

# AGENDA \*Revised

**Thursday, July 25, 2013 - 10:00 AM**

## **Board of County Commissioners Business Meeting**

Beginning Board Order No. 2013-

### **I. CALL TO ORDER**

- Roll Call
- Pledge of Allegiance

**II. 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.)*

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

1. Presentation for the Willamette Falls Legacy Project (Catherine Comer, Business and Economic Development)
2. Presentation and Recognition of the 2013 NACo Achievement Awards for Clackamas County (Tracy Moreland, Public and Government Affairs)

**IV. 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**

**V. 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. Board Order No. \_\_\_\_\_ Approval of Mental Health Director's Designee to Authorize a Custody Hold Under *ORS 426.233 - Behavioral Health*
2. Approval of a Renewal Grant Agreement from the US Department of Housing & Urban Development, Supportive Housing Program, for the Ready to Rent Program to Reduce Housing Barriers to Accessing Permanent Housing for Homeless Individuals and Families - *Social Services*

3. Approval of Intergovernmental Agreement No. 142998 with the State of Oregon Department of Human Services, Aging & People with Disabilities Division for the Provision of Services to Clackamas County Residents age 60 and over - *Social Services*
4. Approval of Intergovernmental Agreement with the City of Lake Oswego/Lake Oswego Adult Community Center to Provide Social Services for Clackamas County Residents age 60 and over - *Social Services*
5. Approval of Intergovernmental Agreement No. 4400000571 with Multnomah County Department of County Human Services, Aging & Disability Services Division - *Social Services*
6. Approval of an Intergovernmental Agreement between the Community Development Division and the City of Gladstone for Street Improvements in Northwest Gladstone - *Community Development*
- \*7. **REMOVED** - Approval of Two Agreements between Clackamas County, Proud Ground and Portland Community Land Trust Development LLC (PCLT) to use Neighborhood Stabilization Program Funds and HOME Program Funds to Purchase and Rehabilitate a Foreclosed Home - *Community Development*

**B. Department of Transportation & Development**

1. Approval of Amendment No. 2 to an Intergovernmental Agreement with Oregon Department of Fish and Wildlife for a Full Time Fish & Wildlife Biologist Liaison for Transportation Maintenance Services
2. Approval of Amendment No. 1 to Intergovernmental Agreement No. 27472 with Oregon Department of Transportation for the Pudding River (Whiskey Hill Road) Bridge Project

**VI. COUNTY ADMINISTRATOR UPDATE**

**VII. 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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300M  
GARY BARTH  
DIRECTOR

**BUSINESS AND COMMUNITY SERVICES**

July 25, 2013

**DEVELOPMENT SERVICES BUILDING**  
150 BEAVERCREEK ROAD | OREGON CITY, OR 97045

Board of County Commissioners  
Clackamas County

Members of the Board:

Willamette Falls Legacy Project

<b>Purpose/Outcomes</b>	For information only, invitation to public event
<b>Dollar Amount and Fiscal Impact</b>	N/A
<b>Funding Source</b>	N/A
<b>Safety Impact</b>	N/A
<b>Duration</b>	N/A
<b>Previous Board Action</b>	Ongoing support of project
<b>Contact Person</b>	Catherine Comer, Manager - Business & Economic Development, 742-4303
<b>Contract No.</b>	N/A

**BACKGROUND:**

The Clackamas County Board of Commissioners have invested in the Master Plan of the Willamette Falls Legacy Project, a project to develop a "framework" plan to be presented to the Oregon City Commission in April 2014. This investment was in partnership with Oregon City, Metro, and the County.

Through a competitive process, Walker Macy was chosen as the consultants for this project. Efforts of this project are driven by the Four Key Values: Public Access, Economic Redevelopment, Healthy Habitat, and Historic and Cultural Interpretation.

**The consultants will present the public outreach efforts and invite the public to an event on July 27<sup>th</sup> in downtown Oregon City.**

**RECOMMENDATION:**

For information only.  
Invitation to public event.

Respectfully submitted,

Gary Barth, Director



**PUBLIC AND GOVERNMENT AFFAIRS**

**PUBLIC SERVICES BUILDING**  
2051 KAEN ROAD | OREGON CITY, OR 97045

July 25, 2013

Board of County Commissioners  
Clackamas County

Members of the Board:

**Presentation recognizing 2013 NACo Achievement Award program staff**

<b>Purpose/Outcomes</b>	Recognizing Clackamas County staff who were involved in the implementation and success of award-winning county programs
<b>Fiscal Impact</b>	None
<b>Funding Source</b>	N/A
<b>Safety Impact</b>	N/A
<b>Duration</b>	N/A
<b>Previous Action</b>	None
<b>Contact Person</b>	Tracy Moreland, Community Relations Specialist – PGA 503-655-8520

**BACKGROUND**

Public and Government Affairs is pleased to present to the Board of County Commissioners several county departments honored by the National Association of Counties (NACo) with a 2013 Achievement Award. NACo awards recognize effective and innovative programs which contribute to and enhance county government in the United States.

The following awards were presented to Clackamas County:

- The **3-D Downtown Program** is offered through Clackamas County Business and Economic Development’s Main Street program. The program is designed to encourage private investment, increase property values, retain and recruit businesses, and enhance the appearance of downtowns through the use of three-dimensional visual imaging.
- The **Transportation Safety Action Plan** is the first county-level plan in Oregon. It serves as a foundation for the county's Transportation System Plan update and as an added incentive for safety-related projects to be included in the county's transportation capital improvement plan. *This project won Best in Category for Planning, as well as an Achievement Award.*



GARY SCHMIDT  
DIRECTOR

**PUBLIC AND GOVERNMENT AFFAIRS**

**PUBLIC SERVICES BUILDING**  
2051 KAEN ROAD | OREGON CITY, OR 97045

- The year-long Clackamas County **Leadership Academy** is designed to develop and cultivate leadership skills in participating employees. The academy supports employees moving into greater leadership positions and those building upon their current leadership experience.
- The **North Clackamas Revitalization Area (NCRA) Sanitary Sewer Project** focuses on improving inadequate infrastructure, particularly a lack of sanitary sewer service threatening public health and the environment, within the service area.
- **Youth Theater for Change** is a partnership between Juvenile and the Arts Alliance that provides a unique experience for Clackamas County youth who have had contact with the juvenile justice system. The program offers these youth an opportunity to write, produce and perform in an original play for the community based on their own life experiences and the general challenges facing youth today.

Also being honored today are projects supported by our Technology Services department.

*Computerworld Magazine* recognized the Broadband project with a laureate of its Honors Program. *Computerworld* recognizes technology projects that influence business and social change around the world.

And Technology Services was ranked fifth in the nation by the Center for Digital Government in its Digital Counties Survey. The Center for Digital Government is a national research and advisory institute focused on IT policies and best practices in state and local government.

**RECOMMENDATION**

Public and Government Affairs is pleased to help the Board recognize these departments for their excellence and hard work. Congratulations to all the staff that made these recognitions possible.

Respectfully submitted,

Gary Schmidt  
Director, Public and Government Affairs



Cindy Becker  
Director

July 18, 2013

Board of County Commissioner  
Clackamas County

Members of the Board:

Approval of Mental Health Director's  
Designee to Authorize a Custody Hold Under ORS 426.233

<b>Purpose/Outcomes</b>	The Clackamas County Behavioral Health Division (CCBH) of the Health, Housing and Human Services Department requests the Board approve the Designation of Erin Palmer, LPC with CCBH, Amy White, LCSW with CCBH, Dzenana Halsead, MS with CCBH, Margaret (Peggy) Colgan, LCSW with CCBH, Lacy Benoit, MA with CCBH, Erin Needham, MA with Cascadia, Roxanne Crossley, MA with Cascadia, Elizabeth Kim, MSW with Cascadia, Amanda Fernie, MA with Cascadia, and Jessica Brunelle, MA with Cascadia, by the CCBH Director as additional designee authorized under ORS 426.233.
<b>Dollar Amount and Fiscal Impact</b>	N/A
<b>Funding Source</b>	N/A
<b>Safety Impact</b>	None
<b>Duration</b>	Effective July 18, 2013 through duration of employment
<b>Previous Board Action</b>	N/A
<b>Contact Person</b>	Martha Spiers, Mental Health Program Mgr. – Behavioral Health Division – 503-742-5833
<b>Contract No.</b>	N/A

**BACKGROUND:**

Under ORS 426.233 (copy attached), the mental health designee will be authorized to direct a peace officer to take a person into custody and remove the person to a hospital or non-hospital facility approved by the Oregon Mental Health and Developmental Disability Services Division.

**RECOMMENDATION:**

Staff recommends the Board approve the Board Order of Erin Palmer, LPC with CCBH, Amy White, LCSW with CCBH, Dzenana Halsead, MS with CCBH, Margaret (Peggy) Colgan, LCSW with CCBH, Lacy Benoit, MA with CCBH, Erin Needham, MA with Cascadia, Roxanne Crossley, MA with Cascadia, Elizabeth Kim, MSW with Cascadia, Amanda Fernie, MA with Cascadia, and Jessica Brunelle, MA with Cascadia, as additional qualified mental health professional authorized to direct a peace officer to take a person into custody under ORS 426.233.

Respectfully submitted,

Cindy Becker, Director

*Healthy Families. Strong Communities.*

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

In the Matter of the Designation of Erin Palmer, LPC with CCBH, Amy White, LCSW with CCBH, Dzenana Halsead, MS with CCBH, Margaret (Peggy) Colgan, LCSW with CCBH, Lacy Benoit, MA with CCBH, Erin Needham, MA with Cascadia, Roxanne Crossley, MA with Cascadia, Elizabeth Kim, MSW with Cascadia, Amanda Fernie, MA with Cascadia, and Jessica Brunelle, MA with Cascadia, as Mental Health Director Designee to Direct Peace Officer Custody Holds



ORDER NO.

This matter coming on at this time to be heard, and it appearing to this Board that Cindy Becker, Director of Health, Housing & Human Services Department, has recommended to this Board the approval of Erin Palmer, LPC with CCBH, Amy White, LCSW with CCBH, Dzenana Halsead, MS with CCBH, Margaret (Peggy) Colgan, LCSW with CCBH, Lacy Benoit, MA with CCBH, Erin Needham, MA with Cascadia, Roxanne Crossley, MA with Cascadia, Elizabeth Kim, MSW with Cascadia, Amanda Fernie, MA with Cascadia, and Jessica Brunelle, MA with Cascadia, as additional designee of the Behavioral Health Division Director, authorized under ORS 426.233 to direct a peace officer to take a person into custody and remove the person to a hospital or non-hospital facility approved by the Oregon Mental Health and Developmental Disability Services Division, and

This Board finds that it would be in the best interest of Clackamas County to approve said designations,

IT IS THEREFORE HEREBY ORDERED that Clackamas County approve the designation of Erin Palmer, LPC with CCBH, Amy White, LCSW with CCBH, Dzenana Halsead, MS with CCBH, Margaret (Peggy) Colgan, LCSW with CCBH, Lacy Benoit, MA with CCBH, Erin Needham, MA with Cascadia, Roxanne Crossley, MA with Cascadia, Elizabeth Kim, MSW with Cascadia, Amanda Fernie, MA with Cascadia, and Jessica Brunelle, MA with Cascadia, as qualified mental health professional authorized to direct a peace officer to take a person into custody under ORS 426.233.

ADOPTED this 18<sup>th</sup> day of July, 2013.

BOARD OF COUNTY COMMISSIONERS

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Recording Secretary

July 25, 2013

Board of County 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 Ready to Rent Program to Reduce Housing Barriers to Accessing Permanent Housing for Homeless Individuals and Families**

<b>Propose/ Outcomes</b>	Approval of a grant agreement with the U.S. Department of Housing and Urban Development (HUD), Supportive Housing Program for the Ready to Rent Program to reduce housing barriers to accessing permanent housing for homeless individuals and families.
<b>Dollar Amount and Fiscal Impact</b>	Total amount of the grant award is \$116,375 for a one-year period. The grant requires a 25% match or in-kind contribution which is met through the Community Development Block Grant (CDBG) funds, and in-kind services from area providers. No County General Funds are involved.
<b>Funding Source</b>	HUD
<b>Safety Impact</b>	None
<b>Duration</b>	July 1, 2013 to June 30, 2014, with an option for renewal
<b>Previous Board Action</b>	Approval to Apply for this grant was approved on December 5, 2012
<b>Contact Person</b>	Brenda Durbin, Director, Social Services Division - 503-655-8641
<b>Contract No.</b>	6294

**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 Ready to Rent: Permanent Housing Solutions Program to reduce housing barriers to access permanent housing for the homeless. This program provides rental education skills training, case management, and supportive services to homeless participants. These funds provide the Social Services Division resources to provide rental education skills training classes and case management. Up to 45 households will be assisted annually.

**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) and this process was delayed. A copy of the grant agreement was released and transmitted through E-

*Healthy Families. Strong Communities.*





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 (Clackamas County, OR)**  
**Grant Number: OR0102L0E071205**  
**Effective Date: 7/11/2013**  
**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 11, 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: OR0102L0E071205  
Effective Date: 7/11/2013  
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 \$116,375 for project number OR0102L0E071205. 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	\$ 0
g. Supportive services	\$ 108,762
h. Operating costs	\$ 0
i. HMIS	\$ 0
j. Administration	\$ 7,613

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

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Vol. 77                      Tuesday,  
No. 147                     July 31, 2012

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Part II

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Department of Housing and Urban  
Development

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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-5476-1-01]

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](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 [www.regulations.gov](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.

**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](http://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 non-victim 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-Vento 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 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 spousor-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](http://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 comprehensiveness 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.<sup>1</sup>

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

<sup>1</sup> 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.<sup>2</sup> Notice and public

<sup>2</sup> 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.<sup>3</sup> 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.

<sup>3</sup> 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
<b>Total</b>					<b>1,921,710.5</b>

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 Rulemaking 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. 11361–11369).

(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 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 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 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 Solution 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 Solution 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 religions 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 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 contributions 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; 3:45 am]

BILLING CODE 4210-67-P

July 25, 2013

Board of County Commissioner  
Clackamas County

Members of the Board:

Approval of Intergovernmental Agreement #142998 with The State of Oregon, Department of Human Services, Aging and People with Disabilities Division for the Provision of Services to Clackamas County Residents age 60 and over

<b>Purpose/Outcomes</b>	To provide Older American Act (OAA) and Oregon Project Independence (OPI) funded services for persons age 60 and over in Clackamas County.
<b>Dollar Amount and Fiscal Impact</b>	The total agreement is \$3,884,648. Funded by Federal OAA Funds and State General Funds designated for the OPI Program.
<b>Funding Source</b>	Federal Older American Act & State General Fund - no County General Funds are involved.
<b>Safety Impact</b>	None
<b>Duration</b>	Effective July 1, 2013 and terminates on June 30, 2015
<b>Previous Board Action</b>	
<b>Contact Person</b>	Brenda Durbin, Director, Social Services Division 503-655-8641
<b>Contract No.</b>	6327

**BACKGROUND:**

This agreement provides funding for the Social Services Division of the Health, Housing & Human Services Department to administer Older American Act (OAA) and Oregon Project Independence (OPI) funded services for persons 60 and over living in Clackamas County. The services provided include nutrition programs, health promotion activities, transportation, information and referral activities, and In-home services. These services link residents with resources to meet their individual needs. This helps them to remain independent and involved in the community as long as possible.

In an effort to provide enhanced, streamlined, access to publicly funded programs this agreement includes funding for a Medicaid Screening Pilot. The goal of this pilot project is to assist residents in accessing information about available Medicaid services. This project will also provide assistance in completing an application and related documentation for the Medicaid eligibility determination process.

Social Services Division is the designated Area Agency on Aging for the Clackamas Planning and Service area designated by the State of Oregon, Department of Human Services, Aging and People with Disabilities Division, State Unit on Aging. This agreement reflects the Older American Act (OAA)



Agreement Number 142998

**STATE OF OREGON  
INTERGOVERNMENTAL 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](mailto:dhs-oha.publicationrequest@state.or.us) or call 503-378-3486 (voice) or 503-378-3523 (TTY) to arrange for the alternative format.

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

**Clackamas County Social Services Division  
Serving: Clackamas County  
PO Box 2950 - 2051 Kaen Road  
Oregon City, Oregon 97045  
Attn: Brenda Durbin  
Phone: 503-655-8640  
Fax: 503-655-8889  
Email: stefanierei@co.clackamas.or.us**

...hereinafter referred to as "County" or "AAA".

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Work to be performed under this Agreement relates principally to DHS'

**Department of Human Services  
Seniors & People with Disabilities  
State Unit on Aging  
Agreement Administrator: Elaine Kruger-Young or delegate  
676 Church Street NE  
Salem OR 97301  
Telephone: 503-373-1726  
Facsimile: 503-373-1133**

1. **Effective Date and Duration.** This Agreement shall become effective on **July 1, 2013** when this Agreement has been fully executed by every party and, when required, approved by Department of Justice. Unless extended or terminated earlier in accordance with its terms, this Agreement shall terminate on **June 30, 2015**. Agreement termination or expiration shall not extinguish or prejudice either parties' right to enforce this Agreement with respect to any default by the other party 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:

Exhibit A, Part 1:	Definitions [ <i>Reserved</i> ]
Exhibit A, Part 2:	Program Description <ul style="list-style-type: none"><li>• <u>Section 1</u> – <i>OAA and OPI Services</i></li><li>• <u>Section 2</u> – <i>Medicaid Screening Pilot</i></li></ul>
Exhibit A, Part 3:	Payment and Financial Reporting
Exhibit A, Part 4:	Special Terms and Conditions
Exhibit B:	Standard Terms and Conditions
Exhibit C:	Subcontractor Insurance Requirements
Exhibit D:	Required Federal Terms and Conditions

This Agreement constitutes the entire agreement between the parties on the subject matter in it; there are no understandings, agreements, or representations, oral or written, regarding this Agreement that are not specified herein.

b. In the event of a conflict between two or more of the documents comprising this Agreement, the language in the document with the highest precedence shall control. The precedence of each of the documents comprising this Agreement is as follows, listed from highest precedence to lowest precedence: this Agreement without Exhibits, Exhibits D, A, B, and C.

c. For purposes of this Agreement, "Work" means the specific work or services to be performed by County as set forth in Exhibit A.

3. **Consideration.**

a. The maximum not-to-exceed amount payable to County under this Agreement, which includes any allowable expenses, is **\$3,884,648.00**. DHS will not pay County any amount in excess of the not-to-exceed amount for completing the Work, and will not pay for Work until this Agreement has been signed by all parties and, when required, approved by the Department of Justice.

b. DHS will pay only for completed Work under this Agreement, and may make interim payments as provided for 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:

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

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

<b>FEDERAL FUNDING SOURCE</b>	<b>Federal Pass-through Grant?</b>	<b>CFDA #:</b>	<b>Vendor/ Sub-recipient:</b>	<b>Service/ Program:</b>
Older Americans Act	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	93.044	Sub-recipient	Title IIIB
Older Americans Act	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	93.045	Sub-recipient	Titles IIICI and IIICII
Older Americans Act	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	93.043	Sub-recipient	Title IIID
Older Americans Act	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	93.052	Sub-recipient	Title IIIE
Older Americans Act	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	93.041	Sub-recipient	Title VIIIB
Older Americans Act	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	93.053	Sub-recipient	NSIP

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**5. County Data and Certification.**

- a. County Information. County shall provide information set forth below. This information is requested pursuant to ORS 305.385 and OAR 125-246-0333(5).

**PLEASE PRINT OR TYPE THE FOLLOWING INFORMATION:**

**County Name (exactly as filed with the IRS):**

Street address: \_\_\_\_\_

City, state, zip code: \_\_\_\_\_

Email address: \_\_\_\_\_

Telephone: ( ) \_\_\_\_\_ Fax: ( ) \_\_\_\_\_

Federal Employer Identification Number: \_\_\_\_\_

**Proof of Insurance:**

Workers' Compensation Insurance Company:

Policy #: \_\_\_\_\_ Expiration Date: \_\_\_\_\_

The above information must be provided prior to Agreement approval. COUNTY shall provide proof of insurance upon request by DHS or DHS designee.

- b. Certification. The County 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 County and that pertains to this Agreement or to the project for which the Agreement work is being performed. The County 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. County 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 County. Without limiting the generality of the foregoing, by signature on this Agreement, the County hereby certifies that:

- i. Under penalty of perjury the undersigned is authorized to act on behalf of County and that County 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;
- ii. The information shown in this Section 5., County Data and Certification , is County's true, accurate and correct information;

- iii. To the best of the undersigned's knowledge, County 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;
- iv. County and County'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>;
- v. County 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/>; and
- vi. County is not subject to backup withholding because:
  - (a) County is exempt from backup withholding;
  - (b) County has not been notified by the IRS that County is subject to backup withholding as a result of a failure to report all interest or dividends; or
  - (c) The IRS has notified County that County is no longer subject to backup withholding.
- c. County is required to provide its Federal Employer Identification Number (FEIN). By County's signature on this Agreement, County hereby certifies that the FEIN provided to DHS is true and accurate. If this information changes, County is also required to provide DHS with the new FEIN within 10 days.

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

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**EXHIBIT A**

**Part 1**  
**Definitions**  
*[Reserved]*

**EXHIBIT A**  
**Part 2, Section 1**  
*for*  
**Older Americans Act services**  
*and*  
**Oregon Project Independence services**

1. **Services to be Provided.** AAA agrees to provide services consistent with the purposes, conditions, and restrictions of Title III and Title VII of the Older Americans Act of 1965, Pub.L. 89-73, 79 Stat. 218, July 14, 1965, as amended (“Older Americans Act”) and 45 CFR Part 1321 (Older Americans Act and 45 CFR Part 1321 collectively “OAA”), , as amended, Oregon Project Independence (“OPI”) program as set out in OAR Chapter 411, Division 032, and ORS 410.210 through 410.250 under which AAA receives funding. AAA agrees to refer the public to local DHS Aging & People with Disabilities office for Medicaid-related issues.
2. **Area Plan.** AAA shall submit for approval to DHS, as instructed, a comprehensive and coordinated four-year service delivery plan (hereafter referred to as the “Area Plan”). The Area Plan will be developed in accordance with Section 306 of the Older Americans Act and OAR 411-032-0005. AAA shall annually submit upon direction of DHS an electronically updated Area Plan. The DHS approved Area Plan will be held on file with the DHS State Unit on Aging (“SUA”). Request for the Area Plan and subsequent updates will be announced through established DHS Action Request procedure. No funds will be authorized for use by AAA without submission and approval of the Area Plan.
3. **Program Reporting Requirements.** AAA shall collect and report National Aging Program Information System (“NAPIS”) data as directed by DHS for all OAA and OPI services provided, using DHS provided software or a DHS approved alternative collection and reporting method. AAA shall at a minimum reconcile reported service data to reported expenditures by end of business day on September 30th of each year. Request for said data will be announced using DHS Action Request procedure.
4. **Program Monitoring.** DHS will conduct periodic monitoring and evaluation of performance management system for program activities and administrative practices conducted in accordance with Section 307(a)(4) of the Older Americans Act and OAR 411-032-0015.
  - a. AAA agrees to participate with DHS to develop a performance management framework to include objectives and metrics and shall report progress towards these objectives and metrics utilizing agreed upon format and intervals.
  - b. DHS agrees to notify AAA in writing of intent to conduct onsite evaluation of reported performance management data and AAA agrees to provide DHS access to its facility(ies) and staff, all related program and fiscal documentation, AAA’s sub recipient reports and any other related documentation to substantiate performance management reporting data.
5. **Management Control Functions.**

- a. Criminal Records and Abuse Checks. AAA agrees to utilize the DHS Criminal Records Information Management System (CRIMS) to meet provider requirements set forth in OAR 407-007-0200 through 407-007-0370 and ORS 181.534 through 181.537 and ORS 443.004. Subject individuals are employees of the AAA; volunteers of AAA; employees and volunteers of AAA's subcontractors and direct care providers of clients for which AAA provides service authorization.
- b. Mandatory Reporting of Elder Abuse. Agency shall ensure compliance with the mandatory reporting requirements of ORS 124.050 through 124.095 and OAR Chapter 411, Division 20 for employees and volunteers of the Agency as well as sub-contractor employees, volunteers and direct care providers for clients for whom the Agency provides service authorization.
- c. Americans with Disabilities Act. AAA will ensure public facilities used for the provision of OAA funded services meet the requirements as stated in Title II of the Americans with Disabilities Act of 1990, as amended ("ADA"), Section 504 of the Rehabilitation Act and DHS Policy #010-005.
- d. Grievance Procedure. AAA shall post the policy and procedure regarding how a client or family member may present a grievance concerning the operation of the Older Americans Act and Oregon Project Independence service programs.
- e. Competitive Procurement. AAA in accordance with OAR 411-011-0005, agrees to competitively award funds by grant or contract to community service providers agencies and organizations, except where by means of AAA's Area Plan, DHS has granted a waiver in accordance with 45 CFR Part 1321.63b.

## 6. Information Systems.

- a. DHS shall provide AAA with access to DHS-owned applications necessary for the proper operation of NAPIS collection databases and administration of the Older Americans Act and Oregon Project Independence programs. Maintenance or trouble shooting services for the DHS applications will be provided remotely; no on-site services will be available. Ownership of said software shall at all times remain with DHS.
- b. AAA shall be responsible for obtaining such internet access and LAN/WAN connectivity as are necessary to access DHS-owned applications. Notwithstanding the provisions set forth in Exhibit B (Standard Terms and Conditions), paragraph 16 (Information Privacy/Security/Access) of this Agreement, when AAA is connected to the DHS network, DHS internet and network use policies apply, and as such, Agency's use of DHS-owned applications is subject to monitoring by the DHS-OIS-Information Security Office.
- c. DHS may provide an allocation for the purchase of information technology necessary for NAPIS reporting. DHS shall not be responsible for maintenance of said technology.
- d. Upon request DHS will provide the required specifications for computer compatibility with DHS applications.

**EXHIBIT A**

**Part 2, Section 2  
Statement of Work  
for  
Medicaid Screening Pilot**

1. **Medicaid Screening Pilot.** County agrees to the following timeframes and expectations for activities related to the Medicaid Screening Pilot:

Phase 1: Planning, Discussion .....May – July, 2013

Phase 2: Implementation.....July, 2013

Phase 3: Refinements.....October – December, 2013

Phase 4: Statewide Rollout .....January, 2014

2. **Development and Implementation.** DHS shall reimburse County’s activities for the Medicaid Screening Pilot which align with the goals and objectives of Oregon’s statewide Aging and Disability Resource Connection (“ADRC”) infrastructure and shall (1) streamline access to publicly funded programs; and, (2) contribute to the financial sustainability of the ADRC. County agrees to fully engage in both development, implementation, and refinement of the following activities:

- a. 100% Time Reporting. Adhere to policies and procedures on how staff time will be recorded; which forms will be used; frequency of reports to DHS; and other processes as needed.
- b. Local Match. Plan for how local match funds will be identified.
- c. Data Flow. Policies and procedures that outline how critical data elements will flow from the ADRC screener to the local Medicaid office.
- d. Training Elements. Active participation in identifying training needs necessary for effective statewide rollout.
- e. Quality Measures. Full engagement throughout pilot to ensure that processes and procedures work as intended.

3. **Medicaid Reimbursable ADRC Activities.**

- a. Medicaid Outreach. Activities that help people access Medicaid services, including educating people about Medicaid eligibility requirements as well as the importance of accessing needed medical services. Medicaid Outreach is a function of Information and Assistance and Referral staff.
- b. Initial Medicaid Screening. Activities that facilitate access to Medicaid services, including assistance completing an application and anything related to the Medicaid eligibility determination process.

**EXHIBIT A**

**Part 3  
Payment and Financial Reporting  
for  
Older Americans Act services  
and  
Oregon Project Independence services**

1. **Funding Appropriations.** The total sum payable for the period of July 1, 2013, through June 30, 2015, shall not exceed the amount described in Section 2 (Grant), which is the Oregon Project Independence funding determined and authorized by the State of Oregon Legislature and the Older Americans Act funding as awarded by the U.S. Administration on Aging as determined by DHS.
- a. DHS, in accordance with Section 305(a)(2)(C-D) of the Older Americans Act, agrees to disburse grant funds to AAA as outlined in Oregon's Intrastate Funding Formula..
  - b. Payment for all work performed under this Agreement shall be subject to the provisions of ORS 293.462 and disbursements under this Agreement shall be as set forth below:

<b>OLDER AMERICANS ACT</b>	<b>\$2,612,510.00</b>	CFDA 93.044, 93.045, 93.043, 93.052, 93.041
<b>NSIP</b>	<b>\$309,534.00</b>	CFDA 93.053
<b>OREGON PROJECT INDEPENDENCE</b>	<b>\$895,311.00</b>	
<b>OTHER STATE FUNDS</b>	<b>\$7,293.00</b>	
<b>MEDICAID, SNAP, OTHER BASE FUNDS</b>	<b>\$30,000.00</b>	CFDA 93.778
<b>MEDICAID LOCAL MATCH FUNDS</b>	<b>\$30,000.00</b>	CFDA 93.778

- c. AAA will be allowed to carry-forward into the biennium no more than ten (10) percent of the full 2011-2013 biennial allocation of Older American Act Title IIIB, IIIC1, IIIC2, IIID, IIIE and VIIB funds not fully expended during the Agreement period.
- d. Funds carried forward from the prior biennium shall be expended prior to use of the current biennial allocation for the same Older Americans Act title.
- e. AAA shall, in accordance with Section 311(d)(4) of the Older Americans Act, promptly and equitably disburse Nutrition Services Incentive Program ("NSIP") funds to its sub-contractors. NSIP funds shall only be used for purchase of domestically produced food for AAA's nutrition service programs. NSIP funds must be fully expended during the Agreement period. NSIP funds cannot be carried forward into the 2015-2017 biennium.



## 2. Fiscal Control Functions.

### a. Federal Requirements.

- i. AAA shall maintain a financial management system that assures that state and federal funds used for activities under this Agreement are expended and accounted for in accordance with applicable state and federal requirements.
- ii. If AAA is organized as local government, it will comply with:
  - (a) A-87 for cost principles, Relocated to 2 CFR, Part 225
  - (b) A-102 for administrative requirements and
  - (c) A-133 for audit requirements.
- iii. If AAA is organized as a non-profit organization, it will comply with:
  - (a) A-122 for cost principles, Relocated to 2 CFR, Part 230
  - (b) A-110 for administrative requirements, Relocated to 2 CFR, Part 215 and
  - (c) A-133 for audit requirements.

### b. Program Income.

- i. AAA shall ensure as required in OAA 315(b)(3) that no means testing for service eligibility will be conducted and as per OAA 315(b)(4)(A-D), all recipients of OAA services will be provided opportunity to voluntarily contribute towards cost of service and AAA has appropriate safeguards in place to account for all contributions. Said contribution, hereby referred to as program income shall be used by the AAA or sub-AAA(s) for the sole purpose of expanding services in the program area in which collected in accordance with Section 315(b)(4)(E) of the Older Americans Act.
- ii. AAA shall ensure that no fee, or cost-sharing practices, unless authorized by DHS and permitted under Section 315(a)(1) of the Older Americans Act, will be assessed or imposed for OAA services.
- iii. AAA shall, in accordance with OAR 411-032-0044, expend all OPI annual fees, monthly fees for service, and all contributions to expand OPI services.

### c. Access to Fiscal Records. AAA shall provide access to all fiscal records and to all other books, documents, papers, and records of AAA which are pertinent to this Agreement, and shall, without prior notification, allow DHS the making of excerpts, photocopies, and transcripts, and allow performance of audits and examination of all pertinent fiscal records and books, documents, papers, and records of AAA. Such access shall be freely allowed to state and federal personnel, including the Oregon Secretary of State's Office, and their duly authorized agents.

