contribute an amount not to exceed \$189,625.00.
Funding Source	CCSD#1 FY2013-14 budget - no County General Funds are involved.
Duration	Effective August 1, 2013 and terminates on October 31, 2013
Contact Person	Leah Johanson PE, Project Manager – 503-742-4620
Contract No.	N/A

BACKGROUND:

Clackamas County Service District No. 1(CCSD#1) identified a need for a wetland restoration project on several adjacent properties owned by CCSD#1 in the Echo Valley Meadows subdivision. The existing stormwater infrastructure was not sized nor designed for the volume of flows it currently sees during the wet weather season. Increased development in the basin has resulted in significant erosion of the downstream channel bank increasing the potential for damage to surrounding residents. Staff has proposed a capital restoration effort to mitigate the existing soil erosion, stabilize the downstream stream embankment and restore some measure of pre-development wetland functions on the CCSD#1 owned properties. In addition, the effort will enhance the water quality treatment of storm water runoff in the area. Staff has secured the necessary permits from Department of State Lands to perform the work.

The effort had been identified within the CCSD#1 five-year capital program with a total project cost of \$750,000 for this four-year effort. Funds were allocated to initiate the construction in the approved FY2013-14 budget. Construction bids were advertised in accordance with Local Contracting Review Board Rules in June 2013 and staff received four bids. T. Edge Construction Inc. was identified as the apparent low bidder at \$189,624. Staff anticipates total project costs including planning, design, permitting, project and construction management, and monitoring of the restoration effort should come in at approximately \$350,000

RECOMMENDATION:

Staff recommends the Board approve the Construction Services Contract between Clackamas County Service District No. 1 and T. Edge Construction Inc. for the Echo Valley Meadows Wetland Restoration project and authorize the WES Director to accept the bid and execute the contract for the restoration construction.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Mike Kuenzi", with a long horizontal flourish extending to the right.

Mike Kuenzi
Director

SECTION 00500

AGREEMENT

THIS AGREEMENT is dated as of the ____ day of _____ in the year 2013 by and between the Clackamas County Service District #1 (hereinafter called OWNER) and T E D S E C O N S T R U C T I O N , I N C . (hereinafter called Contractor).

OWNER and Contractor, in consideration of the mutual covenants hereinafter set forth, agree as follows:

Article 1. WORK

- 1.1 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

Procurement of materials for and construction of the Echo Valley Meadows Restoration Project.

Article 2. THE PROJECT

The Project for which the Work is described in the Contract Documents.

Article 3. ENGINEER

- 3.1 The term Engineer is defined in the Supplementary Conditions.
- 3.2 Engineer is to act as OWNER's representative, assume all duties and responsibilities and have the rights and authority assigned to Engineer in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

Article 4. CONTRACT TIMES

- 4.1 All time limits for milestones, if any, substantial completion, and completion and readiness for final payment are stated in the Contract Documents and are of the essence of the Contract.
- 4.2 The Contractor shall commence work within 10 calendar days after receipt of written Notice-to-Proceed. Contractor shall substantially complete the Work within 150 calendar days of Notice-to-Proceed, and the Work shall be completed and ready for final payment in accordance with Paragraph 14.07 of the General Conditions within 180 calendar days after Notice-to-Proceed, but no later than September 30, 2014. However, all **in-water work must be completed by September 15, 2013**, or the date designated by Oregon Department of Fish and Wildlife (ODFW) as the end of the allowable in-water work period. ODFW may extend the in-water work window as the season progresses. The written notice to proceed will be forwarded to the Contractor after the Contractor submits the signed Agreement, Performance Bond and Payment Bond, and Certificate of Insurance to the OWNER and these documents have been approved as to form by the OWNER's attorney, signed by the OWNER.

4.3 Contractor and OWNER recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss if the Work is not completed within the times specified in Paragraph 4.2 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by OWNER if the Work is not completed on time. Accordingly, instead of requiring any such proof, OWNER and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay OWNER Five Hundred Dollars (\$500.00) for each calendar day that expires after the time specified in Paragraph 4.2 above for Substantial Completion until the Work is substantially complete. After Substantial Completion, if Contractor shall neglect, refuse or fail to complete the remaining Work within the 180 days specified in paragraph 4.2 above for completion and readiness for final payment or any proper extension thereof granted by OWNER, Contractor shall pay OWNER Five Hundred Dollars (\$500.00) for each calendar day that expires after the time specified in Paragraph 4.2 above for completion and readiness for final payment, plus any fees or penalties imposed by regulators for other violations.

