

**STATE OF OREGON  
OREGON HOUSING AND COMMUNITY SERVICES**

**GRANT AGREEMENT #XXXX**

*Emergency Solutions Grant – Coronavirus Relief (ESG-CV) Program*

This Grant Agreement (this “Agreement”) is entered into by and between the State of Oregon, acting by and through its **Housing and Community Services Department**, together with its successors and assigns hereinafter referred to collectively as “OHCS” or “Agency,” and **(insert Subrecipient’s business name)**, a *(see SOS Business Registry)*, hereinafter referred to as “Subrecipient”.

**Recitals**

- A.** Subrecipient is willing to execute this Agreement obligating itself to comply with the terms and conditions hereof and to fulfill such obligations in a manner complementary to and in furtherance of its obligations arising from the Agreement it executed with Agency for receipt of the funds described herein.
- B.** On March 27, 2020, Congress passed the Coronavirus Aid, Relief, and Economic Security (CARES) Act (the “CARES Act”). The CARES Act identified additional funding for the Emergency Solutions Grant Coronavirus Relief (ESG-CV) program to be utilized to prevent, prepare for, and respond to COVID-19 for individuals and families who are experiencing homelessness or receiving homelessness assistance, and to support additional homelessness assistance and homeless prevention activities to mitigate the impact created by COVID-19.

**Agreement**

NOW THEREFORE, for good and sufficient consideration, including the terms and conditions herein, it is agreed by and between the parties hereto as follows:

**1. Incorporation**

The foregoing Recitals are incorporated herein by reference, provided, however, that the Recitals are not be deemed to modify the express provisions hereinafter set forth. This Agreement includes the following exhibits which are incorporated herein:

- Exhibit A (Project Details and Scope of Work)
- Exhibit B (Insurance Requirements)
- Exhibit C (Required Federal Terms and Conditions)
- Exhibit D (ESG Program Under CARES Act)
- Exhibit E (Federal Reporting Information)

**2. Authority**

Pursuant to ORS 456.625(17) and ORS 458.505(6), Agency is authorized to enter into a grant agreement and provide funding for the purposes described in this Agreement.

**3. Term of Agreement**

Unless terminated or extended, this Agreement covers the period **March 1, 2020 through June 30, 2022**. This Agreement shall become effective on the date this Agreement has been signed by every party. The expiration of the

term of this Agreement, including if this Agreement is terminated prior to the end of the above-described term, shall not terminate remedies available to Agency or to Subrecipient hereunder

**4. Work to be Performed.**

Subrecipient shall perform the work described in Exhibit A, Project Details and Scope of Work (the “Work”) in accordance with the terms and conditions of this Agreement and other applicable law whether or not described in this Agreement. Subrecipient shall perform its obligations hereunder efficiently, effectively and within applicable grant timelines, all to the satisfaction of Agency.

Changes to the Work by the Subrecipient shall require the prior written approval of Agency. Requests for and justification of any change must be submitted in writing to Agency and be approved in writing by Agency prior to commencement of the requested change.

**5. Consideration; Reporting**

- a. Agency has agreed to make a conditional award of funds to the Subrecipient not-to-exceed amount of **XX Dollars (\$XX,XXX.XX)** (the “Grant”). Grant distributions will be made by Agency to Subrecipient in increments upon approval of Subrecipient requests by Agency on a cost incurred basis unless otherwise agreed to by Agency.
- b. Upon expiration or termination of this Agreement, Subrecipient shall return all unexpended Grant funds to the Agency within 60 days.
- c. Any desired use of funds by Subrecipient that differs from the Work must first be approved in writing, by Agency. 100% of the Grant must be used to provide services as indicated in the Work.

**Expenditure Milestone Expectations:** HUD’s expenditure deadlines included in the [CPD-20-08 ESG-CV Notice](#) requires subrecipients to meet the following expenditure deadlines for ESG-CV funding. Applicants will be required to confirm they can meet these spenddown targets or provide an alternative timeline to be evaluated by Agency.

Should the subrecipient not meet the agreed upon expenditure expectations, the Agency in its sole discretion reserves the right to recapture the difference in funds between the actual expenditure amount at the expenditure deadline and expected expenditure. The Agency also reserves the right in its sole discretion to mandate a corrective action or remediation plan to ensure future timely expenditure of ESG-CV funds.

Percentage of ESG-CV Award	Expenditure Deadline
20%	July 31, 2021
40%	September 30, 2021
60%	November 30, 2021
80%	January 31, 2022

Additionally all projects should advance part, or all, of the State Objectives from Section 1.3.

ESG-CV recipients are required to submit ESG-CV activities quarterly in [Sage](#) beginning in October 2020 (or at the start of this Agreement ), per HUD requirements.

Other reports are submitted as needed or requested by Agency.

## **6. Funding Appropriation**

Funds specified in the Consideration section of this Agreement or otherwise may include funds that have not yet been appropriated but which Agency anticipates receiving for use in funding this Agreement and their identification herein is not a guarantee that Subrecipient will receive any or all such funds. Any and all disbursements of funds hereunder are subject to the terms and conditions of this Agreement, including (without limitation) that such funds are lawfully and fully appropriated, allocated, and available to Agency with authorizing limitation. Subrecipient's obligation to perform the Work is conditioned upon Agency receiving corresponding Grant funds or other funds available for reimbursement of such appropriate Work costs. Subrecipient is not entitled to receive payment under this Agreement from any part of Oregon state government other than Agency. Nothing in this Agreement is to be construed as permitting of Article XI, section 7 of the Oregon Constitution or any other law regulating liabilities or monetary obligations of the State of Oregon.