### d. Fiscal Reporting.

- i. AAA shall, when requesting working capital, submit Form SPD 150-WC to DHS Accounting and Financial Services at a minimum 7 days prior to requisite receipt of

funds. AAA shall estimate program expenses separate from estimated administrative expenses and detail such expenses by fund source (i.e., Title IIIB, IIIC1, IIIC2, IIID, IIIE, and VIIB of the Older Americans Act and OPI).

- ii. AAA shall submit electronically to DHS Accounting and Financial Services at the electronic address below using DHS Form 148/150 ("Form 148/150") a monthly reimbursement request for OAA and OPI expenditures no later than the 25th day of the following month. DHS agrees to process all reimbursement requests within 30 days following receipt of an approved request.
- iii. AAA agrees that DHS may decrease AAA's OPI allocation for home-care worker ("HCW") expenses which is an hourly rate of \$11.39 as of the Effective Date of this Agreement. This hourly rate is also subject to change based on the HCW collective bargaining agreement.
- iv. AAA shall, no later than 90 days (September 30) from the conclusion of the state fiscal year end (June 30), submit a FINAL fiscal year-end Form 148/150 and no later than 180 days (December 31) from the conclusion of the state fiscal year-end (June 30), submit one (1) electronic or hardcopy of the AAA's signed FINAL AUDITED Form 148/150 to applicable address below:

DHS Accounting and Financial Services  
Attn: Brenda Stuiivenga  
500 Summer Street, NE, E-91  
Salem OR 97301  
[brenda.s.stuiivenga@state.or.us](mailto:brenda.s.stuiivenga@state.or.us)

- v. AAA shall submit one electronic or hardcopy of the AAA's fiscal year-end financial audit no later than 180 days (December 31) from the conclusion of the state fiscal year-end (June 30) to [sua.email@state.or.us](mailto:sua.email@state.or.us) or:

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~~DHS Aging & People with Disabilities, State Unit on Aging~~  
Attn: Elaine Kruger-Young, Manager  
676 Church Street, NE  
Salem OR 97301

- e. OAA Fund Transfers. Beginning October 1st, but not later than June 30th of each fiscal year AAA may, as authorized by DHS and when necessary to meet the needs of the area served, request to transfer Title IIIB, Title IIIC1 and Title IIIC2 funds as permitted in Section 308(b)(4)(A) and (5)(A) of the Older Americans Act.
  - i. Request for transfer shall be electronically submitted using a form provided by DHS and submitted to [sua.email@state.or.us](mailto:sua.email@state.or.us).
  - ii. Upon receipt of transfer authorization, AAA shall post transfer amounts on Form 150, page 1. Failure to do so will result in disqualification of transferred funds.
  - iii. Maximum transfers shall be as follows:

- (a) Not to exceed thirty percent (30%) for any fiscal year from Title IIIB into Title IIIC; or thirty percent (30%) from Title IIIC into Title IIIB; and
  - (b) Not to exceed forty percent (40%) for any fiscal year between Title IIIC1 and Title IIIC2; and
  - (c) When in the best interest of the OAA service recipients, AAA may elect to submit a written explanation of necessity and request DHS to provide a waiver of the maximum percentage limits.
- f. OAA Minimum Expenditure Requirements.** AAA shall in accordance with OAA Section 307(a)(2) of the Older Americans Act and as established by DHS:
- i. Expend, at a minimum, 3% of Title IIIB funds for In-Home Services as defined in Section 102(a)(30)(A-G) of the Older Americans Act.
  - ii. Expend, at a minimum, 3% of Title IIIB funds for legal assistance as described in Section 307(a)(11)(E) of the Older Americans Act,
  - iii. Expend, at a minimum, 18% of Title IIIB funds for access services as described in Section 306(a)(2)(A) of the Older Americans Act and;
  - iv. The required minimum Title IIIB fund expenditure shall be based on total funds after transfer if AAA employed the transfer options as outlined in Exhibit A, Part 3, paragraph E (i) and (ii) titled OAA Fund Transfers.
  - v. Funding for Title IIID, Section 361 of the Older Americans Act for Disease Prevention and Health Promotion may only be used for programs and activities which have been demonstrated through rigorous evaluation to be evidence-based and effective.
- g. OAA Maximum Expenditure Requirements.** AAA shall in accordance with Section 304(d)(1)(A) of the Older Americans Act not exceed a maximum 10% of Title III expenditures for administration and such amount can only be taken from funds allocated for Title IIIB, IIIC1, IIIC2 and IIIE services.
- i. AAA shall, in accordance with 45 CFR Part 1321.17(f)(14)(i) and as authorized by DHS, only fund program development and coordination activity after first expending the full 10% in administrative expenses and when such expenditure will have a direct and positive impact on the enhancement of services and only after the general public has been provided with notification to review and comment. A request for program development and coordination funding shall be electronically submitted using a form provided by DHS and shall be received by the State Unit on Aging no later than end of business on September 30th of a fiscal year.
  - ii. AAA shall in accordance with Section 373(g)(2)(C) of the Older Americans Act expend no more than 10% of the total Federal and non-Federal share of the Title IIIE funds to support services to grandparents and older relatives who are relative caregivers of a child no more than 18 years of age.

- h.** OAA Match Requirements. AAA shall, as required in Sections 309(b)(1) and 373(g)(2) of the Older Americans Act, match expenditures with cash or in-kind resources of non-federal means such as local or state sources as follows:
- i.** Federal funds may not pay for more than 75% of the total administrative expenditures for Title IIIB, IIIC1, IIIC2 and IIIE services. The required match is calculated using the following formula:  $(\text{Total Administrative Expenditures to be charged to Federal funds}/.75) - (\text{Total Administrative Expenditures to be charged to Federal funds})$ . Example:  $100/.75=133$ ;  $133-100=33$ ; the required match is 33.
  - ii.** Federal funds may not pay for more than 85% of the total expenditures for Title IIIB, IIIC1 and IIIC2 services. AAA is required to meet 2/3 of the required match which is calculated using the following formula:  $(\text{Total Service Expenditures to be charged to Federal funds}/.85) - (\text{Total Service Expenditures to be charged for Title IIIB, IIIC1, and IIIC2 services}) \times .67$ . Example:  $100/.85=118$ ;  $118-100=18$ ;  $18 \times .67=12$ ; the required match is 12.
  - iii.** Federal funds may not pay for more than 75% of expenditures for Title IIIE services. The required match is calculated using the following formula:  $(\text{Total Service Expenditures for Title IIIE services}/.75) - (\text{Total Service Expenditures for Title IIIE services})$ . Example:  $100/.75=133$ ;  $133-100=33$ ; the required match is 33.

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## EXHIBIT A

### Part 4 Special Terms and Conditions

#### 4. Confidentiality of Client Information.

- a. All information as to personal facts and circumstances obtained by the County on the client shall be treated as privileged communications, shall be held confidential, and shall not be divulged without the written consent of the client, the responsible parent of a minor child, or his or her guardian except as required by other terms of this Agreement. Nothing prohibits the disclosure of information in summaries, statistical, or other form, which does not identify particular individuals.
- b. The use or disclosure of information concerning clients shall be limited to persons directly connected with the administration of this Agreement. Confidentiality policies shall be applied to all requests from outside sources.
- c. DHS, County and any subcontractor will share information as necessary to effectively serve DHS clients.

#### 5. Amendments.

- a. DHS reserves the right to amend or extend the Agreement under the following general circumstances:
  - i. DHS may extend the Agreement for additional periods of time up to a total Agreement period of five (5) years, and for additional money associated with the extended period(s) of time. The determination for any extension for time may be based on DHS' satisfaction with performance of the work or services provided by the County under this Agreement.
  - ii. DHS may periodically amend any payment rates throughout the life of the Agreement proportionate to increases in Portland Metropolitan Consumer Price Index; and to provide Cost Of Living Adjustments (COLA) if DHS so chooses. Any negotiation of increases in rates to implement a COLA will be as directed by the Oregon State Legislature.
- b. DHS further reserves the right to amend the Statement of Work based on the original scope of work for the following:
  - i. Programmatic changes/additions or modifications deemed necessary to accurately reflect the original scope of work that may not have been expressed in the original Agreement or previous amendments to the Agreement;
  - ii. Implement additional phases of the Work; or

- iii. As necessitated by changes in Code of Federal Regulations, Oregon Revised Statutes, or Oregon Administrative Rules which, in part or in combination, govern the provision of services provided under this Agreement.
  
- c. Upon identification, by any party to this Agreement, of any circumstance which may require an amendment to this Agreement, the parties may enter into negotiations regarding the proposed modifications. Any resulting amendment must be in writing and be signed by all parties to the Agreement before the modified or additional provisions are binding on either party. All amendments must comply with Exhibit B, Section 22 "Amendments" of this Agreement.

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## 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 County 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 County 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. County represents and warrants as follows:
    - i. **Organization and Authority.** County is a political subdivision of the State of Oregon duly organized and validly existing under the laws of the State of Oregon. County has full power, authority and legal right to make this Agreement and to incur and perform its obligations hereunder.
    - ii. **Due Authorization.** The making and performance by County of this Agreement (a) have been duly authorized by all necessary action by County 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 County'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 County is a party or by which County 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 County of this Agreement.

- iii. Binding Obligation. This Agreement has been duly executed and delivered by County and constitutes a legal, valid and binding obligation of County, enforceable in accordance with its terms subject to the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally.
- iv. County has the skill and knowledge possessed by well-informed members of its industry, trade or profession and County 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 County's industry, trade or profession;
- v. County shall, at all times during the term of this Agreement, be qualified, professionally competent, and duly licensed to perform the Work; and
- vi. County 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:

- i. Organization and Authority. DHS has full power, authority, and legal right to make this Agreement and to incur and perform its obligations hereunder.
- ii. 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.
- iii. 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. County 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, County shall provide its taxpayer identification number (TIN) and other necessary banking information to receive EFT payment. County 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. County shall provide this designation and information on a form provided by DHS. In the event that EFT information changes or the County elects to designate a different financial institution for the receipt of any payment made using EFT procedures, the County 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 County.

**6. Recovery of Overpayments.** If billings under this Agreement, or under any other Agreement between County and DHS, result in payments to County to which County is not entitled, DHS, after giving to County written notification and an opportunity to object, may withhold from payments due to County 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 County objects to the withholding or the amount proposed to be withheld, County 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 County 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:
  - i. "County Intellectual Property" means any intellectual property owned by County and developed independently from the Work.

- ii. "Third Party Intellectual Property" means any intellectual property owned by parties other than DHS or County.
  
- 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 County or a subcontractor in connection with the Work. With respect to that portion of the intellectual property that the County owns, County 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.(ii) on DHS' behalf, and (3) sublicense to third parties the rights set forth in Section 8.a.(ii).
  
- c. If state or federal law requires that DHS or County 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 County 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 County 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 County to use, copy, distribute, display, build upon and improve the intellectual property.
  
- d. County 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. **County Default.** County shall be in default under this Agreement upon the occurrence of any of the following events:~~

- a. County fails to perform, observe or discharge any of its covenants, agreements or obligations set forth herein;
  
- b. Any representation, warranty or statement made by County 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 County is untrue in any material respect when made;
  
- c. County (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 County, in any court of competent jurisdiction, seeking (1) the liquidation, dissolution or winding-up, or the composition or readjustment of debts, of County, (2) the appointment of a trustee, receiver, custodian, liquidator, or the like of County or of all or any substantial part of its assets, or (3) similar relief in respect to County 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 County 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 County to measure performance by DHS is untrue in any material respect when made.

**11. Termination.**

a. County Termination. County may terminate this Agreement:

- i. For its convenience, upon at least 30 days advance written notice to DHS;
- ii. Upon 45 days advance written notice to DHS, if County does not obtain funding, appropriations and other expenditure authorizations from County's governing body, federal, state or other sources sufficient to permit County to satisfy its performance obligations under this Agreement, as determined by County in the reasonable exercise of its administrative discretion;
- iii. 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 County may specify in the notice; or
- iv. 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 County no longer has the authority to meet its obligations under this Agreement.

b. DHS Termination. DHS may terminate this Agreement:

- i. For its convenience, upon at least 30 days advance written notice to County;
  - ii. Upon 45 days advance written notice to County, 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 County 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;
  - iii. Immediately upon written notice to County 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;
  - iv. Upon 30 days advance written notice to County, if County 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;
  - v. Immediately upon written notice to County, if any license or certificate required by law or regulation to be held by County or a subcontractor to perform the Work is for any reason denied, revoked, suspended, not renewed or changed in such a way that County 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;
  - vi. Immediately upon written notice to County, if DHS determines that County 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.
  - i. Upon termination of this Agreement, DHS shall have no further obligation to pay County under this Agreement.
  - ii. Upon termination of this Agreement, County 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.** County shall require subcontractors to maintain insurance as set forth in Exhibit C, which is attached hereto.
15. **Records Maintenance; Access.** County shall maintain all financial records relating to this Agreement in accordance with generally accepted accounting principles. In addition, County shall maintain any other records, books, documents, papers, plans, records of shipments and payments and writings of County, whether in paper, electronic or other form, that are pertinent to this Agreement in such a manner as to clearly document County's performance. All financial records, other records, books, documents, papers, plans, records of shipments and payments and writings of County whether in paper, electronic or other form, that are pertinent to this Agreement, are collectively referred to as "Records." County 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. County 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. County 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 County 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 County or its subcontractor(s) access to such DHS Information Assets or Network and Information Systems, County 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 County 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 County, 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. County 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.** County 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, County 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 County 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 County of any of its duties or obligations under this Agreement.

**21. No Third Party Beneficiaries.** DHS and County are the only parties to this Agreement and are the only parties entitled to enforce its terms. The parties agree that County'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 County 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

**COUNTY:** As set forth on page 1 of this Agreement.

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 County (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 County in such proportion as is appropriate to reflect the relative fault of the State on the one hand and of the County 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 County 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 County is jointly liable with the State (or would be if joined in the Third Party Claim), the County 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 County 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 County 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 County'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.** County 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 ("Indemnatee") 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 County'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 Indemnatee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnatee, 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 County, require the County 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, County 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 County, make an adjustment in the time required to complete this Agreement and the Agreement price by a duly executed amendment.

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**EXHIBIT C**

**Subcontractor Insurance Requirements**

**Required Insurance:** Subcontractor shall obtain at Subcontractor’s expense the insurance specified in this Exhibit C, prior to performing under this Agreement and shall maintain it in full force and at its own expense throughout the duration of this Agreement and all warranty periods. Subcontractor shall obtain the following insurance from insurance companies or entities that are authorized to transact the business of insurance and issue coverage in State and that are acceptable to DHS.

1. **Workers Compensation.** All employers, including Subcontractor, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide workers’ compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Subcontractor shall require and ensure that each of its subcontractors complies with these requirements.

2. **Professional Liability:**

Required by DHS     Not required by DHS

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 coverages that are satisfactory to the State. This insurance shall include personal injury liability, products and completed operations. Coverage shall be written on an occurrence basis. Subcontractor shall provide proof of insurance of not less than the following amounts as determined by DHS:

**Bodily Injury, Death and Property Damage:**

Amount described below per occurrence (for all claimants for claims arising out of a single accident or occurrence):

Not-to-exceed under this Subcontract:	Subcontractor Required Insurance Amount:
\$0 - \$1,000,000.	\$1,000,000.
\$1,000,001. - \$2,000,000.	\$2,000,000.
\$2,000,001. - \$3,000,000.	\$3,000,000.
In excess of \$3,000,001.	\$4,000,000.

4. **Automobile Liability Insurance:**

Required by DHS if Agency transports DHS clients     Not required by DHS

Automobile Liability Insurance covering all owned, non-owned, or hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for “Commercial General Liability” and “Automobile Liability”). Subcontractor shall provide proof of insurance of not less than the following amounts as determined by DHS:

**Bodily Injury/Death:**

per occurrence (for all claimants for claims arising out of a single accident or occurrence).

\$4,000,000 per occurrence limit for any single claimant; and

\$4,000,000 per occurrence limit for multiple claimants.

**AND**

**Property Damage:**

\$4,000,000 per occurrence limit for any single claimant; and

\$4,000,000 per occurrence limit for multiple claimants.

5. **Additional Insured.** The Commercial General Liability insurance and Automobile Liability insurance required under this Agreement shall include the State of Oregon, its officers, employees and agents as Additional Insureds but only with respect to Subcontractor's activities to be performed under this Agreement. Coverage shall be primary and non-contributory with any other insurance and self-insurance.
6. **Notice of Cancellation or Change.** There shall be no cancellation, material change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without 60 days' written notice from this Subcontractor or its insurer(s) to DHS. Any failure to comply with the reporting provisions of this clause shall constitute a material breach of Agreement and shall be grounds for immediate termination of this Agreement by DHS.
7. **Proof of Insurance.** Subcontractor shall provide to DHS information requested in Data Certification for all required insurance before delivering any Goods and performing any Services required under this Agreement. Subcontractor shall pay for all deductibles, self-insured retention and self-insurance, if any.
8. **"Tail" Coverage.** If any of the required liability insurance is on a "claims made" basis, Subcontractor shall either 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 this Agreement, for a minimum of 24 months following the later of (i) Subcontractor's completion and DHS' acceptance of all Services required under this Agreement, or, (ii) The expiration of all warranty periods provided under this Agreement. Notwithstanding the foregoing 24-month requirement, if Subcontractor 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 Subcontractor shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace for the coverage required under this Agreement. Subcontractor shall provide to DHS, upon DHS' request, certification of the coverage required under this section 8.
9. **Self-Insurance.** Subcontractor may fulfill its insurance obligations herein through a program of self-insurance, provided that Subcontractor's self-insurance program complies with all applicable laws, and provides insurance coverage equivalent in both type and level of coverage to that required in this Exhibit C. Notwithstanding section 7. of this Exhibit C, Subcontractor shall furnish an acceptable insurance certificate to DHS for any insurance coverage required by this Agreement that is fulfilled through self-insurance.

## EXHIBIT D

### Required Federal Terms and Conditions

**General Applicability and Compliance.** Unless exempt under 45CFR Part 87 for Faith-Based Organizations (Federal Register, July 16, 2004, Volume 69, #136), or other federal provisions, County shall comply and, as indicated, require all subcontractors to comply with the following federal requirements to the extent that they are applicable to this Agreement, to County, or to the Work, 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.** County 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 Work. Without limiting the generality of the foregoing, County 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 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 Work in violation of 42 U.S.C. 14402.
- 2. Equal Employment Opportunity.** If this Agreement, including amendments, is for more than \$10,000, then County 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 County 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. County 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.** County 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.** By signing this Agreement, the County certifies, to the best of the County's knowledge and belief that:
- a. No federal appropriated funds have been paid or will be paid, by or on behalf of County, 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 County shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.
  - c. The County 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.
  - d. 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.
  - e. No part of any federal funds paid to County under this Agreement shall be used other than for normal and recognized executive legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, electronic communication, radio, television, or video presentation designed to support or defeat the enactment of legislation before the United States Congress or any State or local legislature itself, or designed to support or defeat any proposed or pending regulation, administrative action, or order issued by the executive branch of any State or local government itself.
  - f. No part of any federal funds paid to County under this Agreement shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence the enactment of legislation, appropriations, regulation, administrative action, or Executive order proposed or pending before the United States Congress or any State government, State legislature or local legislature or legislative body, other than for normal and recognized executive-

legislative relationships or participation by an agency or officer of a State, local or tribal government in policymaking and administrative processes within the executive branch of that government.

- g.** The prohibitions in subsections (e) and (f) of this section shall include any activity to advocate or promote any proposed, pending or future Federal, State or local tax increase, or any proposed, pending, or future requirement or restriction on any legal consumer product, including its sale or marketing, including but not limited to the advocacy or promotion of gun control.
- h.** No part of any federal funds paid to County under this Agreement may be used for any activity that promotes the legalization of any drug or other substance included in schedule I of the schedules of controlled substances established under section 202 of the Controlled Substances Act except for normal and recognized executive congressional communications. This limitation shall not apply when there is significant medical evidence of a therapeutic advantage to the use of such drug or other substance of that federally sponsored clinical trials are being conducted to determine therapeutic advantage.

**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 Work or obligations of DHS related to this Agreement are covered by HIPAA. County shall determine if County will have access to, or create any protected health information in the performance of any Work or other obligations under this Agreement. To the extent that County 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, County 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 County 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 County is performing functions, activities, or services for, or on behalf of DHS, in the performance of any Work required by this Agreement, County 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 may be obtained by contacting DHS or by looking up form number 2090 on the DHS web site at <https://apps.state.or.us/cfi/FORMS/>.
- b.** Data Transactions Systems. If County intends to exchange electronic data transactions with DHS or the Oregon Health Authority (OHA) in connection with claims or encounter data, eligibility or enrollment information, authorizations or other electronic transaction, County shall execute an EDI Trading Partner Agreement and shall comply with EDI Rules.



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 County, or any of County'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 County or County's employee, officer, agent or subcontractor has used a controlled substance, prescription or non-prescription medication that impairs the County or County'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; (x) Violation of any provision of this subsection may result in termination of this Agreement.

11. **Pro-Children Act.** County 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.** County 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. County shall acknowledge



County'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 Agreement) 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.** County 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. County 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 Agreement, 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 County 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 agreement under a grant or subgrant; and
  - (2) Any rights of copyright to which a grantee, subgrantee or a county 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 agreement under a grant or subgrant.

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July 25, 2013

Board of County Commissioner  
Clackamas County

Members of the Board:

Approval of an Intergovernmental Agreement with City of Lake Oswego/Lake Oswego Adult Community Center to Provide Social Services for Clackamas County Residents age 60 and over

<b>Purpose/Outcomes</b>	Agreement with the City of Lake Oswego/Lake Oswego Adult Community Center to provide Older American Act (OAA) funded services for persons in the City of Lake Oswego service area.
<b>Dollar Amount and Fiscal Impact</b>	The maximum agreement is \$43,655. The contract is funded through the Social Services Division agreement with the Oregon Dept of Human Services, State Unit on Aging.
<b>Funding Source</b>	Federal Older American Act - no County General Funds are involved.
<b>Safety Impact</b>	None
<b>Duration</b>	Effective July 1, 2013 and terminates on June 30, 2014
<b>Previous Board Action</b>	
<b>Contact Person</b>	Brenda Durbin, Director, Social Services Division 503-655-8641
<b>Contract No.</b>	6163

**BACKGROUND:**

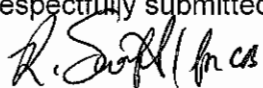
This agreement is for the City of Lake Oswego/Lake Oswego Adult Community Center to provide Older American Act (OAA) funded services for persons living in Lake Oswego. The services provided include lunch served at the Center, home delivered meals, health promotion activities, transportation, and information and referral activities. These services link residents with resources to meet their individual needs. This helps them to remain independent and involved in their community as long as possible.

In the spring of 2011 Social Services advertised for a contractor to provide Older American Act services for older persons in Clackamas County during Fiscal Year 2011-12, with an option for renewal for four additional years. No agency other than City of Lake Oswego/Lake Oswego Adult Community Center showed an interest in providing these services in the Lake Oswego area, so an intergovernmental agreement with the City of Lake Oswego/Lake Oswego Adult Community Center was negotiated. This is the third renewal under this RFP.

**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

CONTRACT FOR SERVICES

between

CLACKAMAS COUNTY SOCIAL SERVICES DIVISION  
AREA AGENCY ON AGING

and

CITY OF LAKE OSWEGO  
LAKE OSWEGO ADULT COMMUNITY CENTER

Fiscal Year 2013-2014

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## AGENCY SERVICE CONTRACT

This contract is between Clackamas County acting by and through its department of Health, Housing, & Human Services, Social Services Division, hereinafter called "COUNTY," and City of Lake Oswego/Lake Oswego Adult Community Center, hereinafter called "AGENCY."

### I. SCOPE OF SERVICES

A. Agency agrees to accomplish the following work under this contract for Older American Act (OAA) funded services:

1. **CASE MANAGEMENT** - A service designed to individualize and integrate social and health care options for or with a person being served. Its goal is to provide access to an array of service options to assure appropriate levels of service and to maximize coordination in the service delivery system. Case management must include four general components: access, assessment, service implementation, and monitoring. A unit of service is one hour of documented activity with the identified individual.
2. **REASSURANCE**: Regular friendly telephone calls and/or visits to physically, geographically or socially isolated registered clients that are receiving services to determine if they are safe and well, if they require assistance, and to provide reassurance. A unit is one contact
3. **INFORMATION & ASSISTANCE** - I & A is a service for older individuals that provides current information on opportunities and services available within their communities; assesses the problems and capacities of the individuals; links individuals to the opportunities and services; to the maximum extent feasible, ensures the individual receives the services needed and is aware of the opportunities available by establishing adequate follow-up procedures. A unit of service is one documented contact with an individual.
4. **TRANSPORTATION** - Transportation provides one-way rides to older persons who are unable to manage their transportation needs independently. A unit of service is one one-way ride provided to an individual.
5. **FOOD SERVICE** - Food Service is the production of meals for the congregate and home delivered meal recipients of the Lake Oswego Adult Center. Each meal must contain at least one-third of the Dietary Reference Intakes (DRI) as established by the Food and Nutrition Board, National Research Council - National Academy of Science. A unit is one meal prepared and served, delivered or a "late cancel".
6. **PHYSICAL ACTIVITY AND FALLS PREVENTION** - Programs based on best practices for older adults that provide physical fitness, group exercise, and music, art, and dance-movement therapy, including programs for multi-generational participation that are provided through local educational institutions or community-based organizations. Programs that include a focus on strength, balance, and flexibility exercise to promote physical activity and/or prevent falls, and that have

been shown to be safe and effective with older populations are highly recommended. (OAA 102(a)(14) E, D, F). A unit is one class session.

7. PREVENTIVE SCREENING, COUNSELING, AND REFERRALS - Education about the availability, benefits and appropriate use of Medicare preventive health services or other preventive health programs. Health risk assessments and screenings, and preventive health education provided by a qualified individual, to address issues including hypertension, glaucoma, cholesterol, cancer, vision, hearing, diabetes, bone density and nutrition screening. Health information on ongoing and age-related conditions including osteoporosis, cardiovascular diseases, diabetes, and Alzheimer's disease and related disorders.(OAA 102(a)(14) (A-B),(H)& (J). A unit is one session per participant.
  8. CAREGIVER RESPITE – Services that offer temporary, substitute supports or living arrangements for care recipients in order to provide a brief period of relief or rest for unpaid caregivers served under the Family Caregiver Support Program. Respite care includes: (1) in-home respite (personal care, home care, and other in-home respite); (2) respite provided by attendance of the care recipient at a senior center or other non-residential program; (3) institutional respite provided by placing the care recipient in an institutional setting such as a nursing home for short period of time as a respite service to the caregiver; and (for grandparents caring for children) summer camps. To be eligible for caregiver respite, the care recipient must either: (1) be unable to perform at least two activities of daily living (ADL's) without substantial human assistance, including verbal reminding, physical cueing OR (2) due to a cognitive or other mental impairment, require substantial supervision because the individual behaves in a manner that poses a serious health or safety hazard to the individual or another individual. A unit of service is one hour of services.
- B. Agency agrees to accomplish the following work under this contract for services funded by County General Fund to individual over 60 or to persons under 60 who are disabled: Geriatric Assessment, Information and Referral, Case Monitoring, and Outreach/Education. Additional services may be provided with prior approval by COUNTY through a written request by the Agency.
- C. Agency agrees to accomplish the following work under this contract for Ride Connection funded services:
1. Provide rides using Agency vehicles, volunteers and private taxis to older persons and to younger persons with disabilities who are unable to manage transportation needs independently.
- D. Purpose, Service Descriptions and Service Objectives are Exhibit 1, attached hereto.
- E. Services required under the terms of this agreement shall commence July 1, 2013. This agreement shall terminate June 30, 2014.

## II. COMPENSATION AND RECORDS

- A. Compensation. County shall compensate the Agency for satisfactorily performing the services identified in Section I on a fixed unit rate reimbursement basis as described in Exhibit 3 - Budget and Units of Service - attached hereto. The maximum compensation allowed under this contract is \$14,266 in Older Americans Act III-B funds, \$1,681 in Older Americans Act III-D funds, \$5,536 in Older Americans Act III-E funds, \$12,000 in NSIP funds, and \$10,172 in Ride Connection funds; for a total net compensation of \$43,655.
- B. Method of Payment. To receive payment the Agency shall submit invoices and accompanying progress reports as follows:
1. As required in Exhibit 3.
  2. Provider match required for OAA funds is 11.12% for Titles III-B, III-C and III-D, and 33.34% for Title III-E (Family Caregiver Support).
  3. Agency will invoice and receive reimbursement from the State of Oregon Seniors and Persons with Disabilities office for eligible Medicaid client Home Delivered Meals.
  4. Withholding of Contract Payments: Notwithstanding any other payment provision of this agreement, should the Agency fail to submit required reports when due, or submit reports which appear patently inaccurate or inadequate on their face, or fail to perform or document the performance of contracted services, the County shall immediately withhold payments hereunder. Such withholding of payment for causes may continue until the Agency submits required reports, performs required services, or establishes the County's satisfaction that such failure arose out of causes beyond the control, and without the fault or negligence, of the Agency.
- C. Record and Fiscal Control System. All payroll and financial records pertaining in whole or in part to this contract shall be clearly identified and readily accessible. Such records and documents should be retained for a period of three (3) years after receipt of final payment under this contract and all other pending matters are closed.
- D. Access to Records. The County, the State of Oregon and the Federal Government, and their duly authorized representatives shall have access to the books, documents, papers, and records of the Agency which are directly pertinent to this contract for the purpose of making audits, examinations, excerpts, and transcripts.

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

## III. MANNER OF PERFORMANCE

- A. Compliance with Applicable Laws and Regulations. The Agency shall comply with all federal, state, and local laws and ordinances applicable to the work to be done under this contract.

When a requirement is listed both in the main boilerplate of the contract and in an Exhibit, the Exhibit shall take precedence.

- B. Special Federal Requirements. Common rule restricts lobbying (Volume 55, NO38 of Fed. Register, Feb. 1990).
- C. Accessibility to Programs, Services and Activities. Agency will meet the requirements of Title II of the ADA, Section 504 of the Rehabilitation Act and DHS Policy 010-005.
  - 1. Agency will ensure the following for all programs, services and activities provided through this contract:
    - a. Public meetings, hearings and public events are held in locations that meet ADA accessibility requirements;
    - b. Services, programs and activities provided are readily accessible to and usable by individuals with disabilities;
    - c. When communicating with individuals make available:
      - 1) Written materials in alternate format,
      - 2) Qualified interpreters or auxiliary aids and services to refer individuals,
      - 3) And access via text telephone (TTY);
    - d. When a location for a service, program or activity is not physically accessible Agency will have a plan for making that service, program or activity available at an alternate location, either with Agency or with a sub-contractor;
    - e. Display notices in Agency's public areas and provide information to individuals about the availability of auxiliary aids and services and the legal rights of individuals with disabilities;
    - f. Cooperate with periodic County reviews for compliance with the ADA and Section 504 and follow Agency policy to address complaints and noncompliance.
- D. Agency shall not enter into any subcontracts for any of the work scheduled under this contract without obtaining prior written approval from the County.
- E. Agency certifies that it is an independent contractor and not an employee or agent of the County, State, or Federal Government. Responsibility for all taxes, assessments, and any other charges imposed upon employers shall be the sole responsibility of the Agency.
- F. Agency is a sole proprietor or is an insured employer for purposes of the Oregon Workers' Compensation law (ORS Chapter 656) and is solely liable for any Workers' Compensation coverage under this contract. If the Agency has the assistance of other persons in performance of this contract, the Agency shall qualify and remain qualified



for the term of this contract as an insured employer under ORS 656.017 and ORS 656.407.