Article 5. CONTRACT PRICE

OWNER shall pay Contractor for completion of the Work in accordance with Contract Documents an amount in funds equal to the sum of the amounts determined pursuant to the paragraphs below:

Unless changes and alterations in the Plans, quantities or details of construction materially change the character of the work to be performed or the unit costs thereof, the Contractor shall accept as payment in full, so far as contract items are concerned, payment at the same unit prices as are provided under the Contract for the accepted quantities of work done.

If, however, changes and alterations in the Plans, quantities or details of construction materially change the character of work or unit costs thereof, compensation for such work will be made on such basis as may be agreed upon in advance of performance of work, or in case no such basis has been agreed upon, then an allowance may be made, either for or against the Contractor. Payment will be made at unit prices only for work actually performed or materials actually furnished according to actual measurement. If the amount of any major work item changes by more than 25% except as noted, compensation for all work that differs from the original estimated quantities for that work item may be made on such basis as may be agreed to in advance of performance of work, or in case no such basis has been agreed upon, an allowance may be made, either for or against the Contractor in such amount as the Engineer determines is fair and equitable. For the purpose of this Section, a major work item is defined as an item that constitutes at least 10% of the total contract bid amount based on either the estimated original quantities or the actual quantities and Contractor's original Bid prices.

If the Contract is done on a lump sum basis, the adjustment for increases or decreases may be based, at the sole discretion of the Engineer, on a theoretical unit price. This price will be determined by dividing the Contractor's applicable breakdown category price by the estimated quantities of all units of work within the applicable breakdown category.

Bidder must include in their Bid prices the entire cost of the work set forth in the Bid.

The Contract Price is the total price stated in Contractor's Bid, attached hereto as an exhibit.

Article 6. PREVAILING WAGE RATES

- 6.1 CONTRACTOR agrees that the provisions required by ORS 279C.830 pertaining to CONTRACTOR's payment of prevailing wage rates shall be included as part of this Agreement. Each worker in each trade or occupation employed in the performance of the contract either by the CONTRACTOR, subcontractor or other person doing or contracting for whole or any part of the work on this contract, shall be paid not less than the applicable prevailing wage in effect for this contract.

Article 7. PAYMENT PROCEDURES

7.1 Progress Payments and Retainage

- A. Payment for all work under the Contract will be made at the price or prices bid, and those prices shall include full compensation for all incidental work.
- B. If the Contract is for a public work and the Contract price is \$10,000.00 or more, supply and file, and require every Subcontractor to supply and file, with the OWNER and with the Wage and Hour Division, Bureau of Labor and Industries, 1400 S.W. Fifth Avenue, Portland, Oregon 97201, a statement in writing that conforms to the requirements of ORS 279C.854. The schedule for submitting payroll information is as follows: Once before the first payment and once before the final payment is made; in addition, for projects exceeding ninety (90) days for completion, submissions are to be made at ninety (90) day intervals.
- C. Make progress estimate of work performed in any calendar month and submit to the Engineer for approval by the 5th day of the following month. These estimates shall include value of labor performed and materials incorporated in the work since commencing work under the Contract. Such estimates need not be made by strict measurements and may be approximate only, and shall be based upon the whole amount of money that will become due according to terms of the Contract when Project has been completed.
- D. If the Contract price is determined, in whole or in part, on a Lump Sum basis, prepare an itemized cost breakdown relating thereto and have the Engineer approve in accordance with Division 1 requirements; progress estimates based on said itemized cost breakdown may be the basis for progress payments. Upon direction by the Engineer provide for revision of the costs breakdown to reflect the true costs of the work as it progresses.
- E. If the Contract price is determined wholly on a unit basis, Engineer may use Unit Prices bid in making progress estimates on the work. In case said Unit Prices do not, in the opinion of the Engineer, truly represent actual relative

costs of different parts of work, a percentage of the Unit Price may be used in making progress estimate adjustments.