## **7. Requests for Funds**

Subrecipient shall request grant funds in such form and manner as is satisfactory to or required by Agency. Further, in accordance with U.S. Department of Treasury Regulations, 31 CFR Part 205, implementing the Cash Management Improvement Act, Subrecipient shall limit any request for funds to the minimum amount needed to accomplish its described purposes and to time the request in accordance with the actual, immediate requirements in carrying out Grant programs to be funded through the Request for Funds. Submission of proper account records showing revenue and expenditures for the reporting period must be submitted as documentation to support the amounts being requested. The foregoing requirements apply to all Grant funds requested under this Agreement.

## **8. Nonexclusive Remedies Related to Funding.**

### **a. Withholding of Grant Funds from Request**

Agency may withhold any and all undisbursed Grant funds from Subrecipient, if Agency, in its sole discretion, determines that Subrecipient has failed to timely satisfy any material obligation arising under this Agreement or otherwise. Subrecipient obligations include, but are not limited to providing complete, accurate and timely reports satisfactory to Agency about its performance under this Agreement as well as timely satisfying all Agreement obligations relating to any awarded funds. Agency may also withhold any and all requested Grant fund from Subrecipient if Agency, in its sole discretion, determines that the rate or scale of requests for funds in any expenditure category materially deviates from the Work or is unsubstantiated by related documentation.

### **b. Redistribution or Retention of Funds**

If Grant funds are not obligated for reimbursement by Subrecipient in a timely manner as determined by Agency at its sole discretion, Agency may reduce Subrecipient funding as it determines to be appropriate in its sole discretion and redistribute such funds to other Subrecipients or retain such Grant funds for other Agency use. This remedy is in addition to any other remedies available to Agency under this Agreement or otherwise.

### **c. Reservation of Right to Recapture**

Agency reserves the right to recapture funds from Subrecipient based on misrepresentation, underperformance, non-compliance, fraud, expiration or termination of this Agreement.

## 9. Termination

a. Agency may immediately terminate this Agreement in whole or in part upon written notice to the Subrecipient for cause related to any material misrepresentation, malfeasance, gross negligence, abandonment of performance or loss of authority to perform any of its obligations hereunder by Subrecipient, whether directly by Subrecipient or through one or more of its Subgrantees, agents, subcontractors, successors or assigns, as determined by Agency in its sole discretion.

b. Agency may, upon 30 days written notice, terminate this Agreement in whole or in part for cause including, but not limited to events described above in subsection 9.a. Cause may include any event, including an event of default, as determined by Agency in its sole discretion that renders inappropriate the continuation of this Agreement or any part hereof. An event of default constitutes an act or omission by Subrecipient, its Subgrantees, agents, representatives, contractors, or assigns by which Subrecipient, as determined by Agency at its sole discretion, fails to timely and appropriately perform one or more material obligations, or otherwise breaches a duty, owed to Agency under this Agreement. Such events and events of default may include, but are not limited to an occurrence of any of the following:

- 1) Subrecipient fails to fulfill timely any of its obligations under this Agreement;
- 2) Subrecipient fails to comply timely with directives received from Agency or from an agency that is the original source of the Grant funds;
- 3) Funds provided under this Agreement are used improperly or illegally by Subrecipient;
- 4) Funding for grant programs are denied, suspended, reduced or eliminated;
- 5) Federal or state laws, regulations or guidelines are modified or interpreted in such a way that Agency is prohibited from paying for or lacks authority to pay for any Work performance under this Agreement or to pay for any such performance from the planned funding source(s);
- 6) Funding, appropriations, limitations or expenditure authorization to expend Grant funds is denied, suspended, reduced or eliminated;
- 7) Any certification, license or certificate required by law to be held by Subrecipient or others to perform the Work required by this Agreement is for any reason denied, revoked, suspended, limited or not renewed;
- 8) Subrecipient (a) applies for or consents to the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or its property, (b) admits in writing its inability, or is generally unable, to pay its debts as they become due, (c) makes a general assignment for the benefit of its creditors, (d) commences a voluntary case under the federal Bankruptcy Code (as now or hereafter in effect), (e) is adjudicated as bankrupt or insolvent, or (f) fails to controvert in a timely or appropriate manner, or agrees in writing to, an involuntary petition for bankruptcy;
- 9) Subrecipient, its principals, officers, or agents are suspended, debarred, proposed for debarment, declared ineligible or voluntarily excluded from participating in agreements or contracts with any federal or state department or agency, including Agency.

c. Subrecipient may, upon thirty (30) days written notice, terminate this Agreement in whole or in part, if;

- 1) Agency unreasonably fails to provide timely funding hereunder and does not correct such failure within

the 30-day notice period;