- G. Confidentiality. All information as to personal facts and circumstances about clients obtained by the Agency shall be treated as privileged communications, shall be held confidential, and shall not be divulged without the written consent of the client, his or her attorney, the responsible parent of a minor child, or his or her guardian except as required by other terms of this contract. Nothing prohibits the disclosure of information in summaries, statistical, or other form which does not identify particular individuals.

The use or disclosure of information concerning clients shall be limited to persons directly connected with the administration of this contract. Confidentiality policies shall be applied to all requests from outside sources. The ADS, the Division, the Agency and subcontractor, if there is one, will share information as necessary to effectively serve mutual clients.

- H. Criminal Records Checks. Agency will ensure that criminal records checks are conducted and are on file for new employees and volunteers, after July 1, 2007, that meet the regulatory definition of a subject individual (someone who oversees, lives or works closely with, or provides services to vulnerable people) and are:

1. Employees of the Agency;
2. Subcontractors of the Agency (i.e. class instructors);
3. Volunteers for the Agency who are not under "active supervision" (i.e. nutrition program drivers); or
4. Direct care providers for which Agency provides service authorization (i.e. Respite Care providers).

Authorization: OAR 407-007-0210 through 407-007-0370 and ORS 181.534 through 181.537 and DHS Policy 060-010.

County will assist Agency to meet this requirement by processing criminal record checks for Agency's subject individuals if requested.

#### IV. GENERAL CONDITIONS

##### A. Indemnity.

1. County – The Agency 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 attributable in whole or in part to the acts or omissions of Agency, and Agency's officers, agents and employees, in performance of this contract.
2. Non-Medical rides for Medicaid clients funds – Agency shall defend, save, hold harmless, and indemnify the State of Oregon, Human Services Division and their officers, agents, and employees 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 Agency or its officers, employees, subcontractors, or agents, in performance of this contract.

3. Ride Connection/Tri-Met funds – Subject to the limits of the Oregon Tort Claims Act, ORS 30.260 through 30.300, and Article XI, Section 10 of the Oregon Constitution, Agency shall indemnify, hold harmless, and defend Ride Connection, TriMet its representatives, officers, directors, and employees from any loss or claim made by third parties, including legal fees and costs of defending actions or suits, resulting directly from Agency's performance or nonperformance of this contract, where the loss or claim is attributable to the negligence or other fault of Agency, its employees, representatives, or subcontractors.

B. Insurance.

1. Comprehensive General Liability Insurance

Required by COUNTY                      [ ] Not required by COUNTY

a. Required for County - Agency shall obtain, at Agency's expense, and keep in effect during the term of this contract, Comprehensive General Liability Insurance covering bodily injury and property damage on an "occurrence" form in the amount of not less than \$1,000,000 per occurrence/\$2,000,000 general aggregate for the protection of the County, its officers, commissioners and employees. This coverage shall include Contractual Liability insurance for the indemnity provided under this contract. The County, at its option, may require a complete copy of the above policy.

b. Required for State of Oregon for non-medical rides for Medicaid clients – Commercial General Liability insurance with a combined single limit, or the equivalent, of not less than \$1,000,000 each occurrence for Bodily Injury and Property Damage. It shall include contractual liability coverage for the indemnity provided for this funding source.

c. Required for Ride Connection/Tri-Met Transportation Funding – Broad form comprehensive general liability coverage, \$1,000,000 combined single limit bodily injury and property damage.

2. Comprehensive Automobile Insurance

Required by COUNTY                      [ ] Not required by COUNTY

a. Required for County Agency shall also obtain, at Agency's expense, and keep in effect during the term of the contract, "Symbol 1" Comprehensive Automobile Liability coverage including coverage for all owned, hired, and non-owned vehicles. The combined single limit per occurrence shall not be less than \$1,000,000. The County, at its option, may require a complete copy of the above policy.

b. Required by State of Oregon for non-medical rides for Medicaid clients – Commercial Automobile Liability insurance with a combined single limit, or the equivalent, of not less than \$1,000,000 for each occurrence for Bodily injury and Property Damage, including coverage for owned, hired or non-owned vehicles, as applicable.

c. Required for Ride Connection/Tri-Met Transportation Funding – Automobile bodily injury and property damage liability insurance covering all motor vehicles, whether owned, non-owned, leased, or hired, with not less than the following limits:  
Bodily injury: \$500,000 per person; \$1,000,000 per occurrence; and  
Property Damage: \$1,000,000 per occurrence  
AGENCY shall pay all deductibles for vehicles.

3. Professional Liability Insurance

Required by COUNTY                       Not required by COUNTY

Agency agrees to furnish the County evidence of Professional Liability Insurance in the amount of not less than \$1,000,000 combined single limit per occurrence/\$2,000,000 general annual aggregate for malpractice or error and omissions coverage for the protection of the County, its officers, commissioners and employees against liability for damages because of personal injury, bodily injury, death, or damage to property, including loss of use thereof, and damages because of negligent acts, errors and omissions in any way related to this contract. The County, at its option, may require a complete copy of the above policy.

4. Additional Insurance Provisions

a. Required by County - The insurance, other than Professional Liability, Workers' Compensation, and Personal Automobile Liability insurance, shall include "Clackamas County, its agents, officers, and employees" as an additional insured.

Such insurance shall provide sixty (60) day written notice to the County in the event of a cancellation or material change and include a statement that no act on the part of the insured shall affect the coverage afforded to the County under this insurance. This policy(s) shall be primary insurance as respects to the County. Any insurance or self-insurance maintained by the County shall be excess and shall not contribute to it.

b. Required by State of Oregon for non-medical rides for Medicaid clients – Insurance must provide that the State of Oregon, Department of Human Services, and its divisions, officers and employees are Additional Insured but only with respect to the transportation services funded under Agreement between the State of Oregon and Clackamas County Social Services.

c. Required for Ride Connection/Tri-Met Transportation Funding – the insurance shall:

- 1) include Ride Connection and Tri-Met and its directors, officers, representatives, agents, and employees as additional insured with respect to work or operations connected with providing transportation;
- 2) give Ride Connection and Tri-Met not less than thirty (30) days notice prior to termination or cancellation of coverage; and
- 3) include an endorsement providing that the insurance is primary insurance and that no insurance that may be provided by Ride Connection or Tri-Met may be called in to contribute to payment for a loss.

5. Notice of Cancellation. There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 60 days written notice to the Clackamas County Purchasing Division. Any failure to comply with this provision will not affect the insurance coverage provided to the County. The 60 days notice of cancellation provision shall be physically endorsed on to the policy.
  6. Insurance Carrier Rating. Coverages provided by the Agency must be underwritten by an insurance company deemed acceptable by the County. Insurance coverage shall be provided by companies admitted to do business in Oregon or, in the alternative, rated A- or better by Best's Insurance Rating. The County reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.
  7. Certificates of Insurance. As evidence of the insurance coverage required by this contract, the Agency shall furnish a Certificate of Insurance to Clackamas County. No contract shall be effected until the required certificates have been received, approved and accepted by the County. The certificate will specify that all insurance-related provisions within this contract have been complied with. A renewal certificate will be sent to the Clackamas County Purchasing Division 10 days prior to coverage expiration.
  8. Independent Contractor Status. The service or services to be rendered under this contract are those of an independent contractor. Agency is not an officer, employee or agent of the County as those terms are used in ORS 30.265.
  9. Primary Coverage Clarification. Agency's coverage will be primary in the event of a loss.
  10. Cross-Liability Clause. A cross-liability clause or separation of insured's condition will be included in all general liability, professional liability, and errors and omissions policies required by this contract.
- C. Amendments. The terms of this contract shall not be waived, altered, modified, supplemented or amended, in any manner whatsoever, except by written instrument signed by Agency and County.
- D. Termination. This contract may be terminated by mutual consent of both parties, or by either party upon 30 days' notice, in writing and delivered by certified mail or in person.

The County may terminate this contract effective upon delivery of written notice to the Agency, or at such later date as may be established by the County, under any of the following conditions:

1. If County funding from federal, state, or other sources is not obtained and continued at levels sufficient to allow for purchase of the indicated quantity of services. The contract may be modified to accommodate a reduction in funds.

2. If federal or state regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this contract or are no longer eligible for the funding authorized by this contract.
3. If any license or certificate required by law or regulation to be held by the Agency to provide the services required by this contract is for any reason denied, revoked, or not renewed.
4. If Agency fails to provide services or reports as specified by the County in this contract.
5. If Agency fails to comply with any requirements in this contract.

Any such termination of this contract shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination.

E. Oregon Public Contracting Provisions and Constitutional Limitations. Pursuant to the requirements of ORS 279B.020 and 279B.220 through 279B.335 and Article XI, Section 10, of the Oregon Constitution, the following terms and conditions are made a part of this contract:

1. Agency shall:
  - a. Make payments promptly, as due, to all persons supplying to Agency labor or materials for the prosecution of the work provided for in this contract.
  - b. Pay all contributions or amounts due the Industrial Accident Fund from such Agency or subcontractor incurred in the performance of this agreement
  - c. Not permit any lien or claim to be filed or prosecuted against Clackamas County on account of any labor or material furnished.
  - d. Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
2. If Agency fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to Agency or a subcontractor by any person in connection with this contract as such claim becomes due, the proper officer representing Clackamas County may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due Agency by reason of this agreement.
3. No person shall be employed for more than ten (10) hours in any one day, or more than forty (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 defined in ORS 279A.055, the employee shall be paid at least time and one-half pay: (a) for all overtime in excess of eight (8) hours a day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; or for all overtime in excess of 10 hours in any one day or 40 hours in any one week when the work week is four consecutive days, Monday

through Friday; and (b) for all work performed on Saturday and on any legal holiday specified in ORS 279B.020.

In the case of contracts for personal services as described in ORS 279A.055, employees shall be paid at least time and one-half for all overtime worked in excess of 40 hours in any one week, except for individuals who are excluded under ORS 653.010 to 653.261 or under 29 USC Section 201 to 209 from receiving overtime.

4. Agency shall promptly, as due, make payment to any person or partnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention incident to sickness and injury to the employees of Agency, of all sums which Agency agrees to pay for the services and all moneys and sums that Agency collected or deducted from the wages of its employees under any law, contract or agreement for the purpose of providing or paying for the services.
5. Agency, if it is an employer of one or more workers subject to workers' compensation coverage under ORS Chapter 656, shall qualify as an insured employer under ORS 656.017 or as an exempt employer under ORS 656.126. Agency shall maintain employer liability insurance with limits of \$500,000 each accident, \$500,000 disease each employee, and \$500,000 each policy limit.


Agency warrants that all persons engaged in contract work and subject to the Oregon Workers' Compensation Law are covered by a workers' compensation plan or insurance policy that fully complies with Oregon law. Agency must indemnify RIDE CONNECTION for any liability incurred by RIDE CONNECTION as a result of Contractor's breach of the warranty under this Paragraph.


6. This contract is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10 of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.
- F. Agency shall comply with Section 504 of the Rehabilitation Act of 1973, and Title VI of the Civil Rights Act of 1964.
  - G. Future Support. The County makes no commitment of future support and assumes no obligation for future support of the activity contracted herein except as set forth in this contract.
  - H. Ownership of Work Product. All work products of the Agency which result from this contract are the exclusive property of the County.

I. Integration. This contract contains the entire agreement between the county and the Agency and supersedes all prior written or oral discussions or agreements. This contract consists of four sections plus the following attachments which by this reference are incorporated herein:

- Exhibit 1 Scope of Work and Service Objectives and Elements of Completion
- Exhibit 2 Medicaid Administrative Activities
- Exhibit 3 HIPAA Agreement
- Exhibit 4 Reporting Requirements
- Exhibit 5 Budget and Units of Service
- Exhibit 6 AGENCY Information

**SIGNATURES**

<p><b>AGENCY</b></p> <p>CITY OF LAKE OSWEGO</p> <p></p> <hr/> <p>By Kent Studebaker Mayor</p> <p><u>June 28, 2013</u></p> <hr/> <p>Date</p> <p><u>PO Box 369</u> Street Address</p> <p><u>Lake Oswego, OR 97034</u> City/Zip</p> <p><u>(503) 635-0215</u>    <u>(503) 699-7462</u> Phone                                      Fax</p> <p><u>93-6002231</u> Tax ID Number</p>	<p><b>CLACKAMAS COUNTY</b></p> <p>Commissioner John Ludlow, Chair Commissioner Jim Bernard Commissioner Paul Savas Commissioner Martha Schrader Commissioner Tootie Smith</p> <p>Signing on Behalf of the Board</p> <hr/> <p>Cindy Becker, Director Health, Housing, &amp; Human Services</p> <hr/> <p>Date</p>
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APPROVED AS TO FORM  
  
Attorney  
City Attorney's Office

**EXHIBIT 1**

**Scope of Work and Performance Standards  
and Guidelines for Service**

- A. Purpose of the Services**
  - B. Description of Services**
  - C. Service Objectives**
-



## Exhibit 1

### VI. PURPOSE, SERVICE DESCRIPTION AND SERVICE OBJECTIVES

#### A. PURPOSE OF THE SERVICES

The purpose of this contract is the cooperation of both parties in providing the Area Agency on Aging's mandated services of meal site management, outreach, assessment, information and assistance, case monitoring, transportation, health promotion and legal consultation for Clackamas County residents age 60 and older. The goal in providing these services is to assist older residents in meeting their individual needs by linking them with County resources.

#### B. DESCRIPTION OF SERVICES

1. **CASE MANAGEMENT:** Is an in-depth interview with a client to provide access to an array of service options to assure appropriate levels of service and to maximize coordination in the service delivery system. Case management must include four general components: access, assessment, service implementation, and monitoring:
  - a) Access & Assessments:
    - 1) Informing clients of available services and, where appropriate, developing a goal-oriented service plan.
    - 2) Utilize an approved County-wide standardized assessment/intake form.
    - 3) Assessment is re-done with a change in client life situation/condition - every six to twelve months.
    - 4) May be billed upon submission of assessment/intake form.
  - b) Service Implementation & Monitoring:
    - 1) Provide early identification of current or potential problem areas.
    - 2) Assess the need for changes/improvements in service.
    - 3) Identify any gaps/unmet needs.
    - 4) Review intervention results to determine if what was done achieved the desired result.
    - 5) Determine if services should be discontinued.
    - 6) Case monitoring services are available to frail but mobile elderly as well as
2. **REASSURANCE:** Regular friendly telephone calls and/or visits to physically, geographically or socially isolated registered clients that are receiving services to determine if they are safe and well, if they require assistance, and to provide reassurance. A unit is one contact
3. **INFORMATION & ASSISTANCE:** Consists of request for assistance locating resources to meet a specific need, or assistance prioritizing and locating resources to meet multiple needs. Inquiries require:
  - a) Informal assessment of the client's needs.
  - b) Evaluation of appropriate resources.
  - c) Assistance linking the client to the resources.
  - d) Completion of an intake form to document background information on the client, the client's needs and what actions or referrals were made.

- e) Follow up with the client or agency to see if the needs were met.
  - f) Tallying the category of need for each inquiry.
  - g) Documenting any unmet needs including recording the request, resources tried and the reason unable to help.
4. **TRANSPORTATION:** Is the service that provides one-way rides for older persons and younger persons with disabilities. The goal is to ensure that transportation needs are met for those who are unable to meet their transportation needs independently. OAA funded rides are scheduled for persons who are age 60 and older for trips to medical appointments, clinics, personal business and to senior center activities. Ride Connection funded rides are scheduled for individuals age 60 and older and for persons with disabilities age 18 and over for medical appointments, clinics, personal business, shopping, nutrition and recreation activities.
- a) Lake Oswego Adult Community Center Transportation Consortium Goals:
    - 1) Continue implementation of fund-raising plan for replacement vehicles.
    - 2) Assure all drivers meet Ride Connection training and eligibility requirements as defined in the Operations Manual for Transportation Coordinators.
    - 3) Share information with Consortium regarding volunteer driver program.
    - 4) Continue regular publicity/marketing efforts regarding transportation program.
    - 5) Continue to explore ways to increase ridership, including contact with long term care facilities in the area.
    - 6) Attend all Transportation Consortium meetings
  - b) Guidelines for Non-Medical Transportation for Waivered Medicaid Clients
    - 1) This funding source is available for Medicaid clients who are receiving "waivered" services. Medicaid clients with a case manager who reside in all types of living situations except nursing facilities are waivered Medicaid clients. All rides must be authorized in writing on a *NON MEDICAL RIDE REFERRAL FORM FOR WAIVERED MEDICAID CLIENT* form by an Aging and Disability Services case manager before reimbursement may be requested for them. AGENCY must keep the client ride authorizations on file – faxed forms are adequate. Case Managers will authorize rides yearly, at a minimum and will note the need for non-medical transportation in the client's signed case plan. County will coordinate completion and distribution of forms for Agency and case managers through the Transportation Reaching People (TRP) program.
    - 2) Services shall be billed by Agency according to the following rate scale:
      - One person, one-way ride:           \$14.00 per ride
    - 3) Clients receiving the rides will not be asked or expected to contribute to the cost of the ride.
    - 4) Trips will be tracked daily by client and type of ride. This information will be sent monthly to County, and be available for State and Federal representatives for audit purposes.

- c) Agency will be responsible for:
  - 1) recruitment of volunteer and/or paid drivers who will qualify for insurance coverage or who are willing to provide proof of coverage as drivers, and maintaining an adequate number of qualified volunteer and/or paid drivers to provide services.
  - 2) orientation of drivers to the transportation program and informing them of other specialized training opportunities required to maintain safety of operations.
  - 3) submission of criminal record check requests on all potential drivers and receiving satisfactory reports back prior to scheduling them to transport any client.
  - 4) drug and alcohol testing on all potential paid drivers prior to hiring them is recommended for all drivers of Center-owned mini vans and buses, including volunteers.
- 5. **FOOD SERVICE-** Is the production of meals for the congregate and home delivered meal recipients of the Lake Oswego Adult Center. Each meal must contain at least one-third of the Recommended Dietary Allowance (RDA) as established by the Food and Nutrition Board, National Research Council - National Academy of Science. A unit is one meal prepared and served, delivered, or a HDM "late-cancel."
- 6. **PHYSICAL ACTIVITY AND FALLS PREVENTION** – The provision of physical fitness programs that include a focus on strength, balance, and flexibility exercise to promote physical activity and/or prevent falls, and that have been shown to be safe and effective with older populations.
- 6. **PREVENTIVE SCREENING, COUNSELING, AND REFERRALS** - The provision of educational programming about the availability, benefits and appropriate use of Medicare preventive health services and/or other preventive health programs.
- 7. **CAREGIVER RESPITE** – Services that offer temporary, substitute supports or living arrangements for care recipients in order to provide a brief period of relief or rest for unpaid caregivers served under the Family Caregiver Support Program. To be eligible for caregiver respite, the care recipient must either: (1) be unable to perform at least two activities of daily living (ADL's) without substantial human assistance, including verbal reminding, physical cueing OR (2) due to a cognitive or other mental impairment, require substantial supervision because the individual behaves in a manner that poses a serious health or safety hazard to the individual or another individual.

**C. SERVICE OBJECTIVES**

**1. Case Management**

**Objective a.:** To provide contracted units of service throughout the contract period for County residents age 60 and older who are identified as needing assistance from County agencies.

**Elements:**

- a) Agency Client Services Coordinator (CSC) assesses clients within two weeks following their request for services or referral from another source (outreach effort, gatekeeper, neighbor, family member, etc.).
- b) Agency CSC completes assessment on a County approved assessment/intake form.

- c) Agency CSC writes case plan, as appropriate, for the client from the information gathered on the assessment form.
- d) Agency CSC re-assesses clients' service needs/eligibility every six months or when their condition or life situation dramatically changes
- e) Agency CSC reviews client case plans quarterly, at a minimum, and provides follow up contact by phone or home visits.
- f) Agency CSC (upon request from client, other agency or family member) provides additional follow up to coordinate services.
- g) Agency CSC consults with SPD Case Manager (if client has one) to maximize coordination of services. Consultations will be annotated on Case Monitoring forms within 2 work days.
- h) Agency CSC documents all reviews and additional follow ups on case monitoring contact forms which are kept in client record file.
- i) Agency CSC keeps all client information in a secured area, accessible to only authorized personnel.

## 2. Reassurance

Objective a.: To provide contracted units of service throughout the contract period for County residents age 60 and older who are identified as needing assistance from County agencies.

### Elements:

- a) Agency Client Services Coordinator (CSC) assesses clients provides follow up contact by phone to ensure that services outlined under case plan are meeting clients need.
  - b) Agency CSC documents all reviews and additional follow ups on case monitoring contact forms which are kept in client record file.
- 
- c) Agency CSC keeps all client information in a secured area, accessible to only authorized personnel.

## 3. Information and Assistance - COUNTY Responsibilities

Objective: To provide participating Agency with training, technical assistance, resource development, networking and information sharing.

### Elements:

- a) County will provide orientation on County's I&R program to Agency I&A staff.
- b) County will notify Agency 's I & A Specialist of "Networking" I & R Breakfast Meetings and schedule speakers to meet interests expressed by Agency.

## 4. Information and Assistance - Agency Responsibilities

Objective a.: Have a system in place which enables Agency to provide referral services to link people with needs to the appropriate resources.

Elements:

- a) Agency will designate a single individual (paid or volunteer) who is at least 0.5 FTE with the Agency as an I & A Specialist.
- b) Agency will notify County I & A Coordinator and Contract Specialist within 30 days of any change in Agency's designated I & A Specialist, and will schedule an on-site training with the County I & A Coordinator for the new designee within 60 days of appointment.
- c) Agency's I & A Specialist will attend a minimum of 6 monthly County "Networking" I&R breakfasts meeting each year and attend 4 CSC meetings.
- d) Agency's I & A Specialist will update center information for the County's Community Resources Guide, initiate notification to County's I&R program regarding any changes to Agency programs, and notify County's I&R program of any significant changes in local community resources.
- e) Agency I & A Specialist will compile and submit quarterly data reports, including a description of unmet needs, to the Contract Specialist for forwarding to the County I & A Coordinator by the 10th day following each quarter.

**Objective b.:** To provide contracted units of service throughout the contract period for County residents age 60 and older who need help identifying resources to meet their individual needs.

Elements:

- a) Agency Manager/Director or CSC annotates name, Medicaid status, address, phone number, date of request, nature of request/need and if referral was to a service that supports the delivery of State Medicaid Plan or Home and Community Based Waiver services on Intake Form when request for referral services is made.
- b) Agency makes referral and follow up with client within a 2 day work period.
- c) Agency annotates follow up taken and number of referrals needed on Referral Log.
- d) Agency Director keeps completed Referral Logs in a secured area, accessible to only authorized personnel.

5. Individual Outreach

**Objective:** -- To inform and/or persuade people to access care through available programs.

Elements:

- a) CSC and other AGENCY staff will engage in active discussions of the benefits of all available programs including the Medicaid program
- b) CSC and other AGENCY staff will work with individuals to overcome barriers to submitting necessary applications for services.
- c) AGENCY will keep a record of all Outreach contacts.

## 6. Transportation

Objective: To provide contracted units of service throughout the contract period for County residents age 60 and older, and to younger persons with disabilities who are unable to meet their transportation needs.

### Elements:

- a) Agency designates one person to be coordinator for the transportation program. This person will be responsible for:
  - 1) Recruiting drivers.
  - 2) Submitting criminal checks
  - 3) Ensuring all drivers meet Ride Connection training requirements
  - 4) Scheduling road tests for all drivers.
  - 5) Conducting periodic/seasonal driver safety training.
  - 6) Providing a copy of written procedures for transportation services to each driver.
  - 7) Scheduling vehicle maintenance.
  - 8) Maintain daily Pre- and Post- trip Reports
- b) Agency provides transportation as scheduled each day.
- c) Agency maintains system to document each trip of each day
- d) Agency schedules private auto transportation for medical appointments within the Lake Oswego area.
- e) Agency coordinates with County Transportation Reaching People program to schedule private auto rides outside of the Lake Oswego area.

## 7. Food Service

Objective a.: To produce and deliver contracted number of meals to specified County sites throughout the contract period.

### Elements:

- a) Agency submits each month's menu to County's Registered Dietitian (RD) by the first day of the preceding month. Menus must meet the following standards:
  - 1) Each meal must contain at least 1/3 of the Dietary Reference Intakes (DRI) as established by the Food and Nutrition Board, National Research Council - National Academy of Science, for Male 70+ or Female 70+, whichever is greater. (Milk is part of Site Management.) Nutrition providers are strongly encouraged to use computerized nutrient analysis to assure meals are in compliance with nutritional requirements.
  - 2) The cycle for the cycle menu system must be at least nine weeks long.
  - 3) A Registered Dietitian (RD) must review and sign the menus to certify that they meet the one-third RDI. They should also incorporate the whole grains, fruits, vegetables and low-fat dairy products that meet the 2007 Dietary Guidelines for Americans.
  - 4) Menus should reflect the tastes and appetites of the current elderly population.

- 5) Menus should incorporate a variety of foods and preparation methods with contrasts in color, texture, sizes, shapes, and flavors. Food items should not be repeated two days in a row, or on same day of consecutive weeks. Menus should reflect seasonal availability of fresh fruits and vegetables.
- 6) All items must be specifically identified in the menu. Listing such things as "Fruit in Season", "Vegetable" or "Cookie" does not provide enough information. Each menu item should be easily identified by its name.
- 7) A special meal should be planned for major holidays, such as Thanksgiving and Christmas. These meal dates will be coordinated with meal site staff. A special food and/or meal planned for lesser holidays, such as Valentine's Day and Mother's Day would also be encouraged.
- 8) Menus should be served as written and approved. If changes are necessary, they must be of comparable nutrient value. Each change is to be recorded on the working and/or file copy of the menu and initialed and dated by a supervisor. Meal sites need to be informed of changes as soon as possible as they are required to post the menu.

Objective b.: To provide Special Diet Meals to meet participants' needs. Menus shall be planned and meals available for the modified diets listed below:

Elements:

- a) Uncalculated Diabetic. Eliminates items high in sugar by substituting products or recipes that use artificial sweeteners. The carbohydrate content of the meal should represent approximately 50% of the total calories.
- b) Moderate Sodium Restricted. Eliminates menu items or foods that are naturally high in sodium (not to exceed 1.2 grams per meal).
- c) Low Cholesterol. Eliminates menu items or foods that are naturally high in cholesterol and/or fat (not to exceed 100 mg per meal).

Objective c.: To use standardized recipes and portion control.

Elements:

- a) Recipes used by Agency should be adapted to the requirements of a Title III Senior Nutrition meal.
- b) Recipes should be standardized for the kitchen, equipment, ingredients, and skills of personnel using them.
- c) Recipes should be adjusted for yield based on portion size and the number of people being served that particular meal.
- d) Food service employees must understand and be able to use standardized recipes and produce standard portions.

Objective d.: To procure food from sources that comply with all federal, state and local laws that relate to food production, manufacturing, packaging and labeling. Donated food that meets the above standards may be used.

Objective e.: To comply with all federal, state and local laws and regulations pertaining to sanitation requirements and practices in food production, storage, transportation, and service.

Elements:

- a) A sanitation inspection by a Registered Sanitarian from the State Health Division or local health department is required every six months.
- b) A copy of each inspection report is to be mailed to County within five working days of receipt, along with a written plan (including timelines) of any required corrective action.
- c) Contractor must establish and use sanitary procedures for packaging and transporting food from kitchen for home delivered meals. This will include procedures for maintaining proper temperatures and cleaning and sanitizing all transport equipment.
- d) Food temperatures shall be taken and recorded as the food is panned to leave the production area for transport. Records of these temperature checks shall be maintained in the Contractor's files.
- e) Oregon Nutrition Program Standards and Oregon Administrative Rules, Chapter 333, Food Sanitation Rules must be followed.

Objective f.: To employ qualified, trained personnel to assure satisfactory performance.

Elements:

- a) Agency must have at least one employee in the kitchen who has completed a community college-level food service sanitation course.
  - b) Agency must have a new employee orientation.
  - c) Agency must have a training plan that includes training for employees and supervisory staff.
7. Physical Activity/Falls Prevention

Objective: To provide contracted units of service throughout the contract period.

Elements:

- a) Agency schedules physical activity classes that include a focus on strength, balance, and flexibility to promote physical activity and/or prevent falls regularly at the center.
- b) Agency registers participants for activities, obtaining a waiver to injury for each participant.
- c) Agency has physical condition of clients assessed before setting up plan for workouts with equipment.



## 8. Preventive Screening, Counseling, and Referrals

Objective: To provide contracted units of service throughout the contract period.

Elements:

- a) Agency contacts qualified professionals/organizations to conduct educational programming about the availability, benefits and appropriate use of Medicare preventive health services.
- b) Agency contacts qualified professionals/organizations to conduct Health risk assessments and screenings or preventive health education programs at their facility or a facility convenient for their clientele.
- c) Agency schedules and advertises programs.
- d) Agency registers participants for activities, if necessary.
- e) Agency has staff and/or trained volunteers available on site to coordinate the programs.
- f) Where appropriate, Agency keeps demographic records of participants for future planning purposes and so that participants may be notified of other preventive health education programs available to them.

## 9. Caregiver Respite –

Objective: To provide contracted units of service for family members of eligible under the Family Caregiver Support Program.

Elements:

- a) Agency respite program coordinator (RPC) interviews care providers to determine appropriateness of clients to program.
- b) Agency RPC registers clients in program.
- c) Agency staff, led by an RN, provide weekly activity program for respite clients.

**EXHIBIT 2**  
**HIPPA Agreement**

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## EXHIBIT 2

### VIII. Health Insurance Portability and Accountability Act (HIPAA) Agreement

The Health Insurance Portability and Accountability Act (HIPAA) is the first comprehensive federal protection of individual privacy. The U.S. Congress passed the act in 1996. It also sets national standards to protect personal health information, reduces health care fraud and waste through standardized electronic transactions and codes, and makes health coverage more portable. The implementation deadlines for Oregon Department of Human Services (DHS) are – privacy compliance: April 14, 2003; transaction and code sets compliance: Oct. 16, 2003.

Health information as defined by HIPAA and DHS privacy policies is much broader than medical. It includes all aspects of physical and mental health information, alcohol & drug, vocational rehabilitation, counseling, etc. HIPAA Federal Reg. 42, CRF 160.103 defines health information as: “any information whether oral or recorded, in any form or medium, which relates to the past, present or future physical or mental health condition of an ‘individual.’”

Agency agrees to deliver the services in the contract, funded in whole or in part by this contract, in compliance with HIPAA.

Individually Identifiable Health Information about specific individuals is confidential. Individually Identifiable Health Information relating to specific individuals may be exchanged between Agency and County for purposes directly related to the provision of services to Clients which are funded in whole or in part under this contract. However, Agency shall not use or disclose any Individually Identifiable Health Information about specific individuals in a manner that would violate the Social Services Privacy Rules.

### **HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT BUSINESS ASSOCIATE AGREEMENT PROVISIONS**

The addition of HIPAA agreement language to the contract between The City of Lake Oswego/ Lake Oswego Adult Community Center and Clackamas County Social Services Division is required by the Health Insurance Portability and Accountability Act of 1996, (HIPAA), Pub. Law No. 104-191.

#### **RECITALS**

The HIPAA Privacy Rule, set forth at Title 45, parts 160 and 164 of the Code of Federal Regulations (CFR) requires a business associate to enter into a contract containing specific provisions intended to preserve the confidentiality of protected health information (PHI) obtained by the business associate in the course of its relationship with a covered entity prior to any disclosure of PHI by the covered entity to the business associate. Clackamas County is a covered entity under the HIPAA Privacy Rule and Agency is a business associate.

County and Agency desire to enter into an agreement that meets the requirements of the HIPAA Privacy Rule and that will permit the Agency to have access to, create or receive certain Protected Health Information from County in conjunction with the services being provided by Agency under the service contract.