- F. If the OWNER receives written notice of any unsettled claims for damages or other costs due to Contractor's operations including, without limitation, claims from any County Department or other governmental agency, an amount equal to the claim may be withheld from the progress or final payments until such claim has been resolved to the satisfaction of Engineer.
- G. Progress payments will be made by OWNER on a monthly basis within thirty (30) days after receipt of the Contractor's estimate of work performed, or 15 days after the payment is approved by the Engineer, whichever is the earlier date. Negotiable warrants will be issued by OWNER for the amount of the approved estimate, less five percent (5%) retainage. Such amount of retainage shall be withheld and retained by OWNER until it is included in and paid to Contractor as part of the final payment of the Contract amount. Securities in lieu of retainage will be accepted, or if Contractor elects, retainage as accumulated will be deposited by OWNER in an interest-bearing account pursuant to ORS Chapter 279 for progress payments. After fifty percent (50%) of the Work under Contract is completed, and the Work is progressing satisfactorily, the OWNER may elect to eliminate further retainage on any remaining monthly Contract payments. Said elimination or reduction of retainage shall be allowed only upon written application by the Contractor, which application shall include written approval of the Contractor's Surety.
- H. The Engineer may decline to approve an application for payment and may withhold such approval if, in the Engineer's opinion, the work has not progressed to the point indicated by the Contractor's submittal in paragraph C above. The Engineer may also decline to approve an application for payment or may reduce said payment or, because of subsequently discovered evidence or subsequent inspections, he may nullify the whole or any part of any payment previously made to such extent as may be necessary in his opinion to protect the OWNER from loss because of: (1) defective work not remedied, (2) third party claims filed or failure of the Contractor to make payments properly to Subcontractors for labor, materials or equipment, unless Surety consents to such payment, (3) reasonable doubt that the Work can be completed for the unpaid balance of the Contract sum, (4) damage to another contractor's work, (5) reasonable indication that the Work will not be completed within the Contract time (6) unsatisfactory prosecution of the Work by the Contractor, (7) claims against the Contractor by the OWNER, (8) failure of Contractor to submit updated project schedules as specified.

When the above grounds are removed, payment shall be made for amounts withheld because of them. Withholding of progress payments or partial payments under the criteria set forth above shall not entitle the Contractor to interest on such withheld payments or partial payments.

- I. If Contractor fails to complete the Project within the time limit fixed in the Contract or any extension, no further estimate may be accepted or progress or other payments allowed until the Project is completed, unless approved otherwise by OWNER.

- J. Progress estimates are for the sole purpose of determining progress payments and are not to be relied on for any other purpose. The making of a progress payment shall not be construed as an acceptance of any of the work or materials under the Contract.
- K. When the progress estimate indicates that the progress payment would be less than one thousand dollars (\$1000), no progress payment will be made for that estimate period, unless approved by the Engineer.
- L. Contractors are required to provide the OWNER with a list of Contractor's personnel who are authorized to personally receive contract payments. This written authorization must be signed by an officer of the Contracting company and will be placed on file in the OWNER's office. No payment will be released to an unauthorized person.

7.2 Final Estimate and Final Payment

- A. Pursuant to ORS Chapter 279C, notify the Engineer in writing when work is considered complete and Engineer shall, within fifteen (15) days after receiving notice, make a final inspection and either accept the work or notify Contractor of work yet to be performed on the Contract. If accepted, Engineer shall so notify Contractor, and will make a final estimate and prepare a Certificate of Completion recommending acceptance of the Work as of a certain date.
- B. If the Contractor believes the quantities and amounts specified in the final estimate and Certificate of Completion prepared by the Engineer to be incorrect, Contractor shall submit to the Engineer within fifteen (15) days of mailing of the Engineer's final estimate and Certificate of Completion to the Contractor's last known address as shown in the records of the OWNER, an itemized statement of any and all claims for additional compensation under the Contract which are based on differences in measurements or errors of computation. Any such claim not so submitted and supported by an itemized statement within said fifteen (15) day period is expressly waived and the OWNER shall not be obligated to pay the same. Nothing contained herein shall limit the requirements of Section 00700, Subsection 10.05, Claims and Disputes.
- C. Upon receipt of the executed Certificate of Completion from the Contractor, and approval by the Engineer, the Engineer will process the final payment.
- D. Provided Contractor submits a claim in the manner and time as required in B. above, the Engineer, as soon as practicable, will consider and investigate the claim or claims of the Contractor for compensation earned under the Contract and not included in the Engineer's final estimate and Certificate of Completion. The Engineer will then promptly advise the Contractor of acceptance or rejection of the claim in full or part. If the Engineer allows the Contractor's claims in full or in part, Engineer will prepare a revised final estimate and Certificate of Completion, including all such items allowed and will submit the same to the Contractor.