- 2) Agency provides one or more material directives which are contrary to federal or state laws, rules, regulations, guidelines, or original funding source requirements and does not correct any such directive within 30 days of being informed that it is contrary to any such law;
- d. Either party may terminate this Agreement in whole or in part immediately upon written notice to the other party if Oregon statutes or federal laws, regulations or guidelines are modified, changed or interpreted by the Oregon Legislative Assembly, the federal government, or a competent court (in a final determination), in such a way that one or both parties no longer has the authority to meet its obligations under this Agreement in whole or such part.
- e. Upon issuance of any notice to terminate this Agreement and prior to the effective date of the termination, Agency may, in its sole and absolute discretion, require that Subrecipient obtain prior Agency approval from it for any additional expenditures that would obligate Agency to reimburse it from Grant funds or otherwise.
- f. Notwithstanding the above, or any termination thereunder, neither Subrecipient nor Agency shall be relieved of its liability to the other party for damages sustained by virtue of its breach of this Agreement. Agency may withhold any reimbursement to Subrecipient in the amount of compensation for damages due Agency from Subrecipient (as estimated by Agency in its sole discretion) until such time as the exact amount of damages has been agreed upon or otherwise finally determined.
- g. In the event of termination of this Agreement by either party, all unexpended money, property, finished or unfinished documents, data, financial reports, audit reports, program reports, studies and reports purchased or prepared by Subrecipient under this Agreement shall be delivered to Agency within sixty (60) days of the date of termination or upon such date as requested by Agency.
- h. Termination of this Agreement shall not impair or invalidate any remedy available to Agency or to Subrecipient hereunder, at law, or otherwise.

## 10. Conflict of Interest.

A conflict exists if a decision or recommendation could affect the finances of the public official or the finances of a relative. A few other situations can present a conflict of interest, as well. If a conflict of interest exists, the public official must always give notice of the conflict, and in some situations the public official is restricted in his ability to participate in the matter that presents the conflict of interest.

Subrecipient must establish a conflict of interest policy which outlines the process for disclosing in writing any potential conflict of interest. Any perceived or actual conflict of interest must be reported to Agency in a timely manner.

## 11. Governing Law; Venue; Consent to Jurisdiction

This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") involving Agency that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County, for the State of Oregon or, if necessary, the United States District Court for the District of Oregon. Subrecipient expressly consents to the *in personam* jurisdiction of such courts.

Notwithstanding the foregoing, Agency and the State of Oregon, as well as any other public-body party hereto, expressly reserve, and do not waive or limit 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.

## **12. Compliance with Applicable Law**

Subrecipient shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Agreement. Without limiting the generality of the foregoing, Subrecipient expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable to the Agreement: (i) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990, as amended; (iv) Executive Order 11246, as amended; (v) the Health Insurance Portability and Accountability Act of 1996; (vi) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vii) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (viii) ORS Chapter 659, as amended; (ix) all regulations and administrative rules established pursuant to the foregoing laws; and (x) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Agreement and required by law to be so incorporated.

## **13. No Third-Party Beneficiaries**

Agency and Subrecipient are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

## **14. Notices**

Except as otherwise expressly provided in this Agreement, any communications between the parties hereto or notices to be given shall be given in writing by personal delivery, email, facsimile, or mailing the same, postage prepaid, or other written instrument, to Subrecipient or Agency at the address or number set forth in this Agreement, or to such other addresses or numbers as either party may hereinafter indicate pursuant to this Section; provided however that any notice of termination shall be given by certified or registered mail, return receipt requested. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing. Any communication or notice delivered by facsimile or email shall be deemed to be given when receipt of the transmission is generated by the transmitting machine. To be effective against Agency, such facsimile transmission must be confirmed by telephone notice to Agency' primary contact. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.

## **15. Confidentiality**

Subrecipient shall, and shall require and cause its Subgrantees and vendors to protect the confidentiality of all information concerning clients and other applicants for and recipients of services funded by this Agreement. Neither it nor they shall release or disclose any such information except as necessary for the administration of the program(s) funded under this Agreement, as authorized in writing by the client, applicant or recipient of such services, or as required by law. All records and files shall be appropriately secured to prevent access by unauthorized persons.

Subrecipient shall, and shall require and cause its Subgrantees and vendors to ensure that all its officers, employees and agents are aware of and comply with this confidentiality requirement.

## **16. Dual Payment**

Subrecipient shall not be compensated for work performed under this Agreement from any other department of the State of Oregon, nor from any other source, including the federal government, unless such funds are used solely to increase the total Work provided under this Agreement. Any additional funds received through or for activities arising under this Agreement shall immediately be reported to Agency.

## **17. Monitoring Required**

### **a. Agency Authorized to Monitor Subrecipient**

Agency may monitor the activities of each Subrecipient and its Subgrantees and vendors as it deems necessary or appropriate, among other things, to ensure Subrecipient and its subgrantees comply with the terms of this Agreement and that Grant fund awards are used properly for authorized purposes hereunder. Agency also may the activities and records of Subrecipient and its Subgrantees and vendors to ensure that performance goals are achieved as specified in this Agreement, including without limitation in the Scope of Work and that performance is to the satisfaction of Agency. Monitoring activities may include any action deemed necessary or appropriate by Agency including, but not limited to the following: (1) the review (including copying) from time to time of any and all Subrecipient, Subgrantee, and Vendor files, records and other information of every type arising from or related to performance under this Agreement; (2) arranging for, performing, and evaluating general and limited scope audits; (3) conducting or arranging for on-site and field visits and inspections; (4) review of Subrecipient fiscal and program reports, and requiring appropriate Request for Funds documentation as well as such other information and clarification as it deems appropriate, prior to providing a Request for Funding approval, whether in whole, in part, or otherwise; and (5) evaluating, training, providing technical assistance and enforcing compliance of Subrecipient, Subgrantee(s), Vendors, and their officers, employees, agents, contractors and other staff. Agency may utilize third parties in its monitoring and enforcement activities, including monitoring by peer agencies. Agency monitoring and enforcement activities may be conducted in person, by telephone and by other means deemed appropriate by Agency and may be effected through contractors, agents or other authorized representatives. Subrecipient consents to such monitoring and enforcement by Agency and agrees to cooperate fully with same, including requiring by agreement and causing that its Subgrantees, Vendors and contractors so cooperate.