#### **ARTICLE 1**

##### **Terms**

- 1.1 Terms used in this Agreement that are terms defined by the HIPAA Privacy Rule, 45 CFR parts 160 and 164, have the same meaning as set forth in those regulations.
- a. BUSINESS ASSOCIATE as defined in 45 CFR §160.103 shall mean City of Lake Oswego/Lake Oswego Community Center [AGENCY].
  - b. COVERED ENTITY as defined in 45 CFR §160.103, shall mean COUNTY.
  - c. DATA AGGREGATION shall have the same meaning as the term used in 45 CFR §164.501.
  - d. DESIGNATED RECORD SET shall have the same meaning as the term used in 45 CFR §164.501.
  - e. INDIVIDUAL shall mean the person who is the subject of the information and has the same meaning as the term "Individual" as defined in 45 CFR §164.501 and includes a person who qualifies as a personal representative pursuant to 45 CFR §164.502(g).
  - f. PRIVACY RULE shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Parts 160 and 164.
  - g. PROTECTED HEALTH INFORMATION shall have the same meaning as the term in 45 CFR §164.501, limited to information created or received by a Business Associate from or on behalf of a Covered Entity.
  - h. REQUIRED BY LAW shall have the same meaning as the term in 45 CFR §164.501.

**ARTICLE 2**  
**Obligation and Activities of Contractor**

- 2.1 Agency shall not receive, use or disclose Protected Health Information other than as permitted or required by this Agreement or as Required By Law.
- 2.2 Agency shall receive, use or disclose only the minimum necessary Protected Health Information required to fulfill its obligations to COUNTY or as otherwise imposed by law.
- 2.3 Agency shall use appropriate safeguards to prevent use or disclosure of the Protected Health Information in any manner that is not permitted by this Agreement.
- 2.4 Agency shall mitigate, to the extent practicable, any harmful effect that is known to Agency of a use or disclosure of Protected Health Information in violation of the requirements of this Agreement.
- 2.5 Agency shall report to County in writing any use or disclosure of Protected Health Information that is not authorized by the Agreement. Such written notice will be provided to County within seven (7) days of Agency becoming aware of such unauthorized use or disclosure.
- 2.6 Agency will ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created by or received by Agency on behalf of County, agrees to the same restrictions and conditions that apply through this Agreement to Agency

with respect to such information. Agency shall terminate any agreement with an agent or subcontractor who fails to abide by such restrictions and obligations. Prior to making any permitted disclosure Agency will obtain reasonable assurances from an agent or subcontractor that such Protected Health Information will be held confidential as provided by this Agreement and only disclosed as required by law, or for the purpose for which it was disclosed by Agency to the agent or subcontractor, and that any breaches of confidentiality of the Protected Health Information that becomes known to such agent or subcontractor will be immediately reported to Agency.

- 2.7 Agency shall make Protected Health Information in Designated Record Sets that are maintained by the Agency available to County to meet its obligations under the HIPAA Privacy Rule, 45 CFR § 164.524.
- 2.8 Agency shall make such Protected Health Information available to County for amendment and shall incorporate any such amendment to enable County to meet its obligations under the HIPAA Privacy Rule, 45 CFR § 164.526.
- 2.9 Agency shall make internal practices, books, and records, including policies and procedures relating to the use and disclosure of Protected Health Information received from, or created by or received by Agency on behalf of County available to the Secretary of the U.S. Department of Health and Human Services for purposes of determining County's compliance with the HIPAA Privacy Rule.
- 2.10 Agency shall make available to County the information required to provide an accounting of disclosures to enable County to fulfill its obligations under, 45 CFR §164.528. Agency shall provide the accounting to County, or to an Individual as directed by the County, within five (5) business days of County's request. Agency, however, is not required to provide an accounting of disclosures made (i) to carry out treatment, payment or health care operations; (ii) to Individuals of their own Protected Health Information; (iii) to persons involved in the Individual's care (iv) for national security or intelligence purposes as set forth in 45 CFR §164.512(k)(2); (v) to correctional institutions or law enforcement officials as set forth in 45 CFR § 164.512(k)(5); or (vi) prior to April 14, 2003.

At a minimum, Agency shall record and provide County, or an Individual as directed by County, with an accounting of the following information: (i) the date of disclosure; (ii) the name of the entity or person who received Protected Health Information and, if known, the address of the entity or person; (iii) a brief description of the Protected Health Information disclosed; and (iv) a brief statement of purpose for the disclosure that reasonably informs the Individual of the basis for the disclosure.

- 2.11 Except as otherwise limited in this Agreement, Agency may use Protected Health Information for the proper management and administration of the Agency or to carry out the legal responsibilities of the Agency.
- 2.12 Except as otherwise limited in this Agreement, Agency may use Protected Health Information to provide Data Aggregation services to County as permitted by 45 CFR § 164.504(e)(2)(i)(B). Agency may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR § 164.502(j)(1).

**ARTICLE 3**  
**Obligations of County**

- 3.1 County will provide Agency with its Notice of Privacy Practices issued in accordance with 45 CFR §164.520, as well as any changes made to that notice.
- 3.2 County will provide Agency with notice of any restrictions to, changes to, revocation of, or permission by Individual to use or disclose Protected Health Information if such information affects Agency's permitted uses or disclosures, within a reasonable period of time after County becomes aware of such information in accordance with 45 CFR § 164.522.
- 3.3 County represents that it has the right and authority to disclose Protected Health Information to Agency for Agency to perform its obligations under the service contract and that County's disclosure does not violate the HIPAA Privacy Rule, County's Notice of Privacy Practices or any applicable law. County will not request Agency to use or disclose Protected Health Information in any manner that would not be permissible under HIPAA Privacy regulations if done by County.
- 3.4 County acknowledges that it shall provide to, or request from, Agency only the minimum Protected Health Information necessary for Agency to perform its obligations under this Agreement and the service contract.

**ARTICLE 4**  
**Term and Termination**

- 4.1 This Agreement will be effective as of the date the services contract between the parties is executed, and will terminate when the services contract terminates unless sooner terminated by the provisions of this Agreement.
- 4.2 A material breach by Agency, of any provision of this Agreement, shall provide grounds for termination of the Agreement and the services contract at the sole discretion of County.
- 4.3 If County learns of an activity or practice of Agency that constitutes a material breach or violation of the Agency's obligations under this Agreement and does not terminate this Agreement, then County may insist that Agency cure such breach or end such violation, as applicable. If Agency does not cure or cease the violation, County shall either: (i) terminate this Agreement and the services contract if, in County's sole discretion, it is feasible, or (ii) report Agency's breach or violation to the Secretary of the U.S. Department of Health and Human Services if such termination is not feasible.
- 4.4 If the County determines that it is not feasible to terminate this Agreement and the services contract, then Agency and its agents and subcontractors shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Agency and its agents or subcontractors maintain such Protected Health Information.
- 4.5 Upon termination of this Agreement for any reason, Agency shall return or destroy all Protected Health Information that Agency and its agents or subcontractors still maintain in any form, and shall retain no copies of such Protected Health Information unless not feasible.

**ARTICLE 5**  
**Miscellaneous**

- 5.1 A reference in this Agreement to a section in the HIPAA Privacy Rule means that section in effect or as amended.
- 5.2 Agency shall indemnify, hold harmless and defend County, its officers, commissioners and employees from and against any and all claims, losses, liabilities, costs and other expenses, including attorney fees and interest, incurred as a result of, or arising directly or indirectly out of or in connection with any violations of the responsibilities of Agency imposed by this Agreement or by HIPAA Privacy regulations, that are caused by the fault, inattention, inadvertence or neglect of CONTRACTOR.
- 5.3 This Agreement will be interpreted and enforced according to the laws of the State of Oregon, without regard to its conflict of law principles. Any proceeding that is brought to enforce any provision of this Agreement, or to seek damages or injunctive relief for its breach, will be filed and heard in a court of competent jurisdiction in Clackamas County, Oregon.
- 5.4 Neither party may assign the rights, or delegate its duties under this Agreement without the express written consent of the other party.
- 5.5 Nothing express or implied in this Agreement is intended to confer, nor shall confer, upon any person other than County and Agency and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.
- 5.6 If any modification to this Agreement is required by law in order for this Agreement to be in conformity with federal or state law, or if County reasonably concludes that an amendment to this Agreement is required because of a change in federal or state law, County will notify Agency of such proposed modification(s). The modification(s) shall be deemed accepted by Agency and this Agreement so amended, if Agency does not, within thirty (30) calendar days following the date of the notice, deliver to County its written rejection to the proposed modifications. In the event that Agency submits a written rejection to the proposed modification(s) County may terminate this Agreement and the service contract upon thirty (30) days written notice.
- 5.7 Any ambiguity in this Agreement relating to the use and disclosure of Protected Health Information shall be resolved in favor of a meaning that furthers the parties' obligations to protect the privacy of Protected Health Information in accordance with the HIPAA Privacy Rule.

- 5.8 All notices which are required or permitted to be given under this Agreement will be in writing and will be sufficient in all respects if delivered personally, by electronic facsimile or email (with a confirmation by registered or certified mail, mailed no later than the following day), or by registered or certified mail, postage prepaid, addressed to a party as indicated below. Notice will be deemed to have been given upon its transmittal as to communications which are personally delivered or transmitted by electronic facsimile or email and, as to communications made by United States mail, on the third (3<sup>rd</sup>) day after mailing.

If to COUNTY:

Social Services Division, ADS  
PO Box 2950  
Oregon City, OR 97045

Attention: Stefanie Reid, ADS Contracts  
Facsimile No.: (503) 655-8889  
Email: stefanierei@co.clackamas.or.us

If to CONTRACTOR:

City of Lake Oswego/Lake Oswego Adult Community Center  
505 G Avenue  
Lake Oswego, OR 97034

Attention: Ann Adrian Manager  
Facsimile No.: (503) 699-7462  
Email: aadrian@ci.oswego.or.us

- 5.9 If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall continue in full force and effect.
- 5.10 The respective obligations of each party under Article 4 of this Agreement shall survive the termination of the Agreement.



**EXHIBIT 3**

**Reporting Requirements**

- A. Invoices
- B. Program Activity Reports
- C. Audit/Monitoring
- D. Administration

Exhibit 3  
Reporting Requirements

A. INVOICES

Agency shall submit invoices in a format designated or approved by County. Invoices are due by the 10th of the subsequent month. The County shall make payment to Agency within 21 days of receipt of each invoice submitted.

Invoices and reports on units of service provided shall bear the Agency's name and address and be signed by an authorized representative of Agency. The authorized signator of the invoice shall verify that the services purchased have been performed.

Agency shall submit the following invoices and reports:

1. Financial summary including match and program income.
2. Additional financial reports for the administration of this contract, as required by the County.

Withholding of Contract Payments: Notwithstanding any other payment provision of this agreement, should the Agency fail to submit reports when due, or submit reports which appear patently inaccurate or inadequate on their face, or fail to perform or document the performance of contracted services, the County shall immediately withhold payments hereunder. Such withholding of payment for cause may continue until the Agency submits required reports, performs required services, or establishes to the County's satisfaction that such failure arose out of causes beyond the control, and without the fault or negligence of the Agency.

Agency shall return to the County all funds which were expended in violation of this contract.

B. PROGRAM ACTIVITY REPORTS

The Agency shall submit monthly program activity reports presenting data comparing actual levels of service to the planned levels specified in Exhibit 5. The format of these reports shall be designated or approved by the COUNTY, and contain the following information:

1. The Agency shall submit nutrition reports monthly. These reports shall have:
  - a. the over and under age 60 meal program participation numbers broken out by: Congregate, HDM, Medicaid, volunteers, guests and staff.
  - b. the amount of participant donations by Congregate and HDM .
2. Agency may bill for OAA funded HDM if they have been ordered by recipients then cancelled after 2:00 PM the day before delivery. Agency may not bill for meal site management for these meals.
3. Service/unit summary with current reporting period figures
4. Monthly NAPIS/Oregon Access information for client registration and program service data including client identifiers for all new clients. Programs service data must be equal too or greater than units of service billed for.
5. Transportation Report forms A, B, and C

6. List of Medicaid waived services clients who were provided non-medical transportation during the billing period, with number of rides provided for each client and ride type.
7. Agency shall submit copies of the SPD Medicaid Home Delivered Meals vouchers on current State approved form.

#### C. AUDIT/MONITORING

Agency shall permit authorized representatives of the County and other applicable audit agencies of the state or federal government, to review the records of the Agency in order to satisfy program audit and evaluation purposes deemed necessary by the County and permitted under law.

Agency agrees to participate with the County in any evaluation project or performance report, as designated by the County or applicable state or federal agency, and to make available all information required by any such evaluation process.

#### D. ADMINISTRATION

The County Project Manager shall be the Contract Specialist or any other person as shall be designated in writing by the Director of the Social Services Division. The Project Manager is authorized to approve invoices, make site inspections, and be the County representative in matters related to this contract. The Agency shall designate one or more representatives in writing who shall be authorized to sign the invoices and accompanying activity reports.

EXHIBIT 4

Budget

- A. Budget
  - 1. Unit Cost Schedule
  - 2. Estimated Revenue
- B. Units of Service

Exhibit 4  
Budget and Units of Service

A. BUDGET

The County's payment to the Agency will be based on the provision of the units of service and according to the service elements and amounts specified in this Exhibit.

Program Income: Agency acknowledges that all contributions received from participants or other persons for receipt of services from the Title III-B, III-C, III-D and III-E funded Programs are program income. If the program income is equal to or less than the budgeted amount, the program income is to be spent before any Title III-B, III-C, III-D, or III-E funds. If the program income is greater than the budgeted amount, the funds are to be used either to expand the service or reduce County's Title III-B, III-C, III-D, or III-E contribution.

Agency may not transfer funds from one service category to another without written approval from the County.

Agency agrees to provide matching funds for the service provision specified in this Exhibit as follows:

Match shall be figured at 11.12% of the OAA Title III-B, III-C and III-D funds contracted per service provision, and at 33.34% for OAA Title III-E funds.

Agency match funds must be from sources other than Federal funds, and a statement of assurance provided to County stating this.

Agency shall receive NSIP funding for each meal provided to a person 60 years of age or older, excluding Medicaid client meals. All home delivered meals for Medicaid clients will be billed to and reimbursed by The State of Oregon, Department of Human Resources, Senior and Disabled Services Division, at the current large meal rate (\$9.54).

**Lake Oswego Adult Community Center**  
Fiscal Year 2013-14

Service Category	NSIP Funds (1)	OAA III B Funds (2)	OAA III D Funds (3)	OAA III E Funds (4)	OAA Match (5)	Ride Con Funds (6)	Program Income (7)	NO. OF UNITS (8)	TOTAL COST (9)	REIMBURSEMENT RATE (10)
Case Management		3,426			381			116	3,807	\$29.45
Reassurance		2,231			248			76	2,479	\$29.45
Info. & Assistance		3,922			436			242	4,358	\$16.23
Transportation - OAA III-B		4,687			521		469	937	5,677	\$5.00
Physical Activity/ Falls Prevention			900		0			45	900	\$20.00
Preventative Screening, Counseling, & Referrals			781		0			20	781	\$40.00
Respite Program				5,536	1,846			147	7,382	\$37.65
Trans - Ride Con In Dist					0	10,172	678	1,356	10,850	\$7.50
NSIP Meals	12,000				0			16,000	12,000	\$0.75
<b>TOTALS</b>	<b>\$12,000</b>	<b>\$14,266</b>	<b>\$1,681</b>	<b>\$5,536</b>	<b>\$3,432</b>	<b>\$10,172</b>	<b>\$1,147</b>		<b>\$48,234</b>	

Total Cost Equals (1 + 2 + 3 + 4 + 5 + 6 + 7 = 9)

Reimbursement Rate (1 + 2 + 3 + 4 + 6 / 8 = 10)

Source of OAA Title III B, III D and III E match -Center Manager's time devoted to program supervision and administration.

**Total Contract Amount:**           \$43,655

## 2. ESTIMATED REVENUE

SOURCE	DESCRIPTION	AMOUNT
Clackamas Co. SSD	OAA Title III B	\$14,266
Clackamas Co. SSD	OAA Title III D	1,681
Clackamas Co. SSD	OAA Title III E	5,536
Clackamas Co. SSD	NSIP Funds	12,000
City of Lake Oswego	OAA Match	3,432
Program Income	Transportation Donations	1,147
Ride Connection	Trans. Consort. Contract	10,172
TOTAL		\$48,234

### B. UNITS OF SERVICE

Agency or County may request substantive changes in the program activities as described in "Exhibit 1". Such changes must be mutually agreed upon by and between Agency and County and incorporated in a written amendment to this contract. Such amendment shall not become effective until signed by both the Agency and the County.

Client Service Objectives:

Service Category	Planned Units of Service	Unit of Measurement	Unduplicated Clients to be Served
Case Management (OAA)	116	1 hour of service	55
Reassurance	76	1 Client Contact	50
Information and Assistance (OAA)	242	1 response to inquiry and follow up	70
Transportation (OAA)	937	1 one-way ride	80
Physical Activity/ Falls Prevention	45	1 class session	18
Preventative Screening, Counseling, & Referrals	20	1 program/activity	N/A
Respite Program	147	1 hour of services	15
Transportation (Ride Connection)	1,356	1 one-way ride	90
Food Service	16,000	1 meal delivered/served	165

**EXHIBIT 5**

**Senior Companion Program**

**Scope of Work and Performance Standards  
and Guidelines for Service**

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~ BASIC PROVISIONS ~

Both Parties agree to:

Designate and keep current a representative to serve as liaison to the other party

a. SCP designates: Eileen Collins Title: SCP Director

Phone: 503-655-8604 E-mail: ecollins2@co.clackams.os.us

b. Station designates: Dana Tassos Title: Client Srvc Coordinator

Phone: 503-635-3758 E-mail: DTassos@ci.oswego.or.us

A. The Clackamas County Senior Companion Program (COUNTY-SCP) will, as sponsored by Clackamas County Social Services and under the oversight of the Corporation for National Service:

1. Recruit, interview, screen, select, and enroll volunteers in the program. The volunteers will meet the Corporation criteria for enrollment in the program.
2. Provide accident and liability insurance coverage as required by the program.
3. Be responsible for the management and fiscal control of the program.
4. Provide orientation to volunteers and provide in-service training on an on-going basis, including Confidentiality Training.
5. Provide orientation to Volunteer Station staff.
6. Permit and encourage the Volunteer Station to screen Senior Companions pursuant to established criteria of Volunteer Station.

B. The City of Lake Oswego/Lake Oswego Adult Community Center (VOLUNTEER STATION) will:

1. Designate a coordinator to serve as liaisons with the SCP staff.
2. Provide Supervision of volunteers on assignment in coordinator with the SCP staff.
3. Provide Senior Companions with assignments which utilize their skills and training.
4. Assist SCP in the coordination of volunteer assignment, orientation, in-service instruction and other project-related activities.
5. Have the right to request the SCP reassign a volunteer.
6. Provide for adequate health and safety protection of volunteers. Investigate incidents, accidents, and injuries involving volunteers and notify the SCP on a timely basis.
7. Submit required paperwork to the SCP on a timely basis as requested
8. Collect and validate appropriate volunteer reports for submission to the SCP.
9. In consultation with the SCP, make investigations and reports regarding accidents and injuries involving volunteers.
10. Obtain a written CarePlan/Letter of Agreement prior to assignment of Senior Companions in homes of clients served, specifying volunteer activities to be performed. CarePlan/This Letter of Agreement will be signed by the volunteer station and person to be served in the home or his/her legal representatives.

11. Ensure Senior Companions serve in a volunteer capacity. The Station will verify the Senior Companions will not: displace nor replace paid or contracted employees, relieve staff of their routine duties.
12. Maintain the programs and activities to which Senior Companion volunteers are assigned accessible to persons with disabilities and provide reasonable accommodation to allow persons with disabilities to participate in programs and activities.
13. Provide cash/in-kind contribution(s) in support of the project -- (Donor verifies funds are not from other federal sources unless authorized under law.)

~ ADDITIONAL PROVISIONS ~

1. Inclusivity: Station will not discriminate against SCP volunteers or in the operation of its program on the basis of race, color, national origin, sex, age, political affiliation, religion, or disability, if the volunteer is an otherwise qualified individual.
2. Accessibility: Station will provide reasonable accommodation to allow persons with disabilities to participate in programs to which volunteers are assigned.
3. Prohibited Activities: SCP volunteers will participate in (1) partisan political activities, (2) religious activities, (3) a position for which pay is available or which supplants a paid employee.

Removal or Separation: The Station may request the removal of an SCP volunteer at any time. A volunteer may withdraw from service at the Station or from SCP at any time. Discussion of individual separations will occur between SCP staff, Station staff and the volunteer to clarify the reasons, resolve conflicts, or take remedial action, including another placement. Clackamas County Social Services has a grievance policy that may be used by an SCP volunteer or Station at any time.

**EXHIBIT 6**

**AGENCY Information**

AGENCY PROFILE

1. City of Lake Oswego/Lake Oswego Adult Community Center  
 Legal Name

2. IRS/STATE NONPROFIT NUMBER:  
N/A

505 G Ave.

3. CHIEF ADMINISTRATIVE OFFICIAL:

Lake Oswego, OR 97034  
 City Zip

(503) 635-3758  
 Phone Number

Name: Alex McIntyre  
 Title: City Administrator  
 Address: P.O. Box 369  
 Lake Oswego, OR 97034  
 Phone: (503)635-0215

4. TYPE OF AGENCY: City

5. TYPE OF PROGRAM: Senior Center

6. AGENCY BOARD (LIST MEMBERS): ADVISORY BOARD (LIST MEMBERS):

Acting Board - City Council

Name	Term Expires
Kent Studebaker, Mayor	12/31/16
Karen Bowerman, Council Member	12/31/16
Jeff Gudman, Council Member	12/31/14
Jon Gustafson, Council Member	12/31/14
Donna Jordan, Council Member	12/31/14
Mike Kehoe, Council Member	12/31/14
Skip O'Neill, <i>Council Member</i>	12/31/16

7. AGENCY INFORMATION:

The following have been approved and adopted by the Agency's Board of Directors:

	<u>YES</u>	<u>NO</u>	Approved Usage Certificate	
			<u>YES</u>	<u>NO</u>
Written Personnel Policies	X			
Staff Job Descriptions	X		Fire Marshal	X
Written Benefits Policies	X		Co. Health	X
Affirmative Action Plan	X		County Zone	X
Nondiscrimination Plan	X			
State/Federal Certifications	X			

Current Articles of Incorporation:

Date: City Charter – May 15, 1964

Last Total Agency Audit:

Date: Done annually at City Level

Types and Amounts of Insurance Held: Commercial General Liability \$4,000,000 per occurrence, \$12,000,000 aggregate; Commercial Automobile \$4,000,000

8. AGENCY CERTIFICATION STATEMENT: I certify that to the best of my knowledge, the information contained in the Agency Profile is accurate and complete and that I have the legal authority to commit this Agency to a contractual agreement.



Signature – Kent Studebaker

Mayor

Title

June 28, 2013

Date

APPROVED AS TO FORM



Attorney  
City Attorney's Office

## ATTACHMENT A

Response Section - Limit your response to the space provided.

I. A. Please describe your grievance procedure for clients and how CCSS will fit into the process:  
LAKE OSWEGO ADULT COMMUNITY CENTER  
PROCEDURES FOR HANDLING COMPLAINTS

Complaints are a natural result of being a visible, active organization providing services to the public. In order to maintain a positive climate in the community, and provide quality services to the public, we must be aware of any concerns about the programs and services we provide and have a consistent procedure for responding to complaints. Our preferred way to handle complaints is to solve them informally by the parties involved. This informal process encourages persons to freely express their concerns so that immediate action may be taken to resolve the issue in a positive way. While the informal process is preferred, it is also necessary to make available a formal process for taking a complaint elsewhere if it cannot be solved informally.

### INFORMAL PROCEDURE

a. When staff\* or volunteers receive a complaint they should:

(1) Make sure that complainants talk directly to the staff person responsible for the day-to-day operation of the activity about which there is a complaint. If persons first receiving the complaint are not responsible for the particular activity, they should take the name and phone number of the complainant. Complainants should be advised that the person responsible for the activity will call them. It is the responsibility of persons first receiving the complaint to inform the person responsible for the activity about the complaint. It is preferable that persons not be passed from one person to another in order to have their complaint be heard.

\* If the complainant chooses to go first to the Recreation Department Director, the City Manager or the Center Advisory Board with the complaint, the informal process described here will normally be used. The Recreation Department Director, City Manager or the Center Advisory Board would refer the complaint to the Center Director to handle according to the informal process before initiating the formal process.

(2) When staff receives a complaint about an activity for which they are responsible, they should try to resolve the problem as follows:

- treat the complaint seriously;
- ask the complainants what action they expect to be taken;
- involve complainants in the process of devising a solution, if feasible;
- inform complainants of what action will be taken, or why no action is necessary.

(3) If complainants still are not satisfied, they should be referred to the Center Director. The Director should be advised of this referral. This will allow the Director to begin to take any appropriate steps and/or follow-up with complainants should they fail to contact the Director. If the issue relates to Center programs, policies or procedures, the Director may request that the Center Advisory Board make a recommendation on the matter. Any decision must be in accordance with Adult Community Center policies and procedures, City of Lake Oswego Policies, and in the case of contracted services, in accordance with established policies and procedures of the contracting agency and terms of the contract.

(4) If complainants still are not satisfied, the Formal Procedure will be initiated.

## FORMAL PROCEDURE

If the problem has not been resolved after speaking to the Center Director, complainants may request a review by the Recreation Director. The Recreation Director will discuss with the complainants what the problem is and what action they would like taken. This will be summarized by the Recreation Department Director. The Recreation Director will request that the Center Director provide a written summary of the action taken to resolve the problem, and will review the information and discuss it with complainants. Within five (5) working days of this discussion, the Recreation Director will let complainants know what action is being taken.

If the problem is not resolved, the complaint must be readdressed in writing to the City Manager. Within 30 days of receipt of the complaint the City Manager will meet with complainants and the Adult Community Center Director to discuss the problem. When the hearing is over the City Manager will send a written decision within five (5) working days of the hearing. The decision of the City Manager is final as to whether actions taken were justified and whether circumstances warrant review by the City Council.

- B. Describe your organization's procedure for prioritizing services for the target population of frail, low-income, minority and rural residents age 60 and older:

### CRITERIA FOR ASSESSMENT, FAMILY CONSULTATION, I & A, AND CASE MONITORING

- Age, i.e., the older the more at risk, 75+ high risk
- Live alone or live with spouse who is also high risk or unable to assist client
- Lack of immediate relatives or support system to assist in care
- Poor health, recent hospitalization
- Low Income
- Immediacy of situation requiring intervention
- No other agency involved in care
- Apparent poor coping skills, i.e., confusion, apparent lack of judgment

### CRITERIA FOR TRANSPORTATION

- See above
- Priority to those living independently

- C. Describe your agency's operating procedures (use space provided only):

1. Hours of Operation: From 8:00 a.m. to 4:30 p.m. Mon - Fri  
Total hours per day: 8.5 hrs/day Mon-Fri  
Total hours per week: 42.5

2. Official Closures:

Martin Luther King Day  
Presidents' Day  
Memorial Day  
Independence Day  
Labor Day  
Veterans' Day  
Thanksgiving Day  
Friday after Thanksgiving  
Christmas Day  
New Year's Day

D. Describe the boundaries of the area for which you propose to provide services.

**BOUNDARIES:**

Lake Oswego area, including Lake Grove.

North – Clackamas County/Multnomah County line, except part of LO that is in Multnomah County;

West – Clackamas County/Washington County line except small area of LO that is in Washington County;

South – Tualatin River to Stafford Rd., North on Stafford to SE Bergin Rd., S. to Crestline Dr., through Skylands to West Linn city limits;

East – Willamette River.

E. Show an organizational chart which identifies staff positions within the contracted program. Identify in the chart the number of FTE staff for each position, paid or volunteer.

Center Director (0.04 FTE)  
(Supervision of contracted services)

Social Services Coordinator (1 FTE)	Client Services Coordinator (0.8 FTE)
<u>Transportation, Nutrition</u>	<u>Assessments, Referral,</u>
	<u>Case Monitoring, Respite</u>
Driver (0.6 FTE)	

F. Describe your methods for providing information about services.

All requests for information about services are handled by the Social Services Coordinator or the Client Services Coordinator.

G. Briefly, describe your methods for providing legal services.



## II. GUIDELINES FOR INCLUSION OF RESIDENTS OF CONGREGATE LIVING FACILITIES IN CLACKAMAS COUNTY SENIOR CENTER ACTIVITIES

Clackamas County Senior Centers provide a variety of program and services for adults who are able to participate independently and without special assistance or supervision.

Those who use the Center must be:

1. Mobile or if of limited mobility, able to use walker, cane, wheelchair or other device completely unassisted.
2. Continent, or wear appropriate protective undergarments and not need assistance with bathroom concerns.
3. Physically able to care for personal needs and be able to take part in activities selected without special assistance.
4. Mentally able to make responsible decisions regarding participation.
5. Able to behave in an appropriate manner so not to disrupt or require supervision.
6. Able to remove self from danger without assistance.
7. Or, if unable to meet the above criteria, accompanied by a caregiver provided by the family or facility where the individual lives, to assist as necessary to comply with guidelines.

If an individual lives in a care facility it is the responsibility of the facility to:

1. Determine if it is appropriate for their resident to take part in Center activities.
2. Make advance arrangements for such participation with the Center Director or appropriate designee.
3. Communicate the information contained in these guidelines to their employees, residents and/or residents' guardians and others involved in residents' care who should be aware of these guidelines.

### **Transportation**

Some Centers provide transportation to and from the Centers and to grocery shopping. Rides are subject to available space and priority is given to isolated individuals without access to transportation. Individuals using Center transportation must be able to:

1. Meet the Guidelines listed above.
2. Be physically able to use the transportation available.
3. Be mentally able to follow procedures, e.g., regarding arrival and departure, seat belt use, etc.

If an individual is being transported from a care facility by a Center bus, the facility must make arrangements in advance for that individual's transportation and is responsible to reimburse the Center for the bus fare.

Under no circumstances is the Center responsible for individuals who call and request a ride without the facility's knowledge and for whom a ride is given. The Center is not responsible for individuals who once arrive at the Center, leave the Center, make other arrangements to return home or request to be returned to a location other than the original pick up address.

### **Nutrition**

Individuals who wish to participate in the Center's nutrition program must meet the guidelines listed above. If an individual is from a care facility, the facility must make arrangements in advance for that individual's participation in the nutrition program and is responsible to reimburse the Center for the meal cost.

**Emergency Care**

It is imperative that a care facility's staff provide contact information prior to one of their residents coming to the Center. It is imperative that a care facility's staff be accessible by phone for the period of time when their resident is taking part in Center activities. In the event that an individual who lives in a care facility becomes ill or incontinent while at the Center, the Center staff will call the facility. It is the facility's responsibility to provide transportation for the individual from the Center back to the facility. In the event of a serious illness or injury, the Center's staff will call "911" for emergency assistance. The facility will be notified by the Center's staff in order for the facility to provide follow-up instructions for care of their resident.

July 25, 2013

Board of County Commissioner  
Clackamas County

Members of the Board:

Approval of an Intergovernmental Agreement #4400000571 with Multnomah County Dept. of County Human Services, Aging & Disability Services Division

<b>Purpose/Outcomes</b>	To provide care transitions services for Medicaid eligible persons who reside in Clackamas County who are being discharged after a hospitalization to reduce their chance of re-hospitalization.
<b>Dollar Amount and Fiscal Impact</b>	The maximum agreement is \$182,952. The contract is funded through the Multnomah County provider agreement with the Center for Medicare & Medicaid Services
<b>Funding Source</b>	The Older American Act - no County General Funds are involved.
<b>Safety Impact</b>	Reduction in re-hospitalizations
<b>Duration</b>	Effective April 1, 2013 and terminates on March 31, 2015
<b>Previous Board Action</b>	
<b>Contact Person</b>	Brenda Durbin, Director, Social Services Division 503-655-8641
<b>Contract No.</b>	6331

**BACKGROUND:**

Clackamas County Social Services, as part of the Metro Aging & Disability Resource Connection Consortium (Metro ADRC), will participate with the Metro Care Transitions Collaborative (MCTC) program which is a joint effort of the four Area Agencies on Aging in the region and four medical systems. Multnomah County Aging & Disability Services Division (Multnomah ADS) is serving as the lead agency and fiscal agent.