- E. The Contractor shall execute and return the revised Certificate of Completion within five (5) days of its receipt together with notice of his acceptance or rejection of the amount there stated as being full compensation earned under the Contract.
- F. If the Engineer rejects the claim or claims, he will issue written notice of rejection mailed to the Contractor's last known address as shown in the records of the OWNER.
- G. The Contractor shall commence any suit or action to collect or enforce the claim or claims for any additional compensation arising from differences in measurements or errors of computation in the final estimate within a period of one (1) year following the original mailing of the Engineer's final estimate and Certificate of Completion to the Contractor's last known address as shown in the records of the OWNER. The Engineer's issuance of a revised final estimate pursuant to this subsection does not alter the original final estimate date. If said suit, action or proceeding is not commenced in said one (1) year period, the final estimate and Certificate of Completion or revised final estimate and Certificate of Completion, if revisions are made, shall be conclusive with respect to the amount earned by the Contractor, and the Contractor expressly waives any and all claims for compensation and any and all causes of suit or action for the enforcement thereof that he might have had.
- H. Upon return of the fully executed Certificate of Completion from the Contractor, the Engineer will submit the Certificate of Completion and final estimate to the OWNER for approval. Upon approval and acceptance by the OWNER, Contractor will be paid a total payment equal to the amount due under the Contract including retainage.
- I. Monies earned by the Contractor are not due and payable until the procedures set forth in these Specifications for inspection, approval and acceptance of the Work, for determination of the work done and the amount due therefor, for the preparation of the final estimate and Certificate of Completion processing the same for payment, for consideration of the Contractor's claim, or claims, if any, and for the preparing of a revised final estimate and Certificate of Completion and processing same for payment have been carried out.
- J. Non-resident Contractor will provide OWNER with evidence that provisions of ORS Chapter 279A.120 have been satisfied; this is a prerequisite to final payment.
- K. Execute and deliver to OWNER, in form approved by the Attorney, a receipt for all amounts paid or payable to Contractor under the Contract, and a release and waiver of all claims against OWNER arising out of or relating to the Contract and furnish satisfactory evidence that all amounts due for labor, materials and other obligations under the Contract have been fully and finally settled or are fully covered by the Performance and Payment Bond and or insurance protecting OWNER, its officers, agents and employees as well as Contractor. This is a condition of final payment and Contractor will not be entitled to final payment on release of retainage nor

interest thereon until execution and delivery of said Receipt, Release & Waiver.

- L. If OWNER declares a default of the Contract, and Surety completes said Contract, all payments after declaration of default and retainages held by OWNER shall be paid to Surety and not to Contractor in accordance with terms of the Contract.
- M. Acceptance by Contractor of final payment shall release OWNER and Engineer from any and all claims by Contractor whether known or unknown, arising out of and relating to the Work. No payment, however, final or otherwise shall operate to release Contractor or his Sureties from warranties or other obligations required in the performance of the Contract.

Article 8. CONTRACT DOCUMENTS

8.1 Contents

- A. The Contract Documents which comprise the entire agreement between OWNER and Contractor concerning the Work consist of the following:
 - 1. This Agreement
 - 2. Performance Bond
 - 3. Payment Bond
 - 4. General Conditions
 - 5. Supplementary Conditions
 - 6. Specifications (including Appendices if any) as listed in Table of Contents, Contract Specifications, to also include the Oregon State prevailing hourly wage rates for Public Works Contracts in Oregon, and Technical Specifications.
 - 7. Drawings consisting of 16 sheets bound in addition to Contract Documents.
 - 8. Exhibits to this Agreement (enumerated as follows):
 - a. Addenda number(s) 1 to 1 included as Exhibit 1.
 - b. Bid Form
 - c. Bid Bond
 - d. Noncollusion Affidavit
 - e. Resident/Nonresident Bidder Status
 - f. First-tier Subcontractor Disclosure Form

- g. Employee Drug Testing Program Certification Form
- h. Public Works Bond Filing Certification
- i. Prebid Notice and Certification Form

9. The following which may be delivered or issued on or after the effective Date of the Agreement and are not attached hereto:

- a. Notice to Proceed.
- b. Written Amendments.
- c. Work Change Directives.
- d. Change Order(s).

B. The documents listed in Paragraph 8.1.A are attached to this Agreement (except as expressly noted otherwise above).

Article 9. MISCELLANEOUS

9.1 Terms used in this Agreement will have the meaning indicated in the General Conditions, and as revised by Supplementary Conditions.