Agency reserves the right, at its sole and absolute discretion, to request assistance in monitoring from outside parties including, but not limited to the Oregon Secretary of State, the Attorney General, the federal government, and law enforcement agencies.

### **b. Subrecipient Shall Fully Cooperate**

Subrecipient shall fully and timely cooperate with Agency in the performance of any and all monitoring and enforcement activities. Failure by Subrecipient or any of its Subgrantees or Vendors to comply with this requirement is sufficient cause for Agency to require special conditions, take such other action (including the exercise of available remedies) as it deems appropriate, and may be deemed by Agency as a material failure by the Subrecipient to perform its obligations under this Agreement.

### **c. Subrecipient Shall Monitor Its Subgrantees**

Subrecipient shall perform onsite visits to monitor the activities and expenditures of its Subgrantees as is

reasonable to ensure compliance with ( and necessary under) applicable Program Requirements or as otherwise directed by Agency, but in no case less than at least once during the term of this Agreement.

The activities of any Subgrantee shall be monitored to ensure, *inter alia*, that grant funds are used only for authorized purposes in compliance with this Agreement, including but not limited to specific program requirements, and that performance goals are achieved as specified in the Work.

## **18. Monitoring**

- a. Agency generally will advise the Subrecipient as to its observations and findings generated by any on-site visit; usually through an exit interview. Within sixty (60) days after an on-site inspection, Agency will endeavor to provide Subrecipient with a written report as to its findings from that inspection. Agency may advise the Subrecipient of any corrective action that it deems appropriate based upon its monitoring activities or otherwise. Subrecipient shall timely satisfy such corrective actions required by Agency.

## **19. Monitoring: Major Findings Resolution**

Agency may track and follow up with Subrecipient regarding the correction by Subrecipient of findings made or other corrective actions required in Agency's monitoring of Subrecipient's performance under this Agreement. The tracking record developed by Agency may include, without limitation: findings, corrective actions, deliverables, due dates, responsible parties, actions taken, and final resolution. Subrecipients shall resolve findings and other required corrective actions within the timeframes reasonably given by Agency by written report or otherwise.

## **20. Remedies**

- a. If Agency determines, in its sole discretion, that Subrecipient has failed to comply timely with any material obligation under this Agreement, including but not limited to any Agency directive or term of a corrective action plan, Agency may, exercise any remedy available to it under this Agreement, applicable law, or otherwise. Such remedies may include, but are not limited to: (a) terminating any part or all of this Agreement; (b) withholding and/or reducing grant funds; (c) disallowing costs; (d) suspending and/or recouping payments; (e) appointing a receiver for the receipt and administration of grant funds under this Agreement; (f) requiring corrective action as it may determine to be appropriate; (g) bringing suit or action in an appropriate forum for the enforcement of this Agreement and any remedy, as well as the recovery of damages, including by temporary restraining order, injunction, specific performance or otherwise; (h) debarring or otherwise limiting Subrecipient's eligibility for other funding from Agency; (i) instituting criminal action for misstatements or fraud; and (j) requesting investigation, audit and/or sanction by other governmental bodies.
- b. The rights and remedies of Agency provided in this Section shall not be exclusive and are in addition to any other rights and remedies provided under this Agreement, by law, or otherwise. Except as expressly stated herein, this Section also does not limit Subrecipient's remedies provided under this Agreement, by law, or otherwise, but Subrecipient acknowledges and agrees that any such remedies are subject to Article XI, Section 7 of the Oregon Constitution, the Oregon Tort Claims Act, and the terms and conditions of any other applicable provision of this Agreement.
- c. No failure or delay by Agency to enforce any provision of this Agreement shall constitute a waiver by Agency of that or any other provision, nor shall any single or partial exercise of any right, power or privilege under this Agreement preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege.



d. Remedies provided under this Agreement or otherwise shall survive termination of this Agreement.

**21. Expenditures Properly Supported.**

Expenditures and Requests for Funds shall be supported by Subrecipient with properly executed payroll and time records, invoices, contracts, vouchers, orders, canceled checks and/or any other accounting documents pertaining in whole or in part to the Agreement (or in the case of Subgrantees, under their respective contracts with Subrecipient) in accordance with generally accepted accounting principles and applicable state and federal requirements, including as specified herein. Agency may require such other information or clarification as it deems necessary or appropriate in its sole discretion.

**22. Unallowable Costs and Lobbying Activities**

Subrecipient shall review and comply with the allowable costs and other provisions applicable to expenditures under the particular grant programs covered by this Agreement. Subrecipient shall, among other obligations, comply with the provisions prohibiting the expenditure of funds for lobbying and related activities, whether in 2 CFR Part 230, 2 CFR Part 225, or otherwise, as such provisions may be modified from time to time. If Subrecipient makes expenditures or incurs costs for purposes or amounts inconsistent with the allowable costs or any other provisions governing expenditures under this Agreement, Agency may exercise any and all remedies under this Agreement, at law or otherwise that it deems, in its sole discretion, to be necessary or appropriate.

**23. Disallowance of Costs**

Agency neither is responsible for nor shall it pay for any costs disallowed (a Disallowance of Costs) either upon a Request for Funds or as a result of any audit, review, site visit, or other disallowance action by Agency except for costs incurred by Subrecipient solely due to the willful misconduct or gross negligence of Agency, its employees, officers or agents. If a cost is disallowed by Agency after reimbursement has occurred, Subrecipient shall repay all disallowed costs to Agency upon written notice within the time frame specified by Agency, which in no event shall exceed thirty (30) days.

Subrecipient shall cooperate and shall cause its Subgrantees to cooperate with Agency and all appropriate investigative agencies and shall assist in recovering invalid payments.

**24. Records Maintenance**

Subrecipient shall, and shall require and cause its Subgrantees to, prepare and maintain such records as necessary for performance of and compliance with the terms of this Agreement, which in no event will be less than six (6) years after the termination of this Agreement.

Subrecipient and its Subgrantees shall retain all records pertinent to expenditures incurred under this Agreement and otherwise in a manner consistent with the requirements of state and federal law. Notwithstanding the above, if there is litigation, claims, audits, negotiations, or other action that involves any of the records cited, then such records must be retained until final completion of such matters.

**25. Records Access**

Agency, the Oregon Secretary of State’s Office, the federal government and the duly authorized representatives of such entities shall have free access to and the right to copy all or any part of the books, documents, papers, audits and records

of Subrecipient and its Subgrantees which are related to this Agreement as they deem appropriate, including without limitation, for the purpose of making audit, examination, excerpts, and transcripts and copies. These records are the property of Agency who may take possession of them at any time after three (3) business days' notice to Subrecipient or Subgrantee, as the case may be. Subrecipient or subgrantee may retain copies of all records taken by Agency under this Section.

In its agreements with subgrantees, Subrecipient shall require and cause its Subgrantees to comply with the requirements of this Section 25 and to grant right of access to and ownership by Agency of the subrecipients' books and records related to this Agreement.

## **26. Audits**

If Subrecipient expends \$750,000 or more in federal funds (from all sources) in a fiscal year, Subrecipient shall have a single organization-wide audit conducted in accordance with the provisions of 2 CFR Subtitle B with guidance at 2 CFR Part 200 and other applicable federal regulations, if any.

## **27. Subgrantee Agreements**

Subrecipient shall require and cause its subgrantees to comply with all applicable provisions of this Agreement between Agency and Subrecipient, each of which must be specifically incorporated into the Subgrantee agreements in a manner satisfactory to Agency. Agency reserves the right to request that any subrecipient agreement be submitted to it for review and approval by Agency within ten (10) business days from the date of written notification.

Subrecipient shall require and cause that all of its subgrantee agreements related to this Agreement must include language specifying that such agreements are subject to termination upon such a directive to Subrecipient by Agency and that Agency shall not be liable to any of the parties of that agreement or to other persons for directing that such agreement be terminated.

Subrecipient shall have a written agreement with each subgrantee that is listed in and consistent with the Subrecipient's Work that identifies:

- a. The services or benefits that the Subgrantee must provide when delivering the program.
- b. The laws and regulations with which the Subgrantee must comply under the terms of the agreement (including but not limited to program specific requirements such as eligibility criteria and matching obligations, public policy for protecting civil rights and the environment, written procedures for appeal by clients of Subgrantee determinations, government-wide administrative mandates affecting the Subgrantee's accounting and record keeping systems, and local laws imposed by Subrecipient).
- c. The Subrecipient's and Agency' monitoring rights and responsibilities and the methods used by Subrecipient for monitoring.
- d. A provision to certify that the Subgrantee is an independent contractor and not an agent of Agency or of Subrecipient.

## 28. Fixed Assets

Subrecipient shall, and shall cause its Subgrantees to, maintain policies and procedures for the management of property and equipment that comply with all requirements of the applicable Code of Federal Regulations, 2 CFR Subtitle B with guidance at 2 CFR Part 200, and specific requirements of the source of funds. These regulations shall apply to all equipment purchased with Agency funding, regardless of source of funds.

## 29. Insurance and Workers Compensation.

Subrecipient shall provide all necessary insurance as described in Exhibit B. Subrecipient shall require and ensure that each of its Subgrantees and Subcontractors complies with these requirements.

## 30. Subrecipient Status

Subrecipient shall perform all work under this Agreement as an independent contractor. Subrecipient is not an officer, employee or agent of the Agency or State, as those entities are respectively defined in ORS chapter 456 and in ORS 30.265, with respect to work performed under this Agreement.

Subrecipient agrees that insurance coverage, whether purchased or by self-insurance, for Subrecipient's agents, employees, officers and/or subcontractors is the sole responsibility of Subrecipient.

Subrecipient certifies that it is not employed by or contracting with the federal government for the work covered by this Agreement.

Subrecipient certifies to the best of its knowledge and belief that neither the Subrecipient nor any of its principals, officers, directors or employees:

- a. Is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any federal department or Agency;
- b. Has within a three-year period preceding this Agreement been convicted of or had a civil judgment rendered against it for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, State or local) transaction or contract related to a public transaction; violation of federal or State antitrust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property;
- c. Is presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in subsection (d)(2) above;
- d. Has within a three-year period preceding this Agreement had one or more public transactions (federal, State or local) terminated for cause or default; and
- e. Is included on the list titled "**Specially Designated Nationals and Blocked Persons**" maintained by the Office of Foreign Assets Control for the United States Department of the Treasury and currently found at: <https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>

### **31. Captions**

The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions of this Agreement.

### **32. Severability**

If any term or provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision thereof.

### **33. Execution and Counterparts**

This Agreement may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.

### **34. Grant Funds**

Grant funds are used in conjunction with this Agreement. Subrecipient assumes sole liability for breach of the conditions of the grant (including all terms and conditions of this Agreement) by Subrecipient or by any of its Subgrantees, agents or assigns and shall, upon breach of grant conditions that require the State to return funds to the grantor, whether such breach is by Subrecipient or by any of its Subgrantees, agents or assigns, hold harmless and indemnify the State for an amount equal to the grant funds received under this Agreement together with any additional damages resulting to Agency; or if there are legal limitations on the indemnification ability of the Subrecipient, the indemnification amount shall be the maximum amount of funds available for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount of grant funds received under this Agreement

### **35. Indemnity**

Subject to applicable law, Subrecipient shall and shall require by contract that its subgrantees shall, defend, save, hold harmless, and indemnify (consistent with ORS Chapter 180) the State of Oregon and Agency and their officers, employees and agents from and against all claims, suites, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever resulting from, arising out of, or, relating to the activities of Subrecipient or its officers, employees, subgrantees, subcontractors, or agents under this Agreement.

### **36. Oregon False Claims Act**

Subrecipient acknowledges that the Oregon False Claims Act, ORS 180.750 to 180.785, applies to any action or conduct by Subrecipient pertaining to this Agreement that constitutes a "claim" (as defined by ORS 180.750(1)). By its execution of this Agreement, Subrecipient certifies the truthfulness, completeness, and accuracy of any statement or claim it has made, it makes, it may make, or causes to be made that pertains to this Agreement. In addition to other liabilities that may be applicable, Subrecipient further acknowledges that if it makes, or causes to be made, a false claim or performs a prohibited act under the Oregon False Claims Act, the Oregon Attorney General may enforce the liabilities and penalties provided by the Oregon False Claims Act against Subrecipient.

Without limiting the generality of the foregoing, Subrecipient represents and warrants that:

- a.** Subrecipient's representations, certifications, and other undertakings in this Agreement are not False Claims Act

Violations; and

- b. None of Subrecipient's performance under this Agreement, including but not limited to any invoices, reports, or other deliverables in connection with its performance of this Agreement, will constitute False Claims Act Violations.

For purposes of this Section 2.F., a "False Claims Act Violation" means a false claim as defined by ORS 180.750(2) or anything prohibited by ORS 180.755.

Subrecipient shall immediately report in writing, to Agency, any credible evidence that a principal, employee, agent, subcontractor, subgrantee, or other person has made a false claim or committed a prohibited act under the Oregon False Claims Act, or has committed a criminal or civil violation of laws pertaining to fraud, bribery, gratuity, conflict of interest, or similar misconduct in connection with this Agreement or any moneys paid under this Agreement.

Subrecipient understands and agrees that any remedy that may be available under the Oregon False Claims Act shall be in addition to any other remedy available to the State of Oregon or Agency under any other provision of law, or this Agreement.

### **37. Attorney Fees**

In the event a lawsuit of any kind is instituted on behalf of Agency or the Subrecipient with respect to this Agreement, or any right or claim related thereto, including but not limited to the collection of any payment due under this Agreement or to obtain performance of any kind under this Agreement, the prevailing party is, to the extent permitted by law, entitled to its reasonable attorney fees incurred before and during trial, on appeal, in arbitration, in bankruptcy, and in such other forum or proceeding appropriate thereto, together with such additional terms as the court or hearings officer may adjudge for reasonable costs and disbursements incurred therein. Reasonable fees shall not exceed the rate charged to Agency by its attorneys.

### **38. Time is of the Essence**

Time is of the essence in the performance of all under this Agreement.

### **39. No Limitations on Actions of Agency in Exercise of Its Governmental Powers**

Nothing in this Agreement is intended, nor shall it be construed, to in any way limit the actions of Agency in the exercise of its governmental powers. It is the express intention of the parties hereto that Agency shall retain the full right and ability to exercise its governmental powers with respect to the Subrecipient, the grant funds, and the transactions contemplated by this Agreement to the same extent as if it were a party to this Agreement, and in no event shall Agency have any liability in contract arising under this Agreement by virtue of any exercise of its governmental powers.

### **40. Amendments**

This Agreement may be amended only by a written instrument executed by the parties or by their successors.

### **41. Merger Clause**

This Agreement and attached exhibits constitute the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement.

No waiver, consent, modification or change of terms of this Agreement shall bind all parties unless in writing and signed by both parties and all necessary Agency approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of Agency to enforce any provision of this Agreement shall not constitute a waiver by Agency of that or any other provision.

**42. Diversity, Equity and Inclusion.**

Agency and Subrecipient commit to intentional, data driven approach to reduce disparities in housing and social service provisions. Agency commits to creating a system to analyze Agency –funded programs and remove identified barriers to accessing opportunities within those programs.

*[The rest of this page left intentionally blank]*

### 43. CERTIFICATIONS AND SIGNATURE OF SUBRECIPIENT'S AUTHORIZED REPRESENTATIVE

THIS AGREEMENT MUST BE SIGNED BY AN AUTHORIZED REPRESENTATIVE OF SUBRECIPIENT.

The undersigned certifies under penalty of perjury both individually and on behalf of Subrecipient that:

- A. The undersigned is a duly authorized representative of Subrecipient, has been authorized by Subrecipient to make all representations, attestations, and certifications contained in this Agreement and to execute this Agreement on behalf of Subrecipient;
  
- B. By signature on this Agreement for Subrecipient, the undersigned hereby certifies under penalty of perjury that the undersigned is authorized to act on behalf of Subrecipient and that Subrecipient is, to the best of the undersigned's knowledge, not in violation of any Oregon Tax Laws. For purposes of this certification, "Oregon Tax Laws" means a state tax imposed by ORS 320.005 to 320.150 and 403.200 to 403.250 and ORS chapters 118, 314, 316, 317, 318, 321 and 323 and the elderly rental assistance program under ORS 310.630 to 310.706 and local taxes administered by the Department of Revenue under ORS 305.620.
  
- C. To the best of the undersigned's knowledge, Subrecipient has not discriminated against and will not discriminate against minority, women or emerging small business enterprises certified under ORS 200.055 in obtaining any required subcontracts.
  
- D. Subrecipient and subgrantees' 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>;
  
- E. Subrecipient is bound by and will comply with all requirements, terms and conditions contained in this Agreement; and
  
- F. Subrecipient further certifies to having a formal statement of nondiscrimination in employment policy.

***[Signature Pages Follow]***





## EXHIBIT A PROJECT DETAILS AND SCOPE OF WORK

All projects must meet all applicable HUD ESG requirements in [24 CFR §576](#) and HUD ESG-CV requirements ([Waivers and Alternative Requirements for the Emergency Solutions Grants \(ESG\) Program Under the CARES Act](#)). These include but are not limited to delivering services within the allowable Program Components:

- **Street Outreach** 25 CFR §576.101 Street outreach is service delivery for the specific purpose of reaching out to unsheltered people experiencing homelessness while connecting them with emergency shelter, housing, or critical services; and providing urgent, non-facility-based care. Street Outreach provides a critical pathway for people experiencing homelessness to receive life-saving services and supports while living outside of a shelter or housing environment. This includes engagement into services, case management, emergency health and mental health services, transportation and services for special populations including communities of color, youth and victims of domestic violence.
- **Emergency Shelter** 24 CFR §576.102: Emergency shelter includes case management and shelter operations, including onsite services (such as patient health services), renovations (rehab and conversion), maintenance, rent & utilities, security, fuel, equipment, insurance, food, furnishings, supplies, and hotel/motel vouchers. Acquisition of real property.
- **Rapid Rehousing** 24 CFR §576.105: Rapid Rehousing is an evidenced-based practice for quickly engaging an individual or family experiencing homelessness back into permanent housing when long term supports and services are not required to sustain the tenancy of the household. Rapid Rehousing is delivered without pre-conditions such as sobriety, income or employment and services are tailored to meet the unique needs of each household. Eligible activities include rental assistance (arrearages included), application fees, security deposits, utility deposits/payments, moving costs, case management, and credit repair.
- **Homeless Management Information System (HMIS)** 24 CFR §576.107: HMIS means the information system designated by the Continuum of Care to comply with the HUD's data collection, management, and reporting standards and used to collect client-level data and data on the provision of housing and services to homeless individuals and families and persons at-risk of homelessness. Funds may be used to pay the costs of contributing data to the HMIS designated by the CoC for the area, including the costs of: hardware, software, equipment, technical support, office support, salaries for operating HMIS, training expenses, HMIS participation fees, user accounts or a comparable database for victim services providers.
- **Homelessness Prevention** 24 CFR §576.105: Homelessness Prevention is a critical tool to ensure that individuals and families at risk of homelessness are able to avoid losing their housing in the first place. ESG-CV funds may be used for the costs of providing housing relocation and stabilization services and/or short and/or medium-term rental assistance necessary to prevent the individual or family from moving into an emergency shelter or into homelessness. Eligible activities under Homelessness Prevention include rental assistance (arrearages included), application fees, last month's rent on a new lease, security deposits, utility deposits/payments, moving costs, case management, and credit repair for households at risk of homelessness or imminent homelessness.

Income levels for Homelessness Prevention clients cannot exceed 50% AMI.

*Please note that Agency and HUD objectives prioritize funding for Emergency Shelter, Rapid Rehousing, Street Outreach activities over Homelessness Prevention in order to meet the immediate needs of literally homeless individuals. Homeless Prevention may be allowed only if the applicant can demonstrate extraordinary needs that homeless individuals (sheltered and unsheltered) within their CoC Region are already housed. If the applicant sufficiently demonstrates the need has been met to house homeless individuals, the applicant may apply for funding for Homeless Prevention*

**Expenditure Milestone Expectations:** HUD’s expenditure deadlines included in the [CPD-20-08 ESG-CV Notice](#) requires subrecipients to meet the following expenditure deadlines for ESG-CV funding. Applicants will be required to confirm they can meet these spenddown targets or provide an alternative timeline to be evaluated by Agency.

Should the subrecipient not meet the agreed upon expenditure expectations, the Agency in its sole discretion reserves the right to recapture the difference in funds between the actual expenditure amount at the expenditure deadline and expected expenditure. The Agency also reserves the right in its sole discretion to mandate a corrective action or remediation plan to ensure future timely expenditure of ESG-CV funds.

Percentage of ESG-CV Award	Expenditure Deadline
20%	July 31, 2021
40%	September 30, 2021
60%	November 30, 2021
80%	January 31, 2022

Additionally all projects should advance part, or all, of the State Objectives from Section 1.3.

ESG-CV recipients are required to submit ESG-CV activities quarterly in [Sage](#) beginning in October 2020 (or at the start of this Agreement) per HUD requirements.

Other reports are submitted as needed or requested by Agency.

**EXHIBIT B  
INSURANCE REQUIREMENTS**

**Note: The following requirements are anticipated limits and will be agreed upon at grant negotiation dependent upon services within allowable program components being provided.**

**INSURANCE REQUIREMENTS:**

Subrecipient shall obtain at Subrecipient's expense the insurance specified in this Exhibit B prior to performing under this Grant Agreement and shall maintain it in full force and at its own expense throughout the duration of this Grant Agreement, as required by any extended reporting period or tail coverage requirements, and all warranty periods that apply. Subrecipient shall obtain the following insurance from insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to Agency. Coverage shall be primary and non-contributory with any other insurance and self-insurance, with the exception of Professional Liability and Workers' Compensation. Subrecipient shall pay for all deductibles, self-insured retention and self-insurance, if any.

**WORKERS' COMPENSATION & EMPLOYERS' LIABILITY**

All employers, including Subrecipient, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Subrecipient shall require and ensure that each of its subcontractors complies with these requirements. If Subrecipient is a subject employer, as defined in ORS 656.023, Subrecipient shall also obtain employers' liability insurance coverage with limits not less than \$500,000 each accident. If Subrecipient is an employer subject to any other state's workers' compensation law, Subrecipient shall provide workers' compensation insurance coverage for its employees as required by applicable workers' compensation laws including employers' liability insurance coverage with limits not less than \$500,000 and shall require and ensure that each of its out-of-state subcontractors complies with these requirements.

**COMMERCIAL GENERAL LIABILITY:**

**Required**

Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverage that are satisfactory to the State. This insurance shall include personal and advertising injury liability, products and completed operations, contractual liability coverage for the indemnity provided under this Grant Agreement, and have no limitation of coverage to designated premises, project or operation. Coverage shall be written on an occurrence basis in an amount of not less than \$1,000,000.00 per occurrence. Annual aggregate limit shall not be less than \$2,000,000.00.

**AUTOMOBILE LIABILITY INSURANCE:**

**Required**     **Not required**

Automobile Liability Insurance covering Subrecipient's business use including coverage for all owned, non-owned, or hired vehicles with a combined single limit of not less than \$1,000,000.00 for bodily injury and property damage. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for Commercial General Liability and Automobile Liability). Use of personal

automobile liability insurance coverage may be acceptable if evidence that the policy includes a business use endorsement is provided.

**PROFESSIONAL LIABILITY:**

**Required**     **Not required**

**Professional Liability insurance** covering any damages caused by an error, omission or any negligent acts related to the services to be provided under this Grant Agreement by the Subrecipient and Subrecipient’s subcontractors, agents, officers or employees in an amount not less than \$1,000,000.00 per claim. Annual aggregate limit shall not be less than \$2,000,000.00. If coverage is on a claims made basis, then either an extended reporting period of not less than 24 months shall be included in the Professional Liability insurance coverage, or the Subrecipient shall provide Tail Coverage as stated below.

**NETWORK SECURITY AND PRIVACY LIABILITY:**

**Required**     **Not required**

Subrecipient shall provide network security and privacy liability insurance for the duration of the Grant Agreement and for the period of time in which Subrecipient (or its Business Associates or subcontractor(s)) maintains, possesses, stores or has access to Agency or client data, whichever is longer, with a combined single limit of no less than \$1,000,000.00 per claim or incident. This insurance shall include coverage for third party claims and for losses, thefts, unauthorized disclosures, access or use of Agency or client data (which may include, but is not limited to, Personally Identifiable Information (“PII”), Payment Card Data and Protected Health Information (“PHI”)) in any format, including coverage for accidental loss, theft, unauthorized disclosure access or use of Agency data.

**DIRECTORS, OFFICERS AND ORGANIZATION LIABILITY:**

**Required**     **Not required**

**Directors, Officers and Organization** insurance covering the Subrecipient’s Organization, Directors, Officers, and Trustees actual or alleged errors, omissions, negligent, or wrongful acts, including improper governance, employment practices and financial oversight - including improper oversight and/or use of use of grant funds and donor contributions - with a combined single limit of no less than \$2,000,000.00 per claim.

**CRIME PROTECTION COVERAGE: EMPLOYEE DISHONESTY or FIDELITY BOND**

**Required**     **Not required**

Employee Dishonesty or Fidelity