The goal of the MCTC is to provide Coleman model care transition services to persons identified by the participating hospitals that meet the eligibility criteria. This 4-week community or hospital-based intervention program was developed by Eric Coleman. This approved evidenced based program utilized trained "transition coaches" to do a hospital visit, home visit, and three follow-up phone calls with eligible participants. The eligibility criteria for the program are: Medicare fee-for-service, resides in one of the four participating counties, and has one of the targeted diagnoses and a primary or secondary reason for hospital admission. Persons that meet these criteria will receive coaching from a Care Transitions Coach to assist them in successfully transitioning back to home with minimal risk of re-hospitalization.

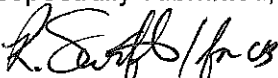
This agreement is late due to Multnomah County not being able to release agreements to the other participating counties until their funding source released their agreement. This resulted in the delay of

Multnomah County sending out its agreements. This agreement is effective April 1, 2013 through March 31, 2015. No County General Funds are involved in this agreement. The agreement was reviewed and approved by County Council on July 10, 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,

  
Cindy Becker, Director

**Multnomah County/Clackamas County  
Intergovernmental Agreement No. 440000571**

This Agreement is made and entered into pursuant to the authority found in ORS Chapter 190 by and between Multnomah County Department of County Human Services (DCHS), Aging and Disabilities Services Division (ADS), hereinafter referred to as County, jointly with and on behalf of Clackamas County, Social Services Division, hereinafter referred to as Contractor.

**PURPOSE.** The purpose of this agreement is to purchase the services and establish the terms of the Metro Care Transitions Collaborative (MCTC), a joint effort of four Area Agencies on Aging (AAA) and four medical systems. Multnomah County ADS will be serving as lead agency.

<b>Community-Based Organizations (CBOs)</b>	<b>Medical Systems</b>
<b>Area Agencies on Aging</b>	
Clackamas County Social Services (CCSS)	Legacy Emanuel Medical Center
Community Action Team, Inc. (CAT)	Legacy Meridian Park Hospital
Multnomah County Aging & Disability Services (ADS)	Legacy Mt. Hood Medical Center
Washington County Disability Aging and Veterans Services (DAVS)	Legacy Good Samaritan Medical Center
	Oregon Health & Science University (OHSU) <i>A top quartile 30-day readmission hospital</i>
	Portland Adventist Medical Center (PAMC)
	Tuality Healthcare

**PROJECT DESCRIPTION.** Multnomah County Aging and Disability Services (ADS) will serve as the lead agency, with executive oversight from the Care Transitions Project Manager and with day-to-day operations and quality assurance provided by a Clinical Coordinator. A steering committee comprised of representatives from each of the CBOs and hospitals, as well as from community health providers (home health, nursing facilities, etc.), the local Center for Independent Living, and consumers, will provide guidance for the project.

All four hospital systems have selected the Coleman model for care transitions (Coleman CTI). Care Transitions (CT) coaches will be located in each of the hospitals to assist in identifying appropriate referrals for the program, making initial contact with patients, completing the authorization/release of information, and beginning the coaching process. Beneficiaries will receive a visit in the hospital, one home visit within 48 – 72 hours following discharge, as well as three (3) follow-up phone calls. The area served by the Collaborative has rich diversity, and the Collaborative will use bi-lingual coaches as well as interpreter services to assure effective communication with beneficiaries.

Data collection and analysis, as well as billing and fee distribution, will be managed by ADS' well-established fiscal reporting system. Quality assurance checks will be part of the ongoing process. A CT database, already in use in a CT pilot project, will be utilized by CBO partners for

**Multnomah County/Clackamas County  
Intergovernmental Agreement No. 440000571**

this project. Additionally, referral and assignment processes are already in place.

The parties agree as follows:

1. **TERM.** The term of this agreement shall be from April 1, 2013 to March 31, 2015. This agreement may be renewed at the sole discretion of County.
2. **RESPONSIBILITIES OF CONTRACTOR.** Contractor agrees to perform the following tasks and deliverables:

Multnomah County ADS will serve as lead agency and fiscal agent for the Collaborative. Contractor agrees to assign a lead staff person for this project, who will participate in the Metro Care Transitions Collaborative Steering Committee. The Steering Committee will be comprised of fifteen (15) to nineteen (19) representatives from the participating four counties and four health systems, consisting of health care professional organizations representing downstream providers, the local Center for Independent Living serving the region, consumers, and State Medicaid offices.

The CT program has been designed to provide for interactive cooperation between the Contractor, the other three participating CBOs and the seven participating hospitals. Based on the root cause analyses, all hospitals will be implementing the Coleman CTI model.

Contractor will ensure that CT services will be provided by CT coaches who have completed required training provided by the Coleman CTI program and who meet the position qualifications. Contractor will identify one or more trained coaches to be assigned within their service area. It is anticipated that each coach will be able to complete a minimum of 24 home visits per 1.0 FTE CT Coach each month, for a total of approximately 296 beneficiaries served per year.

Contractor will coordinate with the MCTC Clinical Coordinator to ensure that CT coach(es) will be assigned to each of the participating hospitals. Regularly scheduled hospital site visits will allow the coaches to help with identification and referral of potential CT program beneficiaries. CT coaches will be onsite at one or more of the seven hospitals on a regular weekly schedule as agreed to by the Collaborative partners, and on demand as needed on other days. The hospitals will provide census information to the coach to aid in identifying patients that meet the criteria for the program: Medicare fee-for-service, resides in one of the four participating counties, and has one of the targeted diagnoses as a primary or secondary reason for hospital admission. Hospital staff will also be able to send a list of potential referrals to their designated CT coach, via by fax to the CT Coach or by leaving a message on the CT coaching phone, when the coach is not scheduled to be at the hospital. The CT coach will confer with the hospital floor and discharge staff about the patients and their projected discharge dates. The hospital visit is completed by the designated CT coach to explain the CT program to the potential beneficiary and their family members, including providing them with an informational brochure and acquainting them with the coach who will be visiting them at home. The designated CT coach will also complete the program intake form and enter into the Collaborative's database.

Hospital staff will notify the coach of the beneficiary's confirmed discharge date. The goal will be for this notification to occur no later than one business day prior to the beneficiary's

**Multnomah County/Clackamas County  
Intergovernmental Agreement No. 4400000571**

discharge. The hospital will send the discharge instructions by fax or phone message to their designated CT Coach. Upon receipt, a designated CT Coach will enter the discharge information into the CT database and make the referral to the appropriately assigned CT Coach based on the zip code and county of the beneficiary's residential address. Discharge notifications will be processed during regular business hours Monday through Friday. In cases where the hospital is too distant from the assigned coach's service area (i.e. the area of the beneficiary's home), the hospital-based coach may act as a liaison, completing the hospital visit and intake process, and the assigned local coach will do the home visit and follow-up calls. This will ensure timely intervention with beneficiaries who reside in rural areas of the 4-county region.

A home visit by the CT coach to meet with the beneficiary, and their caregiver if possible, will occur within 2 business days of discharge. In addition, the CT coach will conduct three follow-up phone calls over the next 30 days. The Coleman CTI model is founded on the principle of patient-centered/directed practices with CT coaches using teach-back methods, coaching, and patient-activation methods to support the beneficiary and their support networks to help them establish skills that last far beyond the 30-day intervention. The home visit focuses on review of the discharge instructions and the four pillars of the Coleman model:

- review of the beneficiary's medication, with a focus on beneficiary self-management of medications;
- planning for the follow-up appointment with physician;
- assuring the client understands potential red flags and complications which might occur; and
- completion of a personal health record and helping the patient/beneficiary make note of any questions to ask their personal care physician or specialist at the follow-up appointment. The three follow-up phone calls within 30 days of discharge will focus on problem solving and patient activation.

The coach will work with the beneficiary and their family to ensure transportation is arranged for the physician visit and for other follow-up appointments, including to labs and pharmacy during the first week at home. For beneficiaries who lack access to transportation resources, the coach will be able to authorize round-trip transportation for one visit, funded through the Community-based Care Transitions Program (CCTP). If the beneficiary and their family identify any care or resource needs, the coach will assist by providing referrals for follow-up assistance and access to community services.

a. Deliverables shall be sent or delivered to:

Multnomah County  
DCHS/Aging & Disability Services Division  
Contract Deliverables  
P.O. Box 40488  
Portland OR 97240-0488

If submitting electronically, send to: [ADS.Contracts@multco.us](mailto:ADS.Contracts@multco.us)

**Multnomah County/Clackamas County  
Intergovernmental Agreement No. 440000571**

**3. ADDITIONAL REQUIREMENTS.**

- a. Outreach Materials: Contractor will ensure that all outreach materials have been approved by the CMS Project Officer prior to distribution.
- b. Public Release of Information: Contractor will coordinate with the MCTC Clinical Coordinator to ensure that report or analytic material based on information obtained through the project has been approved by the CMS Project Officer prior to release.
- c. Evaluation: CMS will contract with an independent evaluator to study the design and implementation of the program and to evaluate the outcomes of the program. The Contractor agrees to cooperate fully with the CMS and their contractor. This may include providing additional information and data, including beneficiary-specific information, regarding program operations, intervention models, patient targeting, and other functions.

**4. PROGRAM PERFORMANCE MEASURES.**

Client demographics and service data are entered in timely and accurate manner.	95% rate for accuracy and timeliness
Clients indicate that the CT Coach was knowledgeable and professional.	85%
CT Coaches and supervisory lead are actively engaged in program development.	CT Coach(es) and supervisory lead participate in Collaborative meetings/calls at least one time/month

- 5. **REPORTING REQUIREMENTS.** Contractor agrees to utilize electronic client and service database system established by the County or as agreed upon by the MCTC Steering Committee. Lead staff and CT Coaches will participate in training and technical assistance for data collection systems to ensure appropriate and accurate use of reporting tools. Contractor will ensure that CT Coaches enter client and service information into the electronic database in a timely, accurate and complete fashion. Monthly client data/service entry will be entered no later than the final day in the month that services are provided.
- 6. **REQUEST FOR PAYMENT.** This Contract will be paid on a Per-Invoice/Fee-for-Service/Requirements basis. Payment will be made for clients and services that are certified by the Centers for Medicare & Medicaid Services (CMS). Payment will be made to Contractor contingent upon receipt of payment by County from CMS for qualified clients and services. County will pay Contractor \$208 for each program participant who receives a home visit from a Care Transitions (CT) Coach; and \$100 for case finding and hospital visit activities that result in a home visit, whether the home visit is completed by the Contractor's CT Coach or another CT Coach.



**Multnomah County/Clackamas County  
Intergovernmental Agreement No. 440000571**

All requests for payment shall be sent to:

Multnomah County  
DCHS/Aging & Disability Services Division  
Contract Deliverables  
P.O. Box 40488  
Portland OR 97240-0488

If submitting electronically, send to: [ADS.Contracts@multco.us](mailto:ADS.Contracts@multco.us)

Payments will be sent to:

Clackamas County Social Services  
2051 Kaen Road  
Oregon City, OR 97045

7. **RESPONSIBILITIES OF COUNTY.** Upon submission of all deliverables and an invoice, County agrees to pay Contractor a maximum of \$182,952.00, including expenses. County will pay upon the conditions and terms indicated in #6 above.
8. **TERMINATION.** This agreement may be terminated by either party upon thirty (30) days written notice. Termination of this Agreement shall be without prejudice to expenses accrued prior to such termination.
9. **INDEMNIFICATION.** Subject to the conditions and limitations of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300, County shall indemnify, defend and hold harmless Contractor from and against all liability, loss and costs arising out of or resulting from the acts of County, its officers, employees and agents in the performance of this Agreement. Subject to the conditions and limitations of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300, Contractor shall indemnify, defend and hold harmless County from and against all liability, loss and costs arising out of or resulting from the acts of Contractor, its officers, employees and agents in the performance of this Agreement.
10. **INSURANCE.** Each party shall each be responsible for providing worker's compensation insurance as required by law. Neither party shall be required to provide or show proof of any other insurance coverage.
11. **ADHERENCE TO LAW.** Each party shall comply with all federal, state and local laws and ordinances applicable to this agreement.
12. **NON-DISCRIMINATION.** Each party shall comply with all requirements of federal and state civil rights and rehabilitation statutes and local non-discrimination ordinances.
13. **ACCESS TO RECORDS.** Each party shall have access to the books, documents and other records of the other which are related to this agreement for the purpose of examination, copying and audit, unless otherwise limited by law.
14. **SUBCONTRACTS AND ASSIGNMENT.** Neither party will subcontract or assign any part of this agreement without the written consent of the other party.

**Multnomah County/Clackamas County  
Intergovernmental Agreement No. 440000571**

15. **NOTICES.** Any notice provided for under this Agreement shall be sufficient if in writing and delivered to the following addressee:

Brenda Durbin  
[BrendaDir@co.clackamas.or.us](mailto:BrendaDir@co.clackamas.or.us)  
503-655-8641

16. **THIS IS THE ENTIRE AGREEMENT.** This Agreement constitutes the entire Agreement between the parties. This Agreement may be modified or amended only by the written agreement of the parties.

Multnomah County/Clackamas County  
Intergovernmental Agreement No. 4400000571

MULTNOMAH COUNTY, OREGON:

CLACKAMAS COUNTY, OREGON:

Jeff Cogoni / AT 6/28/13  
Multnomah County Chair or Designee

\_\_\_\_\_  
Authorized Signer Date

Date: \_\_\_\_\_  
Gatty Scott for Susan Myers  
Department Director or Designee

Date: 6/19/13

JENNY M. MADKOUR, COUNTY ATTORNEY  
FOR MULTNOMAH COUNTY

Approved as to form:

By: Approved via email by Patrick Henry 6/17/2013  
Assistant County Attorney Date

By: \_\_\_\_\_  
Date

July 25, 2013

Board of County Commissioner  
Clackamas County

Members of the Board:

Approval of an Intergovernmental Agreement between  
the Community Development Division and the City of Gladstone  
for street improvements in Northwest Gladstone

<b>Purpose/Outcomes</b>	The Agreement allows for a partnership to complete the NW Gladstone Infrastructure Rehabilitation project: the design and construction of street, sidewalk, waterline and storm drain improvements for 5 streets in the Echo Glenn, Abernethy and Portland Avenue area of the City of Gladstone.
<b>Dollar Amount and Fiscal Impact</b>	\$190,000 of CDBG grant funds and approximately \$50,000 of city of Gladstone funds.
<b>Funding Source</b>	U.S. Department of Housing and Urban Development Community Development Block Grant (CDBG) funds. No County funds are involved.
<b>Safety Impact</b>	Pedestrian safety will be improved in the project area.
<b>Duration</b>	Effective when signed and terminates 10 years after completion of the project
<b>Previous Board Action</b>	The Board approved the NW Gladstone Infrastructure Rehabilitation project as part of the 2013 Action Plan approved on May 2, 2013
<b>Contact Person</b>	Chuck Robbins, Community Development Director – (503) 655-8591
<b>Contract No.</b>	6345

**BACKGROUND:**

The City of Gladstone was awarded Community Development Block Grant (CDBG) funds for this project through the CDBG application process. The streets in this neighborhood area are narrow and lack curbs needed to control traffic and storm water runoff. Current conditions are hazardous for both pedestrians and motorists. Storm drain improvements are needed to alleviate flooding and prevent further deterioration of the roadway. Phase 1 of the project will be on Howell and Barclay Streets, Phase 2 will be on Duniway Ave and Center Street. These drainage and pedestrian improvements will mitigate storm water flooding issues and improve pedestrian safety in this low to moderate income area of Gladstone.

**RECOMMENDATION:**

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

Respectfully submitted,



Cindy Becker, Director

# INTERGOVERNMENTAL AGREEMENT

BETWEEN

**CLACKAMAS COUNTY DEPARTMENT OF  
HEALTH, HOUSING AND HUMAN RESOURCES  
COMMUNITY DEVELOPMENT DIVISION**

AND

**THE CITY OF GLADSTONE**

## **I. Purpose**

- A. This Agreement is entered into between Clackamas County, acting by and through its Community Development Division (COUNTY) and the City of Gladstone (CITY) for the cooperation of units of local government under the authority of ORS 190.010.
- B. This Agreement provides for the **NW Gladstone Infrastructure Rehabilitation** project which includes design and construction of street, sidewalk, waterline and storm drain improvements for 5 streets in the Echo Glenn, Abernethy and Portland Avenue area of the City of Gladstone. These improvements are herein referred to as the PROJECT.
- C. The COUNTY has determined that the PROJECT is eligible for Community Development Block Grant (CDBG) funds as a Low-Mod Area Benefit Activity. The service area for the PROJECT is defined as U.S. Census Tract 219.00 Block Group 1 and show on the map included in Attachment A.

## **II. Scope of Responsibilities**

- A. Under this agreement the responsibilities of the CITY shall be as follows:
  - 1. The CITY shall provide all necessary supervisory and administrative support to assist the COUNTY with the completion of the PROJECT.
  - 2. The CITY shall obtain any easements or approvals necessary to allow access onto private property. Acquisition of any easement shall be obtained pursuant to the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA).
  - 3. The CITY shall provide engineering services for the design and construction oversight of the PROJECT. Such services shall be provided at no cost to the COUNTY. The CITY shall assume responsibility for ensuring the following:

- a. The CITY shall hire a registered professional engineer (herein after referred to as Engineer) to prepare all plans and specifications necessary to publicly bid the PROJECT for award to a construction contractor (herein after referred to as Contractor) and provide construction oversight including staking and surveying of the PROJECT.
- b. The CITY shall require the Engineer to indemnify, save harmless and defend the COUNTY, its officers, agents, commissioners and employees 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 negligent acts, errors or omissions of the Engineer or the Engineer's employees.
- c. The CITY shall require the Engineer to furnish the COUNTY evidence of commercial general liability insurance in the amount of not less than \$1,000,000 combined single limit per occurrence / \$2,000,000 general annual aggregate for personal injury and property damage for the protection of the COUNTY, its officers, commissioners and employees against liability for damages because of personal injury, bodily injury, death or damage to property, including loss of use thereof, in any way related to this contract. The COUNTY, at its option, may require a complete copy of the above policy.
- d. If the Engineer has the assistance of other persons in the performance of this contract, and the Engineer is a subject employer, the CITY shall require that the Engineer agrees to qualify and remain qualified for the term of this contract as an insured employer under ORS 656. The Engineer shall maintain employer's liability insurance with limits of \$100,000 each accident, \$100,000 disease each employee, and \$500,000 each policy limit.
- e. If any other required liability insurance is arranged on a "claims made" basis, "tail" coverage will be required at the completion of this contract for a duration of thirty-six (36) months or the maximum time period the Engineer's insurer will provide "tail" coverage as subscribed, or continuous "claims made" liability coverage for thirty-six (36) months following the contract completion. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage provided its retroactive date is on or before the effective date of this contract.

- f. The CITY shall require the Engineer to furnish the COUNTY evidence of business automobile liability insurance in the amount of not less than \$500,000 combined single limit for bodily injury and property damage for the protection of the COUNTY, its officers, commissioners, and employees against liability for damages because of bodily injury, death or damage to property, including loss of use thereof in any way related to this contract. The COUNTY, at its option, may require a complete copy of the above policy.
- g. The CITY shall require the Engineer to furnish the COUNTY evidence of professional liability insurance in the amount of not less than \$1,000,000 combined single limit per occurrence / \$2,000,000 general annual aggregate for malpractice or errors and omissions coverage for the protection of the COUNTY, its officers, commissioners and employees against liability for damages because of personal injury, bodily injury, death or damage to property, including loss of use thereof, and damages because of negligent acts, errors and omissions in any way related to this contract. The COUNTY, at its option, may require a complete copy of the above policy.
- h. The insurance, other than the professional liability insurance, shall include the COUNTY as an expressly scheduled additional insured. Proof of insurance must include a copy of the endorsement showing the COUNTY as a scheduled insured. Such insurance shall provide sixty (60) days written notice to the COUNTY in the event of a cancellation or material change and include a statement that no act on the part of the insured shall affect the coverage afforded to the COUNTY under this insurance. This policy(s) shall be primary insurance as respects to the COUNTY. Any insurance or self-insurance maintained by the COUNTY shall be excess and shall not contribute to it.
- i. The CITY shall ensure that the Responsibilities of the Engineer include, but not be limited to, the following:
  - (i) During construction the Engineer shall endeavor to guard the COUNTY against apparent defects and deficiencies in the permanent work constructed by the Contractor.
  - (ii) All reports and recommendations concerning construction shall be submitted to the COUNTY for their approval. The COUNTY agrees that no decisions affecting construction shall be made without CITY approval.

- (iii) In the event modifications to the construction contract, which result in an increase in the contract amount, are made without the prior approval of the COUNTY, CITY shall be solely responsible for these modifications.
  - (iv) Notify the County Surveyor of the PROJECT and provide CITY, design engineer, surveyor and contractor contacts.
  - (v) File a "Pre-construction Record of Survey" with the County Surveyor prior to the PROJECT final award of construction contract in order to identify and preserve the locations of survey monuments that may be disturbed or removed during the construction as described in ORS 209.150.
  - (vi) File a "Post-construction Record of Survey" with the County Surveyor after the construction PROJECT is completed. The Engineer is responsible to replace any property corner monuments that were disturbed or removed during construction as described in ORS 209.150.
- 4. The CITY shall operate and maintain the improvements for public purposes for their useful life subject to the limitations on the expenditure of funds by the CITY as provided by Oregon Statute.
- 5. The CITY shall complete and submit a Performance Measures Report following completion of the PROJECT. (refer to Attachment A).
- 6. The CITY shall complete and submit a Matching Funds Report following completion of the PROJECT. (refer to Attachment B).
- B. Under this agreement the responsibilities of the COUNTY will be as follows:
  - 1. The COUNTY will appropriately bid and contract for construction of the PROJECT and with the advice of the CITY, will approve changes, modifications, or amendments as necessary to serve the public interest.
  - 2. In such contracts the COUNTY will assume the rights and responsibilities of the owner of the project.
  - 3. The COUNTY agrees to provide and administer available Federal Community Development Block Grant (CDBG) funds (CFDA 14.218) granted by the U.S. Department of Housing and Urban Development (HUD) to finance the PROJECT.
  - 4. The COUNTY shall conduct necessary environmental reviews described in 570.604 of the CDBG regulations for compliance with requirements of the CDBG program prior to the start of construction.



5. The COUNTY shall provide reasonable and necessary staff for administration of the PROJECT.
- C. The COUNTY and CITY agree to jointly review and approve all design, material selection, and contract documents for the PROJECT.

### **III. Budget & Financial**

- A. The COUNTY will apply CDBG funds in the amount of **\$190,000** to the PROJECT. The obligations of the COUNTY are expressly subject to the COUNTY receiving funds from HUD for the PROJECT, and in no event shall the COUNTY'S financial contribution exceed the amount finally granted, released and approved by HUD for this project.
- B. The CITY agrees to contribute the greater of:
1. Twenty percent (20%) of the total cost of the PROJECT, or
  2. All costs for design and construction which exceed available CDBG funds budgeted for the PROJECT.
  3. Allowable match requirements for this PROJECT may be the use of CITY equipment, CITY workers labor, and/ or CITY reimbursable related to the construction PROJECT. Match credit(s) can be given to the CITY from the COUNTY; moreover, the CITY must submit all match credit(s) items as well as receive approval of the list of match credit(s) items. The COUNTY will not reimburse the CITY in the form of a check (\$). See below Part III. D.
- C. In the event the PROJECT can not be completed with available funds the COUNTY and CITY will jointly determine the priorities of the improvements to be made within funding limits.
- D. The CITY shall be credited towards the matching requirements stated in Part III. B. an amount equal to **10%** of the final construction cost for engineering services as detailed in Part II. A. 3. a.
- E. The CITY agrees to provide funds for the PROJECT to the COUNTY in the following manner:
1. In the event a construction contractor is entitled to payments for work completed after \$190,000 in CDBG funds have been expended, the COUNTY shall request a transfer of funds from the CITY for the amount necessary to make such payments. The CITY shall transfer funds which exceed available CDBG funds and are owed to a contractor to the

COUNTY within thirty (30) consecutive calendar days of a written request.

2. Upon receipt of written notification from the COUNTY the CITY shall provide payment within thirty (30) consecutive calendar days to the COUNTY the funds necessary to meet the matching contribution requirement in Part III. B. All checks shall be made payable to Clackamas County, include a Project Number and be mailed to the following address:

Attn: Toni Hessevick  
Clackamas County - Finance Office  
Public Services Building  
2051 Kaen Road  
Oregon City, OR 97045

3. In the event that unforeseeable conditions arise which necessitate the execution of a change in the amount of the construction contract, the CITY and the COUNTY will jointly evaluate the circumstances surrounding the conditions. Upon approval by the CITY and the COUNTY, the COUNTY shall instruct the Engineer to execute a change order.
4. Funds for the change order shall be split evenly between the COUNTY and the CITY subject to the limitations described above.

#### **IV. Liaison Responsibility**

Scott Tabor, will act as liaison from the CITY for the PROJECT. Mark Sirois will act as liaison from the COUNTY.

#### **V. Special Requirements**

- A. **Law and Regulations.** The COUNTY and CITY agree to comply with all applicable local, state, and federal ordinances, statutes, laws and regulations.
- B. **Public Contracting Requirements.** To the extent applicable, the provisions of ORS 279B.220, 279B.225, 279B.230, and 279B.235 are incorporated by this reference as though fully set forth.
- C. **Relationship of Parties.** Each party is an independent contractor with regard to the other party. Neither party is an agent or employee of the other. No party or its employees is entitled to participate in a pension plan, insurance, bonus, or similar benefits provided by any other party.
- D. **Indemnification.** Subject to the limits of the Oregon Tort Claims Act, and Oregon Constitution each of the parties agrees to hold harmless and indemnify the

others, and their elected and appointed officials, agents, and employees, from and against all claims, demands, and causes of action of any kind or character, including the cost of defense thereof, arising on account of personal injuries, death or damage to property caused by or resulting from their own acts or omissions or those of their officials, agents and employees provided however, upon completion of the improvements, the CITY will assume all responsibility for claims made thereafter against the COUNTY or its officers, agents or employees pertaining to the design and construction of the Project, and will indemnify and defend them therefore.

- E. **Notice.** Each party shall give the other immediate written notice of any action or suit filed or any claim made against the party which may result in litigation in any way related to this Agreement.
- F. **Record and Fiscal Control System.** All payroll and financial records pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible. Such records and documents shall be retained for a period of three (3) years after receipt of final payment under this Agreement; provided that any records and documents that are the subject of audit findings shall be retained for a longer time until such audit findings are resolved.
- G. **Access to Records.** The COUNTY, the State of Oregon and the Federal Government, and their duly authorized representatives shall have access to the books, documents, papers, and records of the CITY which are directly pertinent to the Agreement for the purpose of making audit, examination, excerpts, and transcripts.
- H. **Debt Limitation.** This Agreement is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10 of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent. Obligations of the COUNTY are also expressly subject to the COUNTY receiving funds from HUD for this project and in no event shall the COUNTY's financial contribution exceed the amount finally granted, released and approved by HUD for this project.
- I. **Conflict of Interest.** No officer, employee, or agent of the CITY or COUNTY who exercises any functions or responsibilities in connection with the planning and carrying out of the Block Grant Program, or any other person who exercises any functions or responsibilities in connection with the program, shall have any personal financial interest, direct or indirect, in the use of the funds provided pursuant to this Agreement, and the Parties shall take appropriate steps to assure compliance. The Parties will insure that no contractor, subcontractor, contractor's employee or subcontractor's employee has or acquires any interest, direct or indirect, which would conflict in any manner or degree with the performance of his services.

- J. **Insurance.** The CITY will bear the risk of loss from fire, extended coverage, and will purchase and maintain property insurance on all affected CITY property. The CITY will bear the risk of loss from accidents coverable by owner's liability insurance and may, at its option, maintain such insurance. If applicable, the CITY shall be required to maintain flood insurance. Each party agrees to maintain insurance, or self-insurance, in accordance with ORS 30.282, for the duration of this Agreement at levels necessary to protect against public body liability as specified in ORS 30.270.
- K. **Nondiscrimination.** The CITY and the COUNTY agree to comply with all Federal, State, and local laws prohibiting discrimination on the basis of age, sex, marital status, race, creed, color, national origin, familial status, or the presence of any mental or physical handicap. These requirements are specified in ORS chapter 659; Section 109 of the Housing and Community Development Act of 1974; Civil Rights Act of 1964, Title VII; Fair Housing Amendments Act of 1988; Executive Order 11063; Executive Order 11246; and Section 3 of the Housing and Urban Development Act of 1968; all as amended; and the regulations promulgated thereunder.
- L. **Handicapped Accessibility.** The CITY agrees that all improvements made under this Agreement shall comply with standards set for facility accessibility by handicapped persons required by the Architectural Barriers Act of 1968, as amended. Design standards for compliance are contained in 24 CFR 8.31-32 and the document entitled Uniform Federal Accessibility Standards published by HUD in April, 1988 as a joint effort with other Federal agencies.
- M. **Nonsubstituting for Local Funding.** The CDBG funding made available under this Agreement shall not be utilized by the CITY to reduce substantially the amount of local financial support for community development activities below the level of such support prior to the availability of funds under this Agreement.
- N. **Evaluation.** The CITY agrees to participate with the COUNTY in any evaluation project or performance report, as designed by the COUNTY or the appropriate Federal department, and to make available all information required by any such evaluation process.
- O. **Audits and Inspections.** The CITY will ensure that the COUNTY, the Secretary of HUD, the Comptroller General of the United States, or any of their duly authorized representatives shall have access to all books, accounts, records, reports, files, and other papers or property pertaining to the funds provided under this agreement for the purpose of making surveys, audits, examinations, excerpts, and transcripts.
- P. **Acquisition.** If completion of the project requires acquisition of any real property the parties agree to comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended.

- Q. **Change of Use.** The CITY agrees to comply with applicable change of use provisions contained in 24 CFR 570.505 (refer to Attachment C).
- R. **Reversion of Assets.** Upon expiration or termination of this Agreement, CITY shall transfer to COUNTY any CDBG funds on hand at the time of expiration and any accounts receivable attributable to the use of CDBG funds. Also for any real property under CITY'S control that was acquired or improved in whole or in part with CDBG funds (including CDBG funds provided to CITY in the form of a loan) in excess of \$25,000 or less based on the CDBG amount shall ensure said real property is either:
1. Used to meet one of the National Objectives in CFR 570.208 for the term of this Agreement; or
  2. Not used to meet on the National Objectives for the term of this Agreement, in which event, the CITY shall pay to COUNTY an amount equal to the current market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for the acquisition of, or improvement to, the property.

## VI. Amendment

This Agreement may be amended at any time with the concurrence of both Parties. Amendments become a part of this Agreement only after the written amendment has been signed by both Parties.

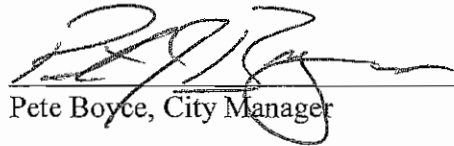
## VII. Term of Agreement

- A. This Agreement becomes effective when it is signed by both Parties.
- B. The term of this Agreement is a period beginning when it becomes effective and ending ten (10) years after completion of the PROJECT.
- C. This Agreement may be suspended or terminated prior to the expiration of its term by:
1. Written notice provided to the COUNTY from the CITY before any materials or services for improvements are procured, or;
  2. Written notice provided by the COUNTY in accordance with 24 CFR 85.43, included as Attachment D, resulting from material failure by the CITY to comply with any term of this Agreement, or;
  3. Mutual agreement by the COUNTY and CITY in accordance with 24 CFR 85.44.

- D. Upon completion of improvements or upon termination of this Agreement, any unexpended balances of CDBG funds shall remain with the COUNTY.

**CITY OF GLADSTONE**

525 Portland Ave  
Gladstone, Oregon 97027



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Pete Boyce, City Manager

7.10.13  
Date

**CLACKAMAS COUNTY**

Chair John Ludlow  
Commissioner Jim Bernard  
Commissioner Paul Savas  
Commissioner Martha Schrader  
Commissioner Tootie Smith

Signing on Behalf of the Board.

---

Cindy Becker, Director  
Health, Housing & Human Services  
Department

\_\_\_\_\_  
Date

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**ATTACHMENT A**  
**COMMUNITY DEVELOPMENT BLOCK GRANT PERFORMANCE MEASURES REPORT**

FOR THE PERIOD: JULY 1, \_\_\_\_\_ TO JUNE 30, \_\_\_\_\_

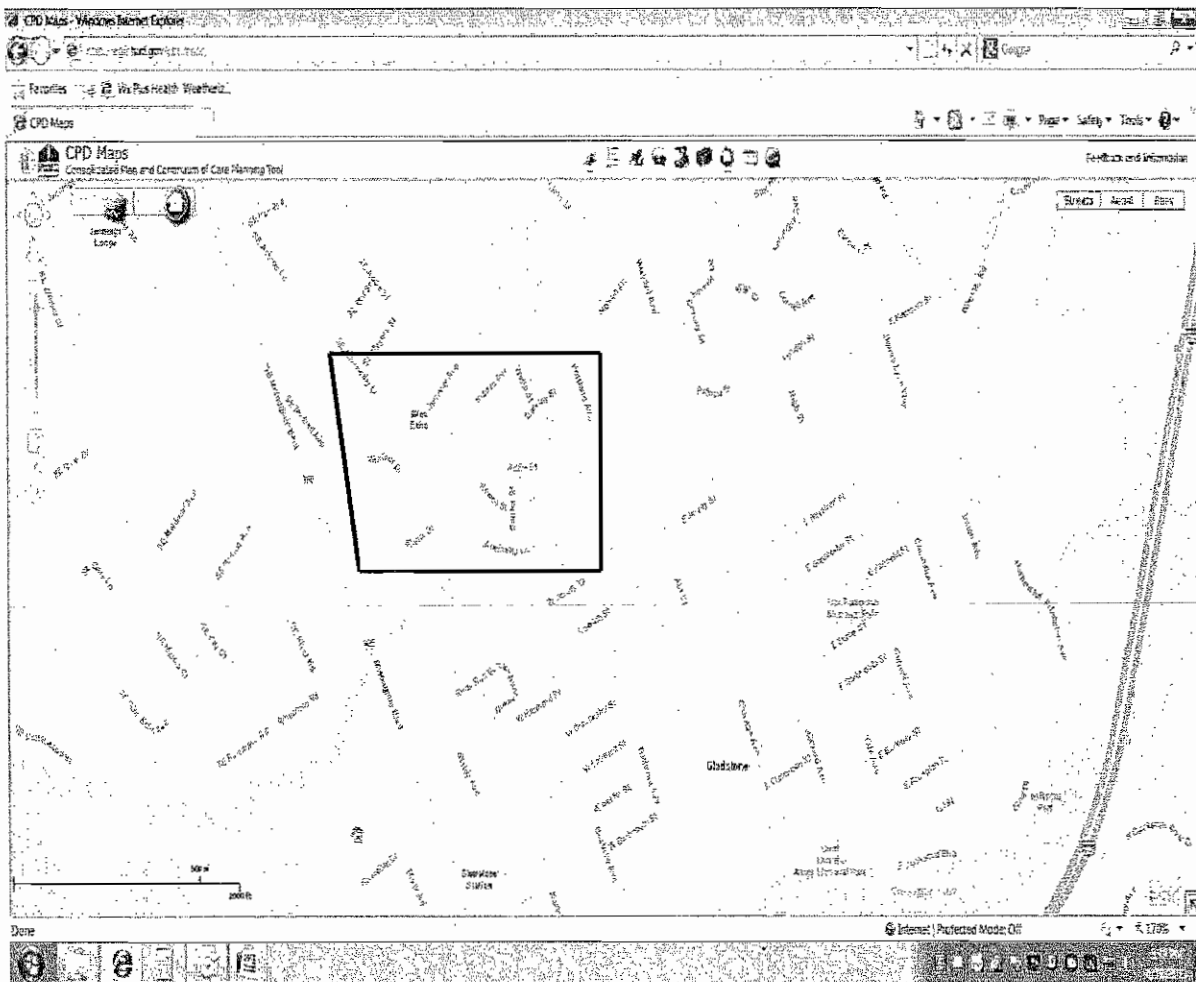
**Project Name: NW Gladstone Infrastructure Rehabilitation Project**

The Service Area for this project is contained within Census Tract 021900 Block Group 1. The City of Gladstone portion of this Block Group is 53.4% Low- and Moderate-Income.

# of persons 690 with new access to this Public Facility or Infrastructure Improvement

# of persons \_\_\_\_\_ with improved access to Public Facility or Infrastructure Improvement

# of persons \_\_\_\_\_ with access to this type of Public Facility or Infrastructure Improvement that is No Longer Substandard. Total Number of persons assisted: 690



Other benefits to the service area:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Organization

**ATTACHMENT B**

**CDBG Project Matching Funds**

**For reporting to HUD at the end of the year, indicate the specific sources and amounts of matching funds for the NW Gladstone Infrastructure Rehabilitation Project:**

2013-14 CDBG Funds	\$ _____
--------------------	----------

<b>SOURCES OF LOCAL MATCH:</b>	
Other Federal (including pass-through funds, e.g. County CDBG, State FEMA, etc.)	
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____

<b>State/Local Governmental Funding (e.g. State Housing Trust Funds, Local Assessment, etc.)</b>	
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____

<b>Private (including recipient) Funding</b>	
Fund Raising/Cash	\$ _____
Loans	\$ _____
Building Value or Lease	\$ _____
Donated Goods	\$ _____
New Staff Salaries	\$ _____
Volunteers (\$5/hr)	\$ _____
Volunteer Medical/Legal	\$ _____
Other _____	\$ _____

Prepared By:  
 (Print name)

Signature \_\_\_\_\_

Date \_\_\_\_\_



## ATTACHMENT C

### Change of Use

#### Excerpt from 24 CFR Part 570

#### 570.505 Use of real property.

The standards described in this section apply to real property within the recipient's control which was acquired or improved in whole or in part using CDBG funds in excess of \$25,000. These standards shall apply from the date CDBG funds are first spent for the property until five years after closeout of an entitlement recipient's participation in the entitlement CDBG program or, with respect to other recipients, until five years after the closeout of the grant from which the assistance to the property was provided.

(a) A recipient may not change the use or planned use of any such property (including the beneficiaries of such use) from that for which the acquisition or improvement was made unless the recipient provides affected citizens with reasonable notice of, and opportunity to comment on, any proposed change, and either;

(1) The new use of such property qualifies as meeting one of the national objectives in 570.208 (formerly 570.901) and is not a building for the general conduct of government; or

(2) The requirements and paragraph (b) of this section are met.

(b) If the recipient determines, after consultation with affected citizens, that it is appropriate to change the use of the property to a use which does not qualify under paragraph (a)(1) of this section, it may retain or dispose of the property for the changed use if the recipient's CDBG program is reimbursed in the amount of the current fair market value of the property, less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, and improvements to, the property.

(c) If the change of use occurs after closeout, the provisions governing income from the disposition of the real property in 570.504(b) (4) or (5), as applicable, shall apply to the use of funds reimbursed.

(d) Following the reimbursement of the CDBG program in accordance with paragraph (b) of this section, the property no longer will be subject to any CDBG requirements.

## ATTACHMENT D

### Excerpt from 24 CFR Part 85

#### §85.43 Enforcement.

(a) *Remedies for noncompliance.* If a grantee or subgrantee materially fails to comply with any term of an award, whether stated in a Federal statute or regulation, an assurance, in a State plan or application, a notice of award or elsewhere, the awarding agency may take one or more of the following actions, as appropriate in the circumstances:

- (1) Temporarily withhold cash payments pending correction of the deficiency by the grantee or subgrantee or more severe enforcement action by the awarding agency,
- (2) Disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance,
- (3) Wholly or partly suspend or terminate the current award for the grantee's or subgrantee's program,
- (4) Withhold further awards for the program, or
- (5) Take other remedies that may be legally available.

(b) *Hearings, appeals.* In taking an enforcement action, the awarding agency will provide the grantee or subgrantee an opportunity for such hearing, appeal, or other administrative proceeding to which the grantee or subgrantee is entitled under any statute or regulation applicable to the action involved.

(c) *Effects of suspension and termination.* Costs of grantee or subgrantee resulting from obligations incurred by the grantee or subgrantee during a suspension or after termination of an award are not allowable unless the awarding agency expressly authorizes them in the notice of suspension or termination or subsequently. Other grantee or subgrantee costs during suspension or after

termination which are necessary and not reasonably avoidable are allowable if:

- (1) The costs result from obligations which were properly incurred by the grantee or subgrantee before the effective date of suspension or termination, are not in anticipation of it, and, in the case of a termination, are noncancellable, and,
  - (2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.
- (d) *Relationship to Debarment and Suspension.* The enforcement remedies identified in this section, including suspension and termination, do not preclude grantee or subgrantee from being subject to "Debarment and Suspension" under E.O. 12549 (see §85.35).

#### §85.44 Termination for convenience.

Except as provided in §85.43 awards may be terminated in whole or in part only as follows:

- (a) By the awarding agency with the consent of the grantee or subgrantee in which case the two parties shall agree upon the termination conditions, including the effective date and in the case of partial termination, the portion to be terminated, or
- (b) By the grantee or subgrantee upon written notification to the awarding agency, setting forth the reasons for such termination, the effective date, and in the case of partial termination, the portion to be terminated. However, if, in the case of a partial termination, the awarding agency determines that the remaining portion of the award will not accomplish the purposes for which the award was made, the awarding agency may terminate the award in its entirety under either §85.43 or paragraph (a) of this section.

Removed

July 25, 2013

Board of County Commissioner  
Clackamas County

Members of the Board:

Approval of Two Agreements between Clackamas County, Proud Ground and Portland Community Land Trust Development LLC (PCLT) to use Neighborhood Stabilization Program Funds and HOME Program Funds to Purchase and Rehabilitate a Foreclosed Home

<b>Purpose/Outcomes</b>	Proud Ground, through PCLT, its development arm, plans to use HOME Program funds and Neighborhood Stabilization Program (NSP) funds to purchase, rehabilitate and resell a single-family foreclosed home located at 465 W. Dartmouth Street in Gladstone.
<b>Dollar Amount and Fiscal Impact</b>	The HOME loan amount is \$140,000. The NSP loan amount is \$111,000. Because there are distinct differences in the requirements of the NSP and HOME programs and in the loan terms, it is in the best interest of the County to have separate loan documents.
<b>Funding Source</b>	The HOME 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 (HUD). The NSP loan is funded through the federal Neighborhood Stabilization Program. The County is a sub-grantee of the State of Oregon which received the NSP funding through HUD. The NSP funds being used are the sale proceeds from another home that was acquired and rehabilitated with NSP funds. No County General Funds are involved.
<b>Safety Impact</b>	None
<b>Duration</b>	The term of the loan is 50 years.
<b>Previous Board Action</b>	Approval of the 2012-14 Annual Action Plan
<b>Contact Person</b>	Chuck Robbins, Director, Community Development Division, 650-5666.
<b>Contract No.</b>	6340 – HOME Loan Agreement 6343 – NSP Loan Agreement

**BACKGROUND:**

Proud Ground is a community land trust. When the rehabilitation work is completed, Proud Ground will sell the improvement – the rehabilitated home -- at a reduced price to an eligible low-income household. Under the community land trust model of homeownership, Proud Ground will retain ownership of the land and enter into a 99-year land lease with the homeowner.

The NSP requires that the foreclosed home must be located in a HUD-designated target area and the purchase price must be at least one percent below the appraised value. The rehabilitation work will bring the home up to the County's rehabilitation standards and improve the energy efficiency of the home.

# CLACKAMAS COUNTY HOME PROGRAM

## LOAN AGREEMENT

**Project: 2012 Community Stabilization Project**  
Homeownership Acquisition with Rehabilitation  
**Activity: 465 W. Dartmouth**

This Loan Agreement ("Agreement") is entered into between Proud Ground, an Oregon non-profit organization, ("Proud Ground"), PCLT Development LLC ("PCLT") of which the sole member is Proud Ground, 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 | H. Land Lease Between PROUD GROUND and Homebuyer           |
|                             | I. HOME Agreement between County and Homebuyer             |

The parties, in consideration of the mutual promises and obligations set forth below, agree as follows:

- DEFINITIONS.** Capitalized terms in this Agreement and in the other Loan Documents have the following definitions:
  - Annual Income.** For the purposes of this Agreement, Proud Ground will use the definition of "Annual Income" found at 24 CFR 92.203(b)(1) when determining whether a Household is an Eligible Low-Income Household.
  - Affordability Requirements.** The Affordability Requirements are the restrictions on purchase/sale price and Homebuyer incomes set forth in this Agreement.
  - CHDO.** A Community Housing Development Organization ("CHDO") is a non-profit organization that has been certified by the County as meeting the requirements of 24 CFR 92.2. Proud Ground has been certified as a CHDO by Clackamas County for the 2013-14 program year.
  - Community Land Trust Model of Homeownership.** Proud Ground is a Community Land Trust (CLT). The CLT Model of Homeownership means that the CLT owns the Land and the Homebuyer owns the dwelling unit (improvement) on the Land. The CLT retains ownership of the Land in perpetuity. The Homebuyer leases the Land from the CLT under a 99-year Land Lease to assure future affordability of the dwelling unit. The CLT records the Land Lease or Memorandum of Lease in the records of Clackamas County.
  - Eligible Low-Income Household.** A Low-Income Household is a Household whose Annual Income does not exceed 80% of the County's Median Income. To be an Eligible Low-Income Household, the head of the Low-Income Household must be a US Citizen, Non-Citizen National, or Qualified Alien.
  - HOME-Assisted Unit or HOME Unit.** HOME-Assisted Unit ("HOME Unit") is a unit which is partially or totally acquired, rehabilitated, constructed, or otherwise assisted with the use of HOME Funds.
  - 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 4.
  - HOME Program and HOME Regulations.** The federal HOME Investment Partnership Program ("HOME Program") is authorized under Title II of the National Affordable Housing Act of 1990. The regulations and requirements for the HOME Program are located in 24 CFR Part 92 ("HOME Regulations"). Should anything in this Agreement or the other Loan Documents conflict with the HOME Regulations, the HOME Regulations shall supersede.
  - Homebuyer.** The Homebuyer is an Eligible Low-Income Household at the time it purchases the HOME Unit. The Homebuyer includes both the initial and any subsequent purchaser of the HOME Unit. Proud Ground

must determine that the Homebuyer is an Eligible Low-Income Household before the purchase of the HOME Unit.

10. **Homeownership.** Homeownership is defined at 24 CFR 92.2 to include ownership in fee simple of a one-unit dwelling.
11. **Household.** Household is defined at 24 CFR 92.2 to mean one or more persons occupying a housing unit.
12. **HUD.** The federal Department of Housing and Urban Development.
13. **Initial Sale.** PCLT's sale of the dwelling unit to a Homebuyer is the Initial Sale.
14. **Loan Documents.** The Loan Documents for the Project 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.
15. **Median Income.** Median Income refers to the median income for Clackamas County, adjusted for family size, as published periodically by HUD.
16. **Owner.** PCLT, the development arm of Proud Ground, will be the initial owner of the Land and the Improvement on the Land. At the time of the Initial Sale, PCLT will transfer ownership of the Land to Proud Ground and ownership of the Improvement to the Homebuyer. Proud Ground and PCLT are considered the Owner for the purposes of Sections 27 and 28.
17. **Period of Affordability.** The Period of Affordability shall begin on the Project Completion Date. The Period of Affordability is comprised of two separate periods: the Initial Period of Affordability and the Extended Period of Affordability. In accordance with 24 CFR 92.254(a)(4), the Initial HUD-required Period of Affordability shall be 15 years. The Extended Period of Affordability shall begin at the end of the Initial Period of Affordability and continue until the HOME Funds are repaid.
18. **Project.** The Project includes: PCLT's purchase of the "Land" and the "Improvement" (a single-family dwelling unit on the Land); PCLT's rehabilitation of the Improvement; PCLT's transfer of ownership of the Land to Proud Ground; PCLT's Initial Sale of the Improvement to and for the benefit of an Eligible Low-Income Household; and, Proud Ground's subsequent monitoring of the HOME-Assisted Unit to ensure use and transfers are consistent with the Land Lease, the community land trust model of Homeownership, and the requirements of this Agreement. The Project is located at:

**465 W. Dartmouth Street, Gladstone, OR 97027**

The legal description for the Project is set forth in **Attachment A**.

19. **Project Completion Date.** The Project Completion Date is the date when:
  - i. All rehabilitation work has been completed.
  - ii. The HOME Unit has been sold to an Eligible Homebuyer and the Land Lease or Memorandum of Land Lease has been recorded;
  - iii. The final HOME funds have been disbursed to Proud Ground;
  - iv. Eligible Homebuyers have moved into the home; and
  - v. The County has entered the Project completion information, including the Homebuyer's information into HUD's integrated disbursement and information system.

**2. HOME REGULATIONS**

The parties agree to comply with the applicable HOME Regulations and with the other requirements of the Loan Documents.

**3. SOURCES AND USES OF FUNDS; SCHEDULE OF TASKS**

1. **Attachment B** identifies all sources and uses of funds for the Project. PCLT and Proud Ground certifies the sources of funds are sufficient to fund the Project in full and the HOME Funds shall only be used for HOME-eligible costs defined at 24 CFR 92.206 and 92.214.
2. **Attachment C** identifies the Schedule of Tasks to be undertaken in order to complete the Project

#### 4. HOME FUNDS; LOAN TERMS

1. **Amount and Purpose.** County shall loan HOME Funds up to a total of **ONE HUNDRED FORTY THOUSAND DOLLARS (\$140,000.00)** for the acquisition and rehabilitation of the Project.
2. **Interest.** The loan is a zero percent interest loan.
3. **Maturity Date.** All principal remaining on the loan must be paid by December 31, 2063; except that County may extend the Maturity Date if Proud Ground is complying with all terms of this Agreement.
4. **Repayment.** The proceeds from the Initial Sale of the HOME Unit will be used to pay the following:
  - i. All Project costs (including the Developer Fee) as identified in Attachment B will be paid first; then,
  - ii. Any excess funds remaining after those payments will be remitted to the County and applied to HOME loan balance.
  - iii. If the proceeds of the Initial Sale of the dwelling unit are not sufficient to repay the entire HOME funds, Proud Ground is not required to pay any remaining principal until the Maturity Date or one of the following occurs:
    1. Proud Ground sells the Land.
    2. Proud Ground transfers title to the Land. (The sale of the HOME Unit to an Eligible Household does not constitute a transfer of title to the Land.)
    3. The HOME Unit is sold to a buyer who is not an Eligible Low-Income Household or for a price which does not meet the Affordability Restrictions outlined in Section 7.
    4. A Homebuyer does not occupy the HOME Unit as its primary residence.
    5. Upon any other change in use of the Land or HOME Units.
    6. Proud Ground defaults on its obligations under any of the Loan Documents, provided that County shall give Proud Ground notice of the default and a thirty (30) day opportunity to cure the default before declaring the loan due and payable.
  - iv. If the proceeds of the Initial Sale of the dwelling unit are greater than the balance of the HOME funds, the County will apply those residual funds to next subordinate County-funded loan on this project.
5. **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**".
6. **Recording Requirement:** Proud Ground and PCLT agree to record the Trust Deed and the Declaration of Land Use Restrictive Covenants, promptly after signing the Promissory Note.

#### 5. EVENTS OF DEFAULT

1. 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 30 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.
  - i. Proud Ground fails to secure all fund sources identified in Attachment B within 12 months from the Effective Date of this Agreement.
  - ii. Proud Ground fails to make the HOME-Assisted Unit available for occupancy within 24 months from the Effective Date of this Agreement.
  - iii. Any other event of default identified in Section 4.01 of the Trust Deed.
2. **Remedies for Default.** In the event of default, either party may pursue any legal or equitable remedy available to it. Without limiting the foregoing, if Proud Ground does not comply with the Affordability Requirements at any time during the term of this Loan, County may declare the entire amount of the Loan due and payable at once.

#### 6. TERMINATION OF THIS AGREEMENT.

1. In the event of termination of this Agreement prior to the completion of the Project, where no benefit results to Eligible Low-Income Households, Proud Ground shall return to the County, upon demand, all HOME Funds paid to Proud Ground for the Project.

2. In the event of termination of this Agreement for gross negligence, fraud or other serious breach of this Agreement or the Regulations, Proud Ground shall pay to the County, upon demand, all HOME Funds paid to Proud Ground for the Project.

#### **7. HOME RESALE REQUIREMENTS**

1. Proud Ground must comply with the requirements of 92.254(a)(5) and HUD's Notice CPD 12-003 *Guidance on Resale and Recapture Provision Requirements under the HOME Program*.
2. If, during the Period of Affordability, the Homebuyer no longer uses the dwelling unit as a principal residence or is unable to continue ownership, then:
  - i. The Homebuyer must sell, transfer, or otherwise dispose of their interest in the HOME Unit only to another Eligible Low-Income Household to use as its principal residence or to Proud Ground for resale to another Eligible Low-Income Household to use as its principal residence.
  - ii. The property must be sold at a price that is affordable to a reasonable range of low-income buyers. Clackamas County defines a "reasonable range of low-income homebuyers" as homebuyers with incomes between 60 and 80 percent of area median income. An affordable unit would have a purchase price at initial and any subsequent resale that does not exceed what a family of four at 70 percent of area median income would pay if paying no more than 30 percent of income for principal, interest, taxes and insurance. The calculation is based on a term of 30 years at four percent interest with taxes and insurance calculated at \$200 per month.
  - iii. Upon resale, the Homebuyer must receive a "fair return on investment" which means that, in an appreciating market, the Homebuyer will receive:
    1. Twenty-five percent of any increase in value from the appraised value at purchase, as determined by an Oregon-licensed appraiser, to the appraised value at resale less any required repairs;
    2. The amount that the Homebuyer paid toward down payment at purchase;
    3. The amount that the Homebuyer has paid toward the mortgage principal;
    4. 100 percent of the increase in appraised value directly attributable to the addition of permitted bedrooms and/or bathrooms; and
    5. 50% of the costs of major systems replacements done within five years prior to resale. Major systems upgrades include replacements or significant upgrades (not repair) of items such as roofs, furnaces, plumbing, electrical, foundation, and energy efficiency.

#### **8. LAND LEASE REQUIREMENTS**

1. The initial Land Lease between Proud Ground and the Homebuyer is part of this Agreement. See **Attachment H**.
2. The Land Lease or Memorandum of Land Lease shall be duly executed and recorded in the land records of Clackamas County.
1. The Land Lease Fee must be defined in the Land Lease and must be affordable to the Homebuyers. Proud Ground may not increase the fee without the County's approval in advance of the increase.
2. The County must approve any revision to the Land Lease prior to the revision taking effect. Any changes to the Land Lease must comply with 92.254.

#### **9. PCLT AND PROUD GROUND'S RESPONSIBILITIES, INCLUDING AFFORDABILITY REQUIREMENTS**

During each phase of the project and throughout the Initial Period of Affordability, Proud Ground will ensure that the Project meets the applicable requirements of affordable Homeownership housing at 24 CFR 92.254.

1. Property Acquisition. PCLT will acquire the Project. The Purchase Agreement must make the sale contingent upon:
  - i. Compliance with the Uniform Relocation and Real Property Acquisition Policies Act of 1970, as amended (URA).
  - ii. Completion of an Environmental Review under 24 CFR Part 58.
  - iii. Access to property for inspections and bidding.
  - iv. A determination by the County's Rehab Advisor that the rehabilitation of the property is economically feasible.

- v. Compliance with Lead Hazard rules if the home was built prior to 1978.
2. Property Rehabilitation: PCLT will rehabilitate the Project to bring it into compliance with the Property Standards outlined in Section 11.
  - i. Bidding and Contracting:
    1. PCLT will use the Worklist Specifications prepared by the Rehab Advisor to solicit bids from at least three licensed Oregon General Contractors for the rehabilitation portion of the Project.
    2. PCLT will use the Owner-Contractor Contract provided by the County to enter into a construction contract with a General Contractor for the rehabilitation portion of the Project.
      - a. The bid of the contractor selected must be within 10% of the Rehab Advisor's cost estimate.
      - b. The General Contractor shall be licensed, bonded and registered with the State of Oregon under a valid Construction Contractors Board (CCB) number.
      - c. If the home was constructed prior to 1978, the General Contractor must be trained and certified as required by HUD, EPA and Oregon in Lead Safe Work Practices or be a licensed Lead Abatement Contractor if the property has lead-based paint or lead-based paint hazards.
  - ii. Construction Reports & Recommendations: PCLT will submit all reports and recommendations concerning construction to the County for its approval.
  - iii. Modifications to the Construction Contract: All modifications to the construction contract shall be in writing using a change order approved by PCLT, the County and the Contractor.
3. Sale of HOME Unit to Homebuyer. At the initial sale and any subsequent resale throughout the period of affordability, Proud Ground will:
  - i. Market the HOME Units to Low-Income Households in Clackamas County through a variety of media with the goal of reaching the greatest number and the most diverse collection of Eligible Low-Income Households in the County.
  - ii. Provide homebuyer education to prospective buyers that meet the curriculum approved by the County.
  - iii. Assist prospective buyers in locating sources of leasehold mortgage financing.
  - iv. Determine and document the Annual Income, as defined in Section 1(a), of the initial Homebuyer and any subsequent Homebuyers at the time of purchase for the purpose of determining whether the Household is an Eligible Low-Income Household.
  - v. Sell the HOME Unit to an Eligible Low-Income Household under the Community Land Trust Model of Homeownership and in compliance with the HOME resale requirements of Section 7.
  - vi. Require that each buyer of a HOME-assisted unit sign the "Agreement between Homebuyer(s) and Clackamas County". See Attachment "I".
  - vii. Enter into a 99-year Land Lease agreement with the Homebuyers and have the Land Lease or Memorandum of Lease recorded in the records of Clackamas County.
4. Monitor and enforce the Land Lease. At least annually, Proud Ground will verify that:
  - i. The Homebuyer(s) continue to occupy the property as their principal residence;
  - ii. The Homebuyers maintain the required insurance; and
  - iii. The HOME Unit is properly maintained.
5. Manage subsequent sales of the HOME Units to Eligible Low-Income Households. During the initial Period of Affordability, Proud Ground will:
  - i. Perform all responsibilities regarding sale of the HOME Unit;
  - ii. Provide notice to the County of a Homebuyer's intent to sell;
  - iii. Certify to County prior to any Homebuyer selling or voluntarily transferring the HOME Unit that the purchaser or transferee is an Eligible Low-Income Household.
  - iv. Ensure that any subsequent purchase/sale price for the HOME Unit:
    1. Complies with the HOME resale requirements of Section 7
    2. Complies with the resale formula in the Land Lease; and
    3. Is at or below the current HOME affordable homeownership limits provided by HUD.



- v. Require that each buyer of a HOME-assisted unit sign the "Agreement between Homebuyer(s) and Clackamas County". See Attachment "I"
6. Extended Period of Affordability
- During the Extended Period of Affordability, Proud Ground will comply with all of the Affordability Requirements listed above except that the County will not require Proud Ground to certify to County prior to any Homebuyer selling or voluntarily transferring a HOME Unit that the purchaser or transferee is an Eligible Low-Income Household.

## 10. COUNTY RESPONSIBILITIES

- 1. Initial Property Inspection. A Rehabilitation Advisor with the Clackamas County Housing Rehabilitation Program will conduct an initial inspection of the Project to determine whether it is economically feasible. That determination will take into account the extent of work needed and the presence of environmental hazards including those related to lead-based paint (if the dwelling unit was constructed prior to 1978), septic systems, heating oil tanks and mold.
- 1. Environmental Review: The County will conduct an Environmental Review of the Property as described in Section 14.
- 2. Required Inspections:
  - i. LBP Evaluation: Rehab Advisor will order the appropriate lead evaluation if the dwelling unit was constructed prior to 1978.
  - ii. Energy Audit: Rehab Advisor will order an Energy Audit by Clackamas County Weatherization.
  - iii. Full Home and Pest & Dry Rot Inspection: Rehab Advisor will order a Full Home inspection as directed by PCLT.
  - iv. Property Standards Inspection: Rehab Advisor will conduct a Property Standards inspection
- 3. Additional / Possible Inspections. On a case by case basis, the Rehab Advisor will decide whether any of these inspections are needed:
  - i. Oil tank locate & inspect
  - ii. Sewer line scope
  - iii. Septic tank & lines inspect
  - iv. Radon short test
  - v. Asbestos testing
  - vi. Well water testing
- 3. Bid Packet / Worklist Specifications: Rehab Advisor will prepare a Bid Packet that includes worklist specifications for the rehabilitation work on the Project. The worklist specifications will be written to ensure that, upon completion of the rehabilitation work, the Project will:
  - i. Meet requirements outlined in Section 11; and
  - ii. Be reasonably maintainable by future owners.
- 4. Cost Estimate: Rehab Advisor will prepare a cost estimate for the rehabilitation portion of the Project.
- 5. Conduct a Bid Conference: Rehab Advisor will contact the contractor(s) selected to bid by PCLT and conduct a Bid Conference using the Bid Packet for the rehabilitation portion of the Project.
- 6. Bid Review: Rehab Advisor will review bids with PCLT.
- 7. Contract with Contractor: Rehab Advisor will prepare an Owner-Contractor Contract for use by PCLT. The contract will provide protections for the County against apparent defects and deficiencies in the permanent work constructed by the Contractor.
- 8. Pre-construction Conference: Rehab Advisor will conduct a Pre-construction Conference with the General Contractor and PCLT.
- 9. Progress Inspections: Rehab Advisor will conduct progress inspections of the rehabilitation portion of the project.
- 10. Progress Payments: Rehab Advisor will review and approve progress payment requests from the General Contractor.

11. Final Inspection: Rehab Advisor with PCLT will conduct a final inspection after the rehabilitation work is completed to verify that:
  - i. All of the work is completed;
  - ii. All final inspection certificates and lien waivers have been submitted, and
  - iii. All units meet the property standards outlined in Section 11.

#### **11. PROPERTY STANDARDS AND WORK PRIORITIES**

1. The order of priority for residential rehabilitation work is:
  - i. Health, Safety and Code Violations -- required
  - ii. Incipient Code Violations -- required
  - iii. Property Standards - required
  - iv. Energy Efficiency Criteria -- required
  - v. Green Building Practices -- recommended
  - vi. General Property Improvements -- if eligible.
2. Upon completion of the rehabilitation, the Project must meet all of the applicable:
  - i. Property Standards in 24 CFR 92.251
  - ii. Lead Based Paint requirements at 24 CFR 92.355 if constructed prior to 1978.
  - iii. Clackamas County Community Development Housing Rehabilitation Program Rehabilitation Standards for the current program year.

#### **12. DISBURSEMENT OF FUNDS, REPORTING AND INSPECTIONS**

1. PCLT and Proud Ground agree 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.
2. Payment requests shall be accompanied by:
  - i. Copies of documentation for actual expenses; and
  - ii. A monthly progress report that describes the activities completed during the reporting period and those anticipated to be completed in the next period.
3. The County shall verify requested amounts for satisfactory completion prior to payment. Payments shall be based upon work completed and approved by the County.
4. The County has the authority to inspect and, if necessary, stop the work if, in the County's sole judgment, performance of the work is not in conformance with the specifications, the terms of this Agreement or the Regulations. PCLT shall provide the County such information as the County may require regarding costs incurred, percentage completion, and work process and status.
5. Five percent (5%) of HOME Funds will be withheld until the Owner provides the County with the documentation outlined in Attachment G.
6. The County will not disburse any HOME Funds until all the Loan Documents are signed and the Trust Deed and Declaration of Land Use Restrictive Covenants are recorded.

#### **13. INDEMNIFICATION AND INSURANCE**

1. PCLT and Proud Ground 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, arising from performance of this agreement.
2. During the construction phase of the Project, PCLT shall maintain insurance coverage on the Project as follows:
  - i. Builder's risk property insurance in the amount of the full replacement value of the property and commercial general liability insurance in the minimum amount of \$1,000,000. PCLT shall provide County proof of insurance in the required amounts upon request by the County and shall give County no less than 30 days notice of cancellation, nonrenewal or material change of insurance.
  - ii. The General Contractor hired by Proud Ground shall obtain at Contractor's expense, and keep in effect during the term of the contract, at least the minimum insurance and bond required by Oregon Law and the Oregon Construction Contractors Board.

- iii. The insurance coverage outlined above shall include the County as an additional insured. Such insurance shall provide 30 days' written notice to the County in the event of cancellation, nonrenewal, or material change and include a statement that no act on the part of the insured shall affect the coverage afforded to the County under this insurance. The insurance company will provide written notice to the County within thirty (30) days after any reduction on the general annual aggregate limit.
  - iv. Upon request by the County, Proud Ground will require the Contractor to furnish the County evidence of the insurance required above.
3. After the sale of the Home Unit to the Homebuyer, Proud Ground shall ensure that Homebuyers maintain the insurance coverage as required in the Land Lease and Paragraph 1.12 of the Trust Deed.

**14. ENVIRONMENTAL REVIEW**

1. The effects of each activity related to the Project must be assessed in accordance with the provisions of the National Environmental Policy Act of 1969 and the related authorities in 24 CFR Parts 50 and 58.
2. Prior to undertaking any activity with respect to the Project which will directly or indirectly cause any change to the natural or man-made environment, regardless of whether such activity is to be funded by the HOME Funds, the Owner must comply to the extent applicable with the regulations found at 24 CFR Part 58, and complete all applicable environmental review and clearance requirements as provided in 24 CFR 58.5.
3. The Owner must comply with Section 106 of the National Historic Preservation Act of 1966, as amended, to the extent applicable by submitting to the County, Form ERR - Historic Compliance Request and the form titled "Determination of Eligibility" prior to initiating any proposed activity. PROUD GROUND must also provide all other necessary information and data upon reasonable request of the County in order that the County may maintain the required environmental review records.
4. The Owner may not use any of the HOME Funds 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.
5. The Owner must not proceed with or commit any funds toward construction of the Project until it receives approval from the County acknowledging that all environmental review and clearance requirements have been met.
6. 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.

**15. CONTRACTOR DEBARMENT AND SUSPENSION**

In order to comply with the requirements of 24 CFR Part 24, PCLT must certify 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.

**16. 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.

**17. DISPLACEMENT, RELOCATION, ACQUISITION, AND REPLACEMENT**

PCLT 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).

**18. 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.

**19. MATCH REQUIREMENT**

**Attachment D** identifies any match sources eligible in accordance with 24 CFR 92.218 through 92.222.

**20. AFFIRMATIVE MARKETING**

If the Project contains five or more HOME-Assisted Units, Proud Ground must implement and follow the adopted Affirmative Marketing Plan of the County ("Plan"), **Attachment F**. Proud Ground must maintain records evidencing compliance with the Plan.

**21. 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-owned and women-owned business enterprises. Proud Ground certifies that it will follow and implement the adopted procedures and requirements in **Attachment F**.

**22. NON-DISCRIMINATION**

1. PCLT and Proud Ground 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).
2. Proud Ground 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 Homeownership of the Project unit.

**23. FAITH BASED ACTIVITIES**

1. 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 Agreement. 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.
2. 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.
3. 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 the HOME Regulations.

**24. RECORDS**

1. Proud Ground and PCLT must keep such records as are necessary to demonstrate compliance with all parts of this Agreement, including but not limited to the Affordability Requirements, Land 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.

**2. Record Retention Periods**

- i. Except as stated in this subparagraph, records must be retained for five years following the Project Completion Date.
  - ii. Written agreements must be retained for five years after the particular written agreement terminates.
  - iii. 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.
  - iv. Records that are the subject of audit findings must be retained for three years after such findings have been resolved.
  - v. Records for non expendable property shall be retained for three years after its final disposition. Non expendable property is defined in 24 CFR Part 84.
  - vi. 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.
3. 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.

**25. MONITORING**

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 Proud Ground's receipt and disbursement of the HOME Funds.

**26. 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.

**27. 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.

**28. 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.

**29. LIAISON RESPONSIBILITY.**

Kathy Armstrong will act as liaison from Proud Ground and Gloria Lewton will act as liaison from the County.

**30. EFFECTIVE DATE**

The Effective Date of this Agreement is the date it is signed by all parties.

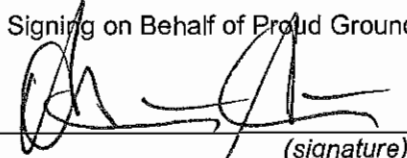
**PROUD GROUND:**

Address: 5288 N Interstate Ave  
Portland, OR 97217

**CLACKAMAS COUNTY:**

Commissioner John Ludlow, Chair  
Commissioner Jim Bernard  
Commissioner Paul Savas  
Commissioner Martha Schrader  
Commissioner Tootie Smith

Signing on Behalf of Proud Ground:



(signature)

Printed Name: Kathy Armstrong  
Title: Deputy Director  
Federal Tax ID: 93-1290320  
Phone: 503.493.0293

7.16.13

Date

Signing on Behalf of the Board

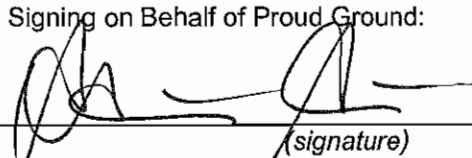
(signature)  
Cindy Becker  
Director, Health, Housing and Human Services

Date

**PCLT Development LLC:**

Address: 5288 N Interstate Ave  
Portland, OR 97217

Signing on Behalf of Proud Ground:



(signature)

Printed Name: Kathy Armstrong  
Title: Authorized signer  
Federal Tax ID: 93-1290320  
Phone: 503.493.0293

7.16.13

Date

**Attachment A. Legal Description**

465 W. Dartmouth Street, Gladstone, OR 97027

LOT 6, AND THE EASTERLY 25 FEET OF LOT 7, BLOCK 11, WEST GLADSTONE BLOCKS 9 TO 14 INCLUSIVE, IN THE CITY OF GLADSTONE, COUNTY OF CLACKAMAS AND STATE OF OREGON.

APN/Parcel No.: 529226

**Attachment B. Sources and Uses of Funds**

*Estimated*

**465 W. Dartmouth**

<b>Sources</b>	
NSP 1	\$111,000
HOME	\$140,000
SHOP	\$15,000
Sale Price to homebuyer	132,000
<b>Total Sources</b>	<b>\$398,000</b>
<b>Uses</b>	
Acquisition with purchase soft costs	\$158,160
Rehab	\$81,640
Soft Costs, excluding purchase costs	\$26,100
Management/Developer's Fee	\$10,000
HOME funds repayment	\$122,100
<b>Total Uses</b>	<b>\$398,000</b>



**Attachment C. Schedule of Tasks**

<b><u>Activity</u></b>	<b><u>2013-14 Q1</u></b>	<b><u>2013-14 Q2</u></b>	<b><u>2013-14 Q3</u></b>
<b><u>Acquisition</u></b>			
Environmental Review	X		
Negotiate PSA	X		
Close	X		
<b><u>Financing/Funding</u></b>			
NSP and HOME approval	X		
<b><u>Bidding Process</u></b>			
Work write-up	X		
Bidding and contracting	X		
<b><u>Construction</u></b>			
Rehab work	X	X	
<b><u>Sales and Occupancy</u></b>			
Market project	X	X	
Qualify buyers		X	
Closing with buyers ( move-in)		X	X
Repayment of County HOME loan		X	X

**Attachment D.  
Home Match Contribution Form**

**Total number of units in Project:** 1  
**Number of HOME-Assisted Units:** 1      100%  
**Applicable match credit percentage\*:** 100%

<b>Column A MATCH SOURCE</b>	<b>Column B ELIGIBLE MATCH TYPE</b>	<b>Column C ELIGIBLE MATCH AMOUNT</b>	<b>Column D DATE OF CONTRIBUTION (Date funds committed)</b>
2.			
3.			
4.			
5.			
6.			
7.			
8.			
<b>TOTAL MATCHING FUNDS:</b>			
<b>Total Match Credit:</b>			

**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."

## Attachment E. HOME Affordability Requirements

HUD published 95% median maximum purchase price is \$246,168 as of March 29, 2012

### AFFORDABILITY REQUIREMENTS

US Department of Housing and Urban Development

Effective Date: 12/04/2012

Household Size	50%	80%*	120%
	Very Low (HOME) Low (CDBG)	Low (HOME) Mod (CDBG)	NSP
1	24,300	<b>38,850</b>	58,300
2	27,800	<b>44,400</b>	66,600
3	31,250	<b>49,950</b>	74,950
4	34,700	<b>55,500</b>	83,300
5	37,500	<b>59,950</b>	89,950
6	40,300	<b>64,400</b>	96,600
7	43,050	<b>68,850</b>	103,250
8	45,850	<b>73,300</b>	109,950

\*The use of HOME Funds in this project will limit the buyers to 80% AMI

**Note:** This schedule is updated from time to time when adjustments are provided by HUD.

## ATTACHMENT F.

### **Affirmative Marketing Policy**

For housing containing five or more HOME-Assisted Units, the HOME Regulations at 24 CFR Part 92.351 require the Owner 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, e.g., ads, brochures, flyers and application forms.
- 3) 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 housing 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 department, or medical service centers to publicize unit vacancies or otherwise provide information to potential tenants.

- 4) 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.*

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 Businesses Enterprises (MBE)  
Women-Owned Businesses Enterprises (WBE)**

Owner will take the following steps to ensure, to the maximum extent possible, that minority-owned business enterprises (MBE) and women-owned business enterprises (WBE) are used whenever possible and economically feasible. Owner will:

- ◆ 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.
- ◆ 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.
- ◆ When necessary and appropriate, utilize the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.
- ◆ 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.
- ◆ **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 and Owners 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

#### 1. **Monthly Progress Reports.**

Proud Ground must submit a progress report each month until the Project Completion Date 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 unit meets the property standards at 24 CFR 92.251;
- b. Proud Ground submits the following documentation:
  - i. Final Sources and Uses that identifies the actual cost and funding source of each line item on the development budget.
  - ii. Documentation for each source of match.
  - iii. Documentation from the Contractor:
    - (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;
      - (c) Consent of surety Company to final payment;
      - (d) Section 3 Summary Report (only for contracts over \$100,000); and
      - (e) Minority- and Woman-Owned Business Enterprise Activity form.
  - iv. Documentation of URA compliance.
  - v. Documentation regarding the sale to an Eligible Low-Income Homebuyer:
    - (a) Copy of recorded Land Lease or Memorandum of Lease.
    - (b) County Homebuyer Agreement
    - (c) Appraisal
    - (d) Purchase and Sale Agreement
    - (e) Homebuyer income calculation workseet
    - (f) HUD-1 Settlement Statement
    - (g) A Household characteristics survey (Form HUD-40097 Part C).

**ATTACHMENT H.**  
**(Reserved for Land Lease)**

**ATTACHMENT I.**

**AGREEMENT BETWEEN QUALIFIED BUYER AND CLACKAMAS COUNTY**

**Clackamas County HOME Program**

**WHEREAS**, Clackamas County through its Community Development Division (County) receives federal HOME Investment Partnerships (HOME) funds from the US Department of Housing and Urban Development (HUD) ;and  
**WHEREAS**, the County loaned HOME funds in the amount of \$\_\_\_\_\_ to Proud Ground for the development of the dwelling unit at "<Click; Type ADDRESS, in caps>", Clackamas County, Oregon (the Property); and  
**WHEREAS**, Proud Ground has determined that you, "<Click; Type NAME OF BUYERS, in caps>" (the Buyer(s)), are Qualified Buyers as defined in Proud Ground's Land Lease and income-eligible under the HOME Program at 24 CFR 92.203 to purchase the Property;  
**THEREFORE**, In consideration of Clackamas County using HOME Program funds to provide a subsidy for the development of the Property, the undersigned agree as follows:

- Affordable Housing:** In compliance with 24 CFR 92.254(a)(1)(iii), the Property qualifies as Affordable Housing. The purchase price of the home is: \$"<Click; Type PURCHASE PRICE, in caps>". Any portion of the HOME subsidy that contributed to this affordable purchase price does not have to be repaid to Clackamas County by the Buyers.
- HOME Period of Affordability:** In compliance with 24 CFR 92.254(a)(4), the HOME Period of Affordability is **15 years** from the project completion date which is the date that title to the Property has transferred (at the initial sale), the County has disbursed all HOME funds for this project, and the County has entered all project completion information into HUD's integrated disbursement and information system (IDIS). Buyer(s) will be informed of the HOME Period of Affordability term by letter from the County.
- Principal Residence:** In compliance with 24 CFR 92.254(a)(3), the Property shall be the principal residence of the Buyer(s) throughout the Period of Affordability.
- Annual Monitoring:** In compliance with 24 CFR 92.254(a)(3), during the HOME period of affordability specified above, Buyer(s) will be required to annually certify that they continue to use the Property as their principal residence. If the Property is no longer Homebuyer(s)' principal residence, the Buyer(s) will be considered in non-compliance with this agreement and the provisions of section 5 of this agreement will be enforced.
- Resale Provision:** In compliance with 24 CFR 92.254(a)(5)(i), if the Property does not continue to be the principal residence of the Buyer(s) for the duration of the HOME period of affordability, the Property must be made available for subsequent purchase only to a qualified low-income buyer who will use the Property as their principal residence. "Low-income" means not more than 80 percent of the area median income as established by HUD at the time of home purchase. The Buyer(s) will receive a fair return on their original investment as outlined in the County-approved land lease. The property can only be sold for price that will be affordable to a reasonable range of low-income buyers as outlined in the County-approved land lease.

By signing below, the Buyer(s) agree to the provisions outlined in this agreement. The effective date of this agreement is the date of the last signature provided by the parties listed below.

\_\_\_\_\_  
Buyer    Date

\_\_\_\_\_  
Chuck Robbins, Director  
Date  
Clackamas County Community Development Division

\_\_\_\_\_  
Buyer    Date



**CLACKAMAS COUNTY**  
**NEIGHBORHOOD STABILIZATION PROGRAM (NSP)**  
**LOAN AGREEMENT**

**NSP Homeownership Project: 465 W. Dartmouth**

This Agreement ("Agreement") is entered into between Proud Ground, an Oregon non-profit organization, ("Proud Ground"), PCLT Development LLC ("PCLT") of which the sole member is Proud Ground, and Clackamas County ("County"), a Sub-grantee of the State of Oregon under the Neighborhood Stabilization Program (NSP), to set forth the parties' agreements related to County's loan of NSP Funds ("Loan"). The Loan is evidenced by a corresponding Promissory Note, Line of Credit Instrument Trust Deed, and Declaration of Land Use Restrictive Covenants, all of which are incorporated in this Agreement by this reference (and all of which incorporate by reference all three other documents). Collectively, these four documents are the "Loan Documents."

This Agreement also includes the following attachments:

- |                               |  |
|-------------------------------|--|
| A. Legal Description          | E. Affirmative Marketing and MBE/WBE Outreach Requirements |
| B. Sources and Uses           | F. Project Reporting and Documentation                     |
| C. Schedule of Tasks          | G. Land Lease Between PROUD GROUND and Homebuyer           |
| D. Affordability Requirements |  |

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.** Part 5 definition of "Annual Income" found at 24 CFR 92.203(b)(1) will be used to determine whether a Household is an Eligible Homebuyer.
  - b. **Affordability Requirements.** The Affordability Requirements are the restrictions on purchase/sale price of the NSP Unit and Homebuyer's incomes set forth in this Agreement.
  - c. **Community Land Trust Model of Homeownership.** The Community Land Trust ("CLT") Model of Homeownership means that the CLT owns the Land and the Homebuyer owns the structure on the Land. The CLT retains ownership of the Land in perpetuity and leases it to the Eligible Homebuyer under a 99-year Land Lease for a nominal fee. The Eligible Homebuyer agrees to sell the NSP Unit to another Eligible Homebuyer at a restricted price to assure future affordability of the NSP Unit.
  - d. **DRGR.** Disaster Recovery Grant Reporting system developed by HUD's Office of Community Planning and Development for the Disaster Recovery CDBG program and other special appropriations.
  - e. **Eligible Homebuyer.** To be an Eligible Homebuyer under the NSP, the Homebuyer must be a US Citizen, Non-Citizen National, or Qualified Alien and the Annual Income of the Homebuyer's household cannot exceed 120% of area median income.
  - f. **Eligible Property.** An eligible property is one that is:
    - i. Located in a HUD-designated high-need census tract for the NSP in Clackamas County;
    - ii. Meets the current definition of a foreclosed single family dwelling for the NSP; and
    - iii. Purchased for a sales price that is discounted at least 1% below the fair market value based on a qualified appraisal.
  - g. **Homeownership.** Homeownership is defined at 24 CFR 92.2 to include ownership in fee simple of a 1-unit dwelling.
  - h. **Homebuyer.** The person or persons who purchase the NSP Unit including the initial and any subsequent purchaser of the NSP Unit.
  - i. **HUD.** The U.S. Department of Housing and Urban Development.

- j. **Initial Sale.** PCLT'S first sale of the NSP Unit to a Homebuyer is the Initial Sale.
- k. **Land.** The Land is described in the Legal Description set forth in **Attachment A**. Proud Ground plans to retain ownership of the Land and lease it to the Homebuyers who purchase the dwelling unit on the Land.
- l. **Land Lease.** Proud Ground's 99-year lease of its Land to Homebuyer containing occupancy requirements and restrictions on sale and transfer.
- m. **Median Income.** Median Income refers to the median income for Clackamas County, adjusted for family size, as published periodically by HUD.
- n. **NSP-Assisted Unit or NSP Unit:** An NSP-Assisted unit or NSP unit is a single-family dwelling unit described in the Legal Description set forth in **Attachment A** that Proud Ground will acquire, rehabilitate, or otherwise assist with NSP Funds.
- o. **NSP Funds.** NSP Funds means the principal amount of County's NSP Loan to Proud Ground under this Agreement. See Section 3 below.
- p. **NSP, NSP Funds, and NSP Regulations.** The Neighborhood Stabilization Program (NSP) is authorized under Title III of the federal Housing and Economic Recovery Act of 2008. The NSP provides states and local governments with emergency Community Development Block Grant (CDBG) funding to stabilize neighborhoods with high numbers of vacant and foreclosed homes. Clackamas County receives NSP funding through the State of Oregon to redevelop foreclosed properties that might otherwise become blighted. NSP regulations include regulations promulgated by HUD or OHCS related to NSP shall prevail if any provision in the Loan Documents conflict with NSP Regulations.
- q. **OHCS.** Oregon Housing and Community Services.
- r. **Owner.** PCLT, the development arm of Proud Ground, will be the initial owner of the Land and the Improvement on the Land. At the time of the Initial Sale, PCLT will transfer ownership of the Land to Proud Ground and ownership of the Improvement to the Homebuyer. Proud Ground and PCLT are considered the Owner for the purposes of Sections 22 and 23.
- s. **Period of Affordability:** The Period of Affordability shall begin on the Project Completion Date. The Period of Affordability is comprised of two separate periods: the Initial Period of Affordability and the Extended Period of Affordability. The Initial Period of Affordability shall be 15 years. The Extended Period of Affordability shall begin at the end of the Initial Period of Affordability and end when the NSP Funds for the Project are paid in full.
- t. **Project:** The Project includes: PCLT's purchase of the "Land" and the "Improvement" (a single-family dwelling unit on the Land); PCLT's rehabilitation of the Improvement; PCLT's transfer of ownership of the Land to Proud Ground; PCLT's Initial Sale of the Improvement to and for the benefit of an Eligible Low-Income Household; and, Proud Ground's subsequent monitoring of the NSP Unit to ensure use and transfers are consistent with the Land Lease, Proud Ground's CLT Model of Homeownership, and the requirements of this Agreement. The Project is located at:

**465 W. Dartmouth Street, Gladstone, OR 97027**

The legal description for the Project is set forth in **Attachment A**.

- u. **Project Completion Date:** The date when the following are complete::
  - i. All rehabilitation work is completed.
  - ii. The NSP Unit has been sold to an Eligible Homebuyer and the Land Lease or Memorandum of Land Lease has been recorded in the records of Clackamas County.
  - iii. Eligible Homebuyers have moved into the home.
  - iv. The County has disbursed the final NSP funds to Proud Ground.
  - v. OHCS has entered the Project completion information into HUD's DRGR information system.

## **2. NSP REGULATIONS**

The parties agree to comply with the applicable NSP Regulations and with the other requirements of the Loan Documents.

3. **SOURCES AND USES OF FUNDS; SCHEDULE OF TASKS**

- a. **Attachment B** identifies all sources and uses of funds for the Project. PCLT and Proud Ground certify that the sources of funds are sufficient to fund the Project in full and the NSP Funds shall only be used for eligible costs defined at 24 CFR 92.206 and 92.214.
- b. **Attachment C** identifies the Schedule of Tasks to be undertaken in order to complete the Project

4. **NSP FUNDS AMOUNT AND PURPOSE; LOAN TERMS**

- a. **Amount and Purpose.** County shall loan NSP Funds up to the amount of **ONE HUNDRED ELEVEN THOUSAND dollars \$111,000.00** for the acquisition and rehabilitation of the Project.
- b. **Interest.** The loan is a zero percent interest, deferred payment loan.
- c. **Maturity Date.** Proud Ground shall pay the entire principal of the loan by December 31, 2063; except that County may extend the Maturity Date if Proud Ground is complying with all terms of this Agreement.
- d. **Repayment.**
  - i. The proceeds from the Initial Sale of the Unit will be used as follows:
    - 1. All Project costs (including the Developer Fee) as identified in Attachment B will be paid first; then,
    - 2. All remaining sale proceeds will be remitted to Clackamas County.
  - ii. Clackamas County will apply all such funds received first to repay the HOME Program Funds borrowed from Clackamas County. The County then will apply any remaining funds toward repayment of the NSP Funds owed to the County pursuant to these Loan Documents.
  - iii. Proud Ground is not required to pay any remaining principal until the Maturity Date except in the event that Proud Ground defaults on the loan.
  - iv. If the Unit becomes a lease-purchase or a rental Unit, Proud Ground may delay repayment of the Loan until the 60th day after it sells the Unit.
- e. **Events of Default.** In the event of default, either party may pursue any legal or equitable remedy available to it. Without limiting the foregoing, if Proud Ground does not comply with the Affordability Requirements at any time during the term of this Loan, County may declare the entire amount of the Loan due and payable at once. Proud Ground shall pay the remaining principal immediately upon any of the following occurring before the Maturity Date:
  - i. Proud Ground sells the Land.
  - ii. Proud Ground transfers title to the Land. (The sale of the NSP Unit to an Eligible Homebuyer does not constitute a transfer of title to the Land.)
  - iii. The NSP Unit is sold to a buyer who is not an Eligible Low- to Middle-Income Income Household or for a price which does not meet the Affordability Restrictions outlined in Section 5.
  - iv. An Eligible Homebuyer does not occupy the NSP Unit as its primary residence.
  - v. Upon any other change in use of the Land or NSP Unit.
  - vi. Proud Ground defaults on its obligations under any of the Loan Documents, provided that County shall give Proud Ground notice of the default and a thirty (30) day opportunity to cure the default before declaring the loan due and payable.
- f. **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.**"
- g. **Recording Requirement:** The parties agree to record the Trust Deed and the Declaration of Land Use Restrictive Covenants, promptly after signing the Promissory Note.

5. **AFFORDABILITY REQUIREMENTS**

- a. Proud Ground shall market the NSP Unit to Low-, Moderate and Middle-Income Households through a variety of media with the goal of reaching the broadest cross-section of potentially Eligible Homebuyers.

- b. Proud Ground shall transfer the NSP Unit to an Eligible Homebuyer and ensure that all subsequent transfers of the NSP Unit are to Eligible Homebuyers.
- c. Proud Ground shall calculate and document the Annual Income to determine that the Eligible Homebuyer is a member of an Eligible Low-, Moderate- or Middle-Income Household at the time the Homebuyer purchases the NSP Unit.
- d. Proud Ground shall comply with the requirements of affordable homeownership housing at 24 CFR 92.254(a)(2)(iii).
- e. Proud Ground shall set the initial and any subsequent purchase/sale price for the NSP Unit which shall not be more than the lesser of:
  - i. The actual cost to purchase and rehabilitate the Project; or
  - ii. The “unrestricted” leasehold value of the Project, i.e. the value based on an after-rehab appraisal of the leasehold value of the Land and the NSP Unit without affordability restrictions on transferees, occupancy, resale and other related restrictions.
- f. Proud Ground shall restrict any subsequent sale to comply with the Land Lease resale formula.
- g. Proud Ground shall enforce its Land Lease so that not only the original Homebuyer but all subsequent buyers:
  - i. Are certified as an Eligible Homebuyer; and
  - ii. Assume the remaining period of time on the Initial Period of Affordability.

**6. PCLT AND PROUD GROUND RESPONSIBILITIES**

- a. Property Acquisition: PCLT will acquire an Eligible Property for the Project. The Purchase Agreement must make the sale contingent upon:
  - i. Compliance with the Uniform Relocation and Real Property Acquisition Policies Act of 1970, as amended (URA).
  - ii. Compliance with the NSP Appraisal requirements.
  - iii. Compliance with the Protecting Tenants at Foreclosure Act, Title VII of the Helping Families Save their Homes Act of 2009 (PTFA).
  - iv. Completion of an Environmental Review under 24 CFR Part 58.
  - v. Location in a designated high-need census block group.
  - vi. Access to property for inspections and bidding.
  - vii. A determination by the County’s Rehab Advisor that the rehabilitation of the property is economically feasible.
  - viii. Compliance with Lead Hazard rules for homes built prior to 1978.
- b. Property Rehabilitation: PCLT will rehabilitate the NSP Unit to bring it into compliance with the Property Standards outlined in Section 8.
  - i. Bidding and Contracting:
    - 1. PCLT will use the Worklist Specifications prepared by the County’s Rehab Advisor to solicit bids from at least three licensed Oregon General Contractors for the rehabilitation portion of the Project.
    - 2. PCLT will use the Owner-Contractor Contract provided by the County, or a contract approved by the County, to enter into a construction contract with a General Contractor for the rehabilitation portion of the Project
    - 3. The bid of the contractor selected must be within 10% of the Rehab Advisor’s cost estimate.
    - 4. The General Contractor hired by PCLT shall be
      - a. Licensed, bonded and registered with the State of Oregon under a valid Construction Contractors Board (CCB) number.
      - b. Trained and certified as required by HUD, EPA and Oregon in Lead Safe Work Practices or be a licensed Lead Abatement Contractor if the property has lead-based paint or lead-based paint hazards.

- ii. Construction Reports & Recommendations: PCLT will submit all reports and recommendations concerning construction to the County for its approval.
- iii. Modifications to the Construction Contract: All modifications to the construction contract shall be in writing using a change order approved by PCLT, the County and the Contractor prior to work being done.
- c. Sale of HOME Unit to Homebuyer. PCLT and/or Proud Ground will:
  - i. Provide homebuyer education to prospective buyers that meet the curriculum approved by the County.
  - ii. Assist prospective buyers in locating sources of leasehold mortgage financing.
  - iii. Determine and document the Annual Income, as defined in Section 1(a), of the initial Homebuyer and any subsequent Homebuyers at the time of purchase.
  - iv. Sell the housing unit to an Eligible Homebuyer as defined in Section 1(d) under the Community Land Trust Model of Homeownership as defined in Section 1(c).
  - v. Enter into its 99-year Land Lease agreement with the Eligible Homebuyer to assure future affordability of the NSP Unit and to meet the definition of Homeownership and record the Land Lease or a Memorandum of Land Lease in the records of Clackamas County.
  - vi. Determine who is occupying the NSP Unit at least annually to ensure that the lessees continue to occupy the NSP Unit as their principal residence during the Period of Affordability.

**7. COUNTY RESPONSIBILITIES**

- a. Initial Property Inspection. Prior to submitting any offer to purchase, PCLT will ask a Rehabilitation Advisor with the Clackamas County Housing Rehabilitation Program to conduct an initial inspection of the Project to determine whether it is economically feasible. That determination will take into account the extent of work needed and the presence of environmental hazards including those related to lead-based paint (if the dwelling unit was constructed prior to 1978), septic systems, heating oil tanks and mold.
- b. Property Acquisition. If the Rehab Advisor determines that the Project is economically feasible, Clackamas County will provide NSP Funds for purchase the Project.
- c. Rehab Process:
  - i. Required Inspections:
    - 1. LBP Evaluation: Rehab Advisor will order the appropriate lead evaluation if the dwelling unit was constructed prior to 1978.
    - 2. Energy Audit: Rehab Advisor will order an Energy Audit by Clackamas County Weatherization.
    - 3. Full Home Inspection: Rehab Advisor will order a Full Home inspection as directed by Proud Ground.
    - 4. Pest & Dry Rot Inspection: Rehab Advisor will order a Full Home inspection as directed by Proud Ground.
    - 5. Property Standards Inspection: Rehab Advisor will conduct a Property Standards inspection
  - ii. Additional / Possible Inspections:
    - 1. Oil tank locate & inspect
    - 2. Sewer line scope
    - 3. Septic tank & lines inspect
    - 4. Radon short test
    - 5. Asbestos testing
    - 6. Well water testing
  - iii. Bid Packet / Worklist Specifications: Rehab Advisor will prepare a Bid Packet that includes worklist specifications for the rehabilitation work on the Project. The worklist specifications will be written to ensure that, upon completion of the rehabilitation work, the Project will:
    - 1. Meet requirements outlined in Section 8; and
    - 2. Be reasonably maintainable by future owners.

- iv. Cost Estimate: Rehab Advisor will prepare a cost estimate for the rehabilitation portion of the Project.
- v. Conduct a Bid Conference: Rehab Advisor will contact the contractor(s) selected to bid by PCLT and conduct a Bid Conference using the Bid Packet for the rehabilitation portion of the Project.
- vi. Bid Review: Rehab Advisor will review bids with PCLT.
- vii. Contract with Contractor: Rehab Advisor will prepare an Owner-Contractor Contract for use by PCLT. The contract between PCLT and the Contractor will provide protections for the County against apparent defects and deficiencies in the permanent work constructed by the Contractor.
- viii. Pre-construction Conference: Rehab Advisor will conduct a Pre-construction Conference with the General Contractor and Proud Ground.
- ix. Progress Inspections: Rehab Advisor will conduct progress inspections of the rehabilitation portion of the project.
- x. Progress Payments: Rehab Advisor will review and approve progress payment requests from the General Contractor.
- xi. Final Inspection: Rehab Advisor with PCLT will conduct a final inspection after the rehabilitation work is completed to verify that:
  - 1. All of the work is completed;
  - 2. All final inspection certificates and lien waivers have been submitted, and
  - 3. All units meet the property standards outlined in Section 8.

**8. PROPERTY STANDARDS AND WORK PRIORITIES**

Upon completion of the rehabilitation, the Project must meet all of the applicable:

- a. Property Standards in 24 CFR 92.251
- b. Lead Based Paint requirements at 24 CFR 92.355 if constructed prior to 1978.
- c. Clackamas County Community Development Housing Rehabilitation Program Rehabilitation Standards for the current Program Year.
- d. Residential Rehabilitation Work Priorities:
  - i. Health, Safety and Code Violations -Required
  - ii. Incipient Code Violations -Required
  - iii. Property Standards - Required
  - iv. Energy Efficiency Criteria - Required
  - v. Green building Practices - Recommended
  - vi. General Property Improvements - Recommended

**9. TERMINATION OF THIS AGREEMENT.**

- a. In the event of termination of this Agreement prior to the completion of the Project, where no benefit results to low-income persons, Proud Ground shall return to the County, upon demand, all NSP funds paid to the Proud Ground for the Project.
- b. In the event of termination of this Agreement for gross negligence, fraud or other serious breach of this Agreement or the Regulations, Proud Ground shall pay to the County, upon demand, all NSP funds paid to Proud Ground for the Project.

**10. DISBURSEMENT OF FUNDS, REPORTING AND INSPECTIONS**

- a. PCLT agrees to request NSP Funds under this Agreement only when needed to pay specific eligible costs and only in amounts needed to pay such costs.
- b. The County will not disburse any NSP funds until all the Loan Documents are signed.
- c. PCLT shall attach to payment requests:
  - i. Copies of document showing charges for actual, eligible expenses; and

- ii. A monthly progress report that describes the activities completed during the reporting period and those anticipated to be completed in the next period.
- d. The County shall determine if PCLT has completed the activities for which it requests payment to County's satisfaction before County makes payment. County will make payments only for activities Proud Ground has completed which the County approves.
- e. The County has the authority to inspect and, if necessary, stop PCLT's rehabilitation work if, in the County's sole judgment, PCLT is not performing the work in conformance with the specifications, the terms of this Agreement, or NSP Regulations. PCLT shall provide the County such information as the County may require regarding costs incurred, percentage completion, work process, and status.
- f. The County will withhold five percent of NSP funds until the project is completed and PCLT has provided the documents listed in Attachment F.

**11. INDEMNIFICATION AND INSURANCE**

- a. PCLT and Proud Ground 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, arising from performance of this agreement.
- b. During the acquisition/rehabilitation phase of the Project PCLT shall maintain insurance coverage on the Project as follows:
  - i. All-risk property insurance in the amount of the full replacement value of the property and commercial general liability insurance in the minimum amount of \$1,000,000. Proud Ground shall provide County proof of insurance in the required amounts upon request by the County. Proud Ground shall give County no less than 30 days notice of cancellation, nonrenewal or material change of Owner's insurance.
  - ii. The General Contractor shall obtain at Contractor's expense, and keep in effect during the term of the contract, at least the minimum insurance and bond required by Oregon Law and the Oregon Construction Contractors Board.
  - iii. The insurance coverage outlined above shall include the County as an additional insured. Such insurance shall provide 30 days' written notice to the County in the event of cancellation, nonrenewal, or material change and include a statement that no act on the part of the insured shall affect the coverage afforded to the County under this insurance. The insurance company will provide written notice to the County within thirty (30) days after any reduction on the general annual aggregate limit.
  - iv. Upon request by the County, PCLT will require the Contractor to furnish the County evidence of the insurance required above.
- c. After the sale of the NSP Unit to the Homebuyer, Proud Ground shall ensure that Homebuyers maintain the insurance coverage as required in the Land Lease and Paragraph 1.12 of the Trust Deed.

**12. AFFIRMATIVE MARKETING**

The Owner must implement and follow the adopted Affirmative Marketing Plan of the County, Attachment E.

**13. 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 NSP 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 E**.

**14. 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. Proud Ground 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 homeownership of the Project units.

**15. ENVIRONMENTAL REVIEW**

- a. The effects of each activity related to the Project must be assessed in accordance with the provisions of the National Environmental Policy Act of 1969 and the related authorities in 24 CFR Parts 50 and 58.
- b. Prior to undertaking any activity with respect to the Project which will directly or indirectly cause any change to the natural or man-made environment, regardless of whether such activity is to be funded by the NSP Funds, the Owner must comply to the extent applicable with the regulations found at 24 CFR Part 58, and complete all applicable environmental review and clearance requirements as provided in 24 CFR 58.5.
- c. The Owner must comply with Section 106 of the National Historic Preservation Act of 1966, as amended, to the extent applicable by submitting to the County, Form ERR - Historic Compliance Request and the form titled "Determination of Eligibility" prior to initiating any proposed activity. The Owner must also provide all other necessary information and data upon reasonable request of the County in order that the County may maintain the required environmental review records.
- d. The Owner may not use any of the NSP Funds 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.
- e. The Owner must not proceed with or commit any funds toward construction of the Project until it receives approval from the County acknowledging that all environmental review and clearance requirements have been met.
- f. In the event that changes or modifications to the approved 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.

**16. CONTRACTOR DEBARMENT AND SUSPENSION**

In accordance with the requirements of 24 CFR Part 24, no participants in lower tier covered transactions, having to do with the Project financed in whole or in part by the NSP Funds, are currently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in federal Projects.

**17. 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.

**18. 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).



**19. CONFLICT OF INTEREST**

24 CFR Part 570.489 (h) regarding Conflict of Interest provisions shall apply to this Project. No director, officer, employee, agent or consultant of Proud Ground may occupy the Project.

**20. RECORDS**

a. The Owner must keep such records as are necessary to demonstrate compliance with all parts of this Agreement and all the requirements it incorporates by reference.

b. Record Retention Periods

The Owner shall retain:

- i. All written agreements into which it enters related to the Project for five years after the Agreement terminates.
  - ii. All records covering displacement and acquisition 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.
  - iii. All records that are the subject of audit findings for three years after such findings have been resolved.
  - iv. All records for non expendable property for three years after its final disposition. Non expendable property is defined in 24 CFR Part 84.
  - v. Record of any litigation, claim, negotiation, audit, monitoring, inspection or other action started before the expiration of the required record retention period. Such 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.
- c. Access to Records. The Owner shall grant access to HUD, the Comptroller General of the U.S., the County, and any of their duly authorized representatives, to inspect, copy, audit, and examine all any pertinent books, documents, papers or other records relating directly to Proud Ground's receipt and disbursement of NSP Funds at all reasonable times in order to make audits, examinations, excerpts or transcripts, or otherwise determine compliance with NSP Regulations.

**21. 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.

**22. SUCCESSORS AND ASSIGNS**

This Agreement shall be binding on and inure to the benefit of the successors and assigns of each party; however, Proud Ground shall not assign or transfer its interests in the Project except as permitted by this Agreement or County's prior written consent.

**23. 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.

**24. LIAISON RESPONSIBILITY.**

Kathy Armstrong will act as liaison from Proud Ground, Steve Whitson will act as liaison from PCLT; Gloria Lewton will act as liaison from the County; and Kathy Rock will act as the County's Rehab Advisor.

**25. EFFECTIVE DATE**

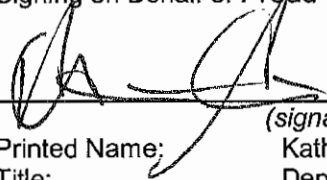
The Effective Date of this Agreement is the date it is signed by all parties.

**PROUD GROUND :**  
5288 N. Interstate Avenue  
Portland, OR 97217

**CLACKAMAS COUNTY:**  
Commissioner  
Commissioner John Ludlow, Chair  
Commissioner Jim Bernard  
Commissioner Paul Savas  
Commissioner Martha Schrader  
Commissioner Tootie Smith

Signing on Behalf of Proud Ground:

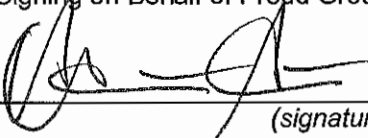
Signing on Behalf of the Board

  
\_\_\_\_\_  
(signature)  
Printed Name: Kathy Armstrong  
Title: Deputy Director  
Federal Tax ID: 93-1290320  
Phone: 503.493.0293  
7.16.13  
\_\_\_\_\_  
Date

\_\_\_\_\_  
(signature)  
Cindy Becker  
Director, Health Housing and Human Services  
\_\_\_\_\_  
Date

**PCLT Development LLC:**  
Address: 5288 N Interstate Ave  
Portland, OR 97217

Signing on Behalf of Proud Ground:

  
\_\_\_\_\_  
(signature)  
Printed Name: Kathy Armstrong  
Title: Authorized signer  
Federal Tax ID: 93-1290320  
Phone: 503.493.0293  
7.16.13  
\_\_\_\_\_  
Date

**Attachment A. Legal Description**

465 W. Dartmouth Street, Gladstone, OR 97027

LOT 6, AND THE EASTERLY 25 FEET OF LOT 7, BLOCK 11, WEST GLADSTONE BLOCKS 9 TO 14 INCLUSIVE, IN THE CITY OF GLADSTONE, COUNTY OF CLACKAMAS AND STATE OF OREGON.

APN/Parcel No.: 529226

**Attachment B. Sources and Uses of Funds**

*Estimated*

465 W. Dartmouth

<b>Sources</b>	
NSP 1	\$111,000
HOME	\$140,000
SHOP	\$15,000
Sale Price to homebuyer	132,000
<b>Total Sources</b>	<b>\$398,000</b>
<b>Uses</b>	
Acquisition with purchase soft costs	\$158,160
Rehab	\$81,640
Soft Costs, excluding purchase costs	\$26,100
Management/Developer's Fee	\$10,000
HOME funds repayment	\$122,100
<b>Total Uses</b>	<b>\$398,000</b>

**Attachment C. Schedule of Tasks**

<b><u>Activity</u></b>	<b><u>2013-14 Q1</u></b>	<b><u>2013-14 Q2</u></b>	<b><u>2013-14 Q3</u></b>
<b><u>Acquisition</u></b>			
Environmental Review	X		
Negotiate PSA	X		
Close	X		
<b><u>Financing/Funding</u></b>			
NSP and HOME approval	X		
<b><u>Bidding Process</u></b>			
Work write-up	X		
Bidding and contracting	X		
<b><u>Construction</u></b>			
Rehab work	X	X	
<b><u>Sales and Occupancy</u></b>			
Market project	X	X	
Qualify buyers		X	
Closing with buyers ( move-in)		X	X
Repayment of County HOME loan		X	X

**ATTACHMENT D.**

**AFFORDABILITY REQUIREMENTS**

US Department of Housing and Urban Development  
Effective Date: 12/04/2012

Household Size	<b>50%</b>	<b>80%*</b>	<b>120%</b>
	Very Low (HOME) Low (CDBG)	Low (HOME) Mod (CDBG)	NSP
1	24,300	<b>38,850</b>	58,300
2	27,800	<b>44,400</b>	66,600
3	31,250	<b>49,950</b>	74,950
4	34,700	<b>55,500</b>	83,300
5	37,500	<b>59,950</b>	89,950
6	40,300	<b>64,400</b>	96,600
7	43,050	<b>68,850</b>	103,250
8	45,850	<b>73,300</b>	109,950

\*The use of HOME Funds in this project will limit the buyers to 80% AMI

**Note:** This schedule is updated from time to time when adjustments are provided by HUD.

## **ATTACHMENT E.**

### **Affirmative Marketing Policy**

Proud Ground must:

- 1) Provide information and otherwise attract eligible persons from all racial, ethnic, and gender groups in the housing market area to the available housing.
- 2) Use the Equal Housing Opportunity statement or logo on all advertisements and publications, e.g., ads, brochures, flyers and application forms.
- 3) Solicit applications from persons in the housing market who are least likely to apply for the 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 housing is located is considered those least likely to apply.
- 4) 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.

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### **Outreach to**

### **Minority-Owned and Women-Owned Businesses Enterprises (MBE & WBE)**

Clackamas County ensures, to the maximum extent possible, that MBE / WBE are used whenever possible and economically feasible by taking these steps:

- ◆ 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.
- ◆ Through contractual agreement, ensure that recipients of NSP 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.
- ◆ When necessary and appropriate, utilize the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.
- ◆ Include a statement in notices, advertisements, and informational materials that MBE/WBE are encouraged to apply and participate as suppliers, contractors, professional service providers, etc.
- ◆ Encourage Project owners to include, to the maximum extent feasible, the use of MBE/WBE in providing supplies, professional and construction services.
- ◆ Request that Project owners 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 developers and owners to determine their efforts in promoting the use of MBE/WBE in specific procurement areas, i.e. supplies, professional services, and construction services.

## ATTACHMENT F

### Project Reporting and Documentation Requirements

#### 1. **Monthly Progress Reports.**

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 NSP Funds at Project Completion.**

Five percent of NSP funds will be withheld until:

- a. The County inspects the completed Project to verify that the NSP-assisted units meet:
  - i. The written rehabilitation standards of the County's Housing Rehabilitation Program;
  - ii. The property standards at 24 CFR 92.251(a)(1); and
  - iii. The lead-based paint regulations at 24 CFR 92.355;
  - iv. The work priorities outlined in Section 8.
- b. Proud Ground submits the following documentation:
  - i. Final Sources and Uses or Cost Certification that identifies the actual cost and funding source of each line item on the development budget.
  - ii. Documentation from the Contractor:
    - (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;
      - (c) Section 3 Summary Report (only for contracts over \$100,000); and
      - (d) Minority- and Woman-Owned Business Enterprise Activity form.
  - iii. Documentation of URA compliance for Acquisition and Relocation.

#### 3. **Documentation regarding the sale to an Eligible Low- or Middle-Income homebuyer.**

Proud Ground must submit the following documentation pertaining to the sale of the NSP unit to an eligible homebuyer:

- (a) Copy of recorded land lease or memorandum of lease.
- (b) HUD-1 Settlement Statement
- (c) Copy of homebuyers' 8-hour training certificate
- (d) Copy of HUD Income Calculation Worksheet
- (e) Copy of buyer's 1003 showing racial, ethnic and gender characteristics of head of household.
- (f) Other documents required by NSP or OHCS.





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**DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT**

**DEVELOPMENT SERVICES BUILDING**

150 BEAVERCREEK ROAD | OREGON CITY, OR 97045

July 25, 2013

Board of Commissioners  
Clackamas County

Members of the Board:

**Approval of Amendment No. 2 to an Intergovernmental Agreement with Oregon Department of Fish and Wildlife for a Full Time Fish & Wildlife Biologist Liaison for Transportation Maintenance Services**

<b>Purpose/Outcomes</b>	Assists with permitting and compliance of maintenance and construction activities adjacent to streams and rivers.
<b>Dollar Amount and Fiscal Impact</b>	Not to exceed \$125,000
<b>Funding Source</b>	County Road Fund
<b>Safety Impact</b>	N/A
<b>Duration</b>	July 1, 2013-June 30, 2014
<b>Previous Board Action</b>	12/1/11 – BCC Approval of Agreement for the subject services 7/19/12 – BCC Approval of Amendment No. 1 for the subject services
<b>Contact Person</b>	Joel Howie, Civil Engineering Supervisor 503-742-4658

**BACKGROUND:**

Oregon Department of Fish and Wildlife (ODFW) and Clackamas County have an Intergovernmental Agreement for the purpose of providing a full time Oregon Department of Fish and Wildlife Biologist to assist Clackamas County in the inventory, prioritization, permitting, design and monitoring of road/stream crossings affected by State listed migratory fish and Federally listed threatened and endangered species.

This amendment renews the agreement for the period from July 1, 2013 through June 30, 2014.

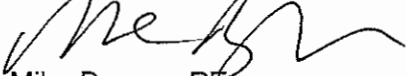
Funds have been allocated in the 2013-14 budget, not to exceed \$125,000, and are funded by County Road Fund.

County Counsel has reviewed and approved this amendment.

**RECOMMENDATION:**

Staff respectfully recommends that the Board approve Amendment No. 2 to the Intergovernmental Agreement between ODFW and Clackamas County for a full-time wildlife biologist.

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



**AMENDMENT 2**

TO

**INTERGOVERNMENTAL AGREEMENT**

**CAPITAL IMPROVEMENT/ROAD MAINTENANCE PROGRAM**

1. This is Amendment 2 to the Agreement between the Oregon Department of Fish and Wildlife, hereafter called "ODFW" and the CLACKAMAS COUNTY, hereinafter referred to as "COUNTY" for the CAPITAL IMPROVEMENT/ROAD MAINTENANCE PROGRAM Agreement.
2. Specific Amendments to the Agreement. The Agreement is hereby amended as follows: (new language is indicated by being in **bold and underlined** and deleted language is indicated by [brackets]):

AGREEMENT NUMBER: **ODFW # 13300-719031-09** [ODFW # 13301-719031-08]

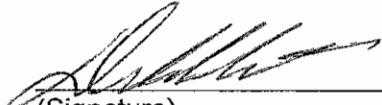
"2. EFFECTIVE DATE AND DURATION. This Agreement is effective on July 1, 2011 and shall expire on June 30, **2014** [2013], unless otherwise amended or terminated. The term of the Agreement, including all amendments, will not be extended past a final end date of June 30, 2014."

"3. CONSIDERATION. In consideration for the services performed, COUNTY agrees to pay ODFW a maximum of \$125,000 (one hundred twenty-five thousand dollars) for the **2013-2014** [2012-2013] fiscal year. The maximum, not to exceed, amount for this Agreement for the period July 1, 2011 through June 30, 2014 is \$375,000 (three hundred seventy-five thousand dollars)."

3. Except as expressly amended above, all other terms and conditions of the original Agreement remain in full force and effect. Both parties certify that the representations, warranties and certifications contained in the original Agreement are true and correct as of the effective date of this Amendment, and with the same effect as though made at the time of this Amendment.

**STATE OF OREGON, by and through:**  
Department of Fish and Wildlife

**GRANTEE:**  
CLACKAMAS COUNTY,

  
\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature)

Debbie Colbert  
Deputy Director for Administration

\_\_\_\_\_  
Chair, Board of County Commissioners

Date: 10/25/13

Date: \_\_\_\_\_

\_\_\_\_\_  
Recording Secretary

Date: \_\_\_\_\_

  
\_\_\_\_\_  
County Counsel

Date: \_\_\_\_\_

Approved for Legal Sufficiency via e-mail  
Dated July 21, 2011 from Lore BenseL,  
Senior Assistant Attorney General



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DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

DEVELOPMENT SERVICES BUILDING

150 BEAVERCREEK ROAD | OREGON CITY, OR 97045

July 25, 2013

Board of Commissioners  
Clackamas County

Members of the Board:

**Approval of Amendment No. 1 to Intergovernmental Agreement No. 27472 with Oregon Department of Transportation for the Pudding River (Whiskey Hill Road) Bridge Project**

<b>Purpose/Outcomes</b>	Adds funding for the construction of the Pudding River (Whiskey Hill Rd) Bridge project.
<b>Dollar Amount and Fiscal Impact</b>	Total project cost \$8,769,000
<b>Funding Source</b>	Federal-Aid Surface Transportation Program (STP): \$6,971,124 Highway Bridge Program (HBP): \$897,300 County Road Fund: \$900,576
<b>Safety Impact</b>	The existing bridge has been the site of numerous accidents due to its alignment along a horizontal curve with poor sight distance. In addition, it has a perpetual scour problem which has not abated with scour countermeasures that have been installed.
<b>Duration</b>	Upon execution through completion of the project
<b>Previous Board Action</b>	4/14/11 – BCC Approval of Agreement No. 27472 for design of the subject project 7/18/13 – BCC Approval of Agreement No. 27929 for right of way services for the subject project
<b>Contact Person</b>	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 amendment adds funding for the construction of the project through the Federal-Aid Surface Transportation Program (STP). The County previously received funding for the design of the project through the Highway Bridge Program (HBP) which remains unchanged.

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.

**Oregon Department of Transportation  
AMENDMENT NUMBER 01  
LOCAL AGENCY CERTIFICATION PROGRAM  
Supplemental Project Agreement No. 27472  
Pudding River (Whiskey Hill Road) Bridge No. 01559  
Clackamas County**

The **STATE OF OREGON**, acting by and through its Department of Transportation, hereinafter referred to as "State;" and **CLACKAMAS COUNTY**, acting by and through its elected officials, hereinafter referred to as "County," entered into an Agreement on May 25, 2011. Said Agreement covers the replacement of an existing bridge with a new structure.

It has now been determined by State and County that the Agreement referenced above shall be amended to increase the scope of work for the project, add federal Highway Bridge Program funds, and update language. Except as expressly amended below, all other terms and conditions of the Agreement are still in full force and effect.

**Exhibit B shall be deleted in its entirety and replaced with the attached Revised Exhibit B. All references to "Exhibit B" shall hereinafter be referred to as "Revised Exhibit B."**

**TERMS OF AGREEMENT, Paragraphs 1 through 5, Pages 1 and 2, which read:**

1. Under such authority, County agrees to develop the design for replacement of an existing bridge with a new structure which meets current design standards, hereinafter referred to as "Project." The location of the Project is shown on the sketch map attached hereto, marked "Exhibit A", and by this reference made a part hereof. The Project Key Milestones, Budget, and Progress Report details are further described in "Exhibit B", attached hereto and by this reference made a part hereof.
2. The total estimated cost of the Project is \$1,000,000, which is subject to change.
3. The Project shall be conducted as a part of the federal Highway Bridge Program (HBP), under Title 23, United States Code. HBP funds for the Project shall be limited to \$897,300. The Project will be financed with HBP funds at the maximum allowable federal participating rate, with County providing the match and any non-participating costs, including all costs in excess of the available federal funds. County shall also be responsible for funding the road approach work associated with the Project. County shall submit a letter identifying the funding source six (6) weeks prior to advertisement of Project for bid opening.
4. County shall make all payments for work performed on the Project, including all construction costs, and invoice State for 100 percent of its costs. State shall reimburse County invoices at the pro-rated federal share. All costs beyond the federal and state reimbursement, any deposited local funds, and any non-participating costs

will be the responsibility of the County. State shall perform work in the estimated amount of \$5,000. State shall send monthly invoices to County's Project Manager. County understands that State's costs are estimates only and agree to reimburse State for the actual amount expended.

5. County shall select consultants to provide the design for the Project. County understands that this Project is a test project and agrees to comply with all of the terms and conditions found in Certification Program Agreement No. 24688.

**Shall be deleted in their entirety and replaced with the following:**

1. Under such authority, County agrees to design and construct the replacement of an existing bridge with a new structure, hereinafter referred to as "Project." The location of the Project is shown on the sketch map attached hereto, marked "Exhibit A," and by this reference made a part hereof. The Project Key Milestones, Budget and Progress Report details are further described in "Revised Exhibit B," attached hereto and by this reference made a part hereof.
2. The total estimated cost of the Project is \$8,769,000, which is subject to change.
3. The Project shall be conducted as a part of the Highway Bridge Program (HBP) and Federal-Aid Surface Transportation Program (STP) under Title 23, United States Code. HBP funds for this Project shall be limited to \$897,300 and STP funds for this Project shall be limited to \$6,971,124. The Project will be financed with HBP and STP funds at the maximum allowable federal participating amount, with County providing the match and any non-participating costs, including all costs in excess of the available federal funds. County shall submit a letter identifying the funding source six (6) weeks prior to advertisement of Project for bid opening.
4. County shall make all payments for work performed on the Project, including all construction costs, and invoice State for 100 percent of its costs. State shall reimburse County invoices at the pro-rated federal share. All costs beyond the federal and state reimbursement, any deposited local funds, and any non-participating costs will be the responsibility of the County. State shall perform work in the estimated amount of \$20,000. State shall simultaneously invoice FHWA and County for State's Project costs, and County agrees to reimburse State for the federal-aid matching state share and any non-participating costs as determined in accordance with paragraph number 3, above upon receipt of invoice. Failure of County to make such payments to State may result in withholding of County's proportional allocation of State Highway Trust Funds until such costs are paid. County understands that State's costs are estimates only and agrees to reimburse State for the actual amount expended.
5. County shall select consultants to provide the design for the Project, advertise, bid, award the construction contract, and perform construction administration. County understands that this Project is a test project and agrees to comply with all of the terms and conditions found in Certification Program Agreement No. 24688.

**TERMS OF AGREEMENT, Paragraph 20, Page 4, which reads:**

20. State's Project Liaison for the Agreement is Mark Foster, Region 2 Local Agency Liaison, 455 Airport Road SE, Building B, Salem, Oregon 97301-5395, telephone (503) 986-2650, or by an individual designated by the State's Region 2 Manager in the event of the unavailability of the aforementioned individual.

**Shall be deleted in its entirety and replaced with the following:**

20. State's Project Liaison for this Agreement is Brian Nicholas, Region 2 Local Agency Liaison, 455 Airport Road SE, Building B, Salem, Oregon 97301-5395; phone: (503) 986-2650; email: [brian.nicholas@odot.state.or.us](mailto:brian.nicholas@odot.state.or.us), or assigned designee upon individual's absence. State shall notify the other Party in writing of any contact information changes during the term of this Agreement.

This Amendment 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 Amendment so executed shall constitute an original.

**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.

This Project is in the 2012-2015 Statewide Transportation Improvement Program, (Key No. 17408) that was adopted by the Oregon Transportation Commission on March 21, 2012 (or subsequently approved by amendment to the STIP).

SIGNATURE PAGE FOLLOWS



**CLACKAMAS COUNTY**, by and through its elected officials

By \_\_\_\_\_  
Chair

Date \_\_\_\_\_

By \_\_\_\_\_  
Recording Secretary

Date \_\_\_\_\_

**APPROVED AS TO LEGAL SUFFICIENCY**

By  \_\_\_\_\_  
County Legal Counsel

Date \_\_\_\_\_

By \_\_\_\_\_  
Assistant Attorney General

Date \_\_\_\_\_

**County Contact:**  
Mike Bezner, Engineering Supervisor  
Clackamas County Engineering Division  
150 Beaver Creek Road  
Oregon City, OR 97045-4302  
Phone: (503) 742-4651  
Email: [MikeBez@co.clackamas.or.us](mailto:MikeBez@co.clackamas.or.us)

**STATE OF OREGON**, by and through its Department of Transportation

By \_\_\_\_\_  
Highway Division Administrator

Date \_\_\_\_\_

**APPROVAL RECOMMENDED**

By \_\_\_\_\_  
Technical Services Manager/Chief Engineer

Date \_\_\_\_\_

By \_\_\_\_\_  
Active Transportation Section Manager

Date \_\_\_\_\_

By \_\_\_\_\_  
Region 2 Manager

Date \_\_\_\_\_

**State Contact:**  
Brian Nicholas, Local Agency Liaison  
ODOT, Region 2  
455 Airport Road SE, Bldg. B  
Salem, OR 97301-5395  
Phone: (503) 986-2650  
Email: [brian.nicholas@odot.state.or.us](mailto:brian.nicholas@odot.state.or.us)

**REVISED EXHIBIT B – PROJECT KEY MILESTONES AND SCHEDULE**

**Agreement No. 27472**

**Project Name:** Pudding River (Whiskey Hill Road) Bridge No. 01559

1. **Project Description** – The Project will replace the Whiskey Hill Road Bridge spanning the Pudding River with a longer, wider, three-span to five-span structure to provide adequate roadway width, improve alignment characteristics, and eliminate scour issues. Drilled shaft foundations will support the interior bents and driven piles will support the abutments. The roadway surface elevation at the bridge will be raised approximately four feet to accommodate the increased bridge depth and clear the 100-year flood elevation. The Project includes acquisition of new right-of-way and easements, improvement of existing driveways abutting Whiskey Hill Road, and installation of an off-site detour during construction.
2. This Project is subject to progress reporting and project change process as stated in Paragraphs No. 3 through No. 6 below.
3. **Monthly Progress Reports (MPR)** – County shall submit monthly progress reports using MPR Form 734-2862, attached by reference and made a part of this Agreement. The Monthly Progress Report is due by the 5<sup>th</sup> day of each month, starting the first full month after execution of this Agreement, and continuing through the first month after State issues Project Acceptance.

The fillable MPR form and its instructions are available at the following web site:  
<http://www.oregon.gov/ODOT/HWY/LGS/Pages/online.aspx>

4. **Project Milestones** – The Parties agree that the dates shown in Table 1 constitute the intended schedule for advancing and completing the Project. Project Milestones may only be changed through amendment of this Agreement, after obtaining an approved Project Change Request.

**Table 1: Project Milestones**

	<b>Milestone Description</b>	<b>Obligation Date</b>	<b>Estimated Budget</b>
1	Obligation (Federal Authorization) of HBP funds for the Preliminary Engineering phase of the Project	5/1/2011	\$1,100,000
2	Obligation (Federal Authorization) of STP funds for the Right of Way phase of the Project	11/29/2013	\$260,000
3	Obligation (Federal Authorization) of STP funds for the Construction phase of the Project	9/1/2014	\$7,409,000
	<b>Total Project Cost</b>		<b>\$8,769,000</b>

5. **Project Change Request (PCS) Process** – County must obtain approval from State's contact and State's Bridge Engineer for changes to the Project's scope, schedule, or budget by submitting a PCR, as specified in Paragraphs No. 5a, 5b, and 5c, below. County shall be fully responsible for all costs attributable to changes to the estimated Project scope, schedule, or budget and prior to an approved PCR. Amendments to this Agreement are required for all approved PCRs.
  - a. **Scope** – A PCR is required for a change or in the scope of work described in the Project Description (Paragraph No. 1 of this Exhibit).
  - b. **Schedule** – A PCR is required if County or State's contact anticipate that any Project Milestone will be delayed by more than ninety (90) days, and also for any change in schedule that will require amendment to the Statewide Transportation Improvement Program (STIP).
  - c. **Budget** – The Project's estimated budget is used for determining the level of compensation for completed work. Increases or decreases in the budget which require a STIP amendment also require the submission of a Project Change Request to the State's Regional Local Agency Liaison.
  - d. PCR requests that result in Project cost increases that are equal to or less than twenty (20) percent of the total estimated Project cost or \$200,000, whichever amount is less, can be approved by the State Bridge Engineer. Amendments can be approved and entered into by the State Bridge Engineer.
  - e. PCR requests that result in a Project cost increase in excess of twenty (20) percent of the total estimated Project cost or \$200,000, whichever amount is greater, must be approved by the State Bridge Engineer and the Local Agency Bridge Selection Committee with a majority vote. Amendments must be executed by the same officials who executed the original Agreements.
6. **PCR Form** – County must submit all change requests using PCR Form 734-2863, attached by reference and made a part of this Agreement. The PCR Form is due no later than thirty (30) days after the need for change becomes known to County. The PCR shall explain what change is being requested, the reasons for the change, and any efforts to mitigate the change. A Project Change Request may be rejected at the discretion of State's Bridge Engineer.

The fillable PCR form and its instructions are available at the following web site:  
<http://www.oregon.gov/ODOT/HWY/LGS/Pages/online.aspx>

7. **Consequence for Non-Performance** – If County fails to fulfill its obligations in Paragraphs No. 3 through No. 6 above, or does not assist in advancing the Project or perform the tasks that the County is responsible for under the Project Milestones, State's course of action through the duration of County's default may include: (a)

restricting County consideration for future funds awarded through State's Active Transportation Section; then (b) withdrawing unused Project funds; and then (c) terminating this Agreement as stated in Terms of Agreement, Paragraphs No. 16a and 16b of the Agreement and recovery of payments pursuant to Terms of Agreement, Paragraph No. 18 of the Agreement.