9.2 No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

9.3 OWNER and Contractor each binds itself, its partners, successors, assignees, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

9.4 Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

9.5 Two- Year Maintenance and Warranty

A. In addition to and not in lieu of any other warranties required under the Contract, make all necessary repairs and replacements to remedy, in a manner satisfactory to the OWNER and at no cost to OWNER, any and all defects, breaks, or failures of the Work occurring within two (2) years following the date of Acceptance of the Work due to faulty or inadequate ma-

materials or workmanship. Repair damage or disturbances to other improvements under, within, or adjacent to the Work, whether or not caused by settling, washing, or slipping, when such damage or disturbance is caused, in whole or in part, from activities of the Contractor in performing his duties and obligations under this Contract when such defects or damage occur within the warranty period. The two-year maintenance period required shall, with relation to such required repair, be extended two (2) years from the date of completion of such repair. Where equipment and/or systems are specified to have a longer warranty period, Contractor shall be bound to the longer warranty period for the specific equipment and/or system.

- B. If Contractor, after written notice, fails within ten (10) days to proceed to comply with the terms of this section, OWNER may have the defects corrected, and Contractor and Contractor's Surety shall be liable for all expense incurred. In case of an emergency where, in the opinion of the OWNER, delay would cause serious loss or damage, repairs may be made without notice being given to Contractor and Contractor or Surety shall pay the cost of repairs. Failure of the OWNER to act in case of an emergency shall not relieve Contractor or Surety from liability and payment of all such costs.
- C. As a means of providing surety during the maintenance period, the Contractor shall provide to the OWNER written and legally attested proof of surety in the amount of not less than 10 percent of the final contract amount. The maintenance guarantee shall be one of the following types:
1. Continuance of the contract performance bond at the original or a reduced amount.
 2. Maintenance bond in a format and with the conditions acceptable to the OWNER.
 3. Cash deposit to the OWNER's Treasury, with a treasurer's receipt acting as proof of surety.
 4. Other arrangements, as may be proposed by the contractor and accepted by the OWNER.

Article 10. GOVERNING LAW

- 10.1 It is expressly understood that this Agreement in all respects shall be governed by the laws of the State of Oregon, the ordinances of Clackamas County Clackamas County Service District #1, and Clackamas County.

Article 11. ASSIGNMENT OF ANTITRUST RIGHTS

- 11.1 By entering into this Agreement, the Contractor irrevocably assigns to OWNER any claim or cause of action which the Contractor now has or which may accrue in the future, including at OWNER's option, the right to control any such litigation, by reason of any violation of 15 USC Section 1-15 or ORS 646.725 or ORS 646.730, in connection with any goods or services provided to the Contractor by

any person which are used, in whole or in part, for the purpose of carrying out the Contractor's obligations under this Agreement.

- 11.2 Contractor shall require any subcontractor to irrevocably assign to the OWNER, as a third party beneficiary, any right, title or interest that has accrued or may accrue to the subcontractor by reason of any violation of 15 USC Section 1-15, ORS 646.725 or ORS 646.730, including, at the OWNER's option, the right to control any litigation arising thereunder, in connection with any goods or services provided to the subcontractor by any person, in whole or in part, for the purpose of carrying out the subcontractor's obligations as agreed to by the Contractor in pursuance of the completion of this Agreement.
- 11.3 In connection with this assignment, it is an express obligation of the Contractor that it shall take no action which any way diminishes the value of the rights conveyed or assigned hereunder to the OWNER. It is an express obligation of the Contractor to advise the OWNER's legal counsel:
- A. In advance of its intention to commence any action on its own behalf regarding such claims or causes of action;
 - B. Immediately, upon becoming aware of the fact that an action has been commenced on its own behalf by some other person or persons, of the pendency of such action; and
 - C. The date on which it notified the obligor(s) of any such claims for relief or causes of action of the fact of its assignments to the OWNER.
- 11.4 Furthermore, it is understood or agreed that in the event that any payment under any such claim is made to the Contractor, it shall promptly pay over to the OWNER its proportionate share thereof, if any, assigned to the OWNER hereunder.

Article 12. RECORDS RETENTION

- 12.1 Contractor shall maintain all standard records and accounts as required by the Contract Documents throughout the life of the Agreement and for a period of three years after the termination of the Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate by their respectively authorized officers or representatives as of the day and year first above written.

WATER ENVIRONMENT SERVICES
for
CLACKAMAS COUNTY SERVICE DISTRICT #1
OWNER:

CONTRACTOR:

T. Edge Construction, Inc.
Company

Director

14355 SE Donatello Loop
Address

Date

Happy Valley, OR 97086
City, State, Zip

Tammy Edgerly
Authorized Signature

President
Title

36-4754846
Federal Tax ID Number

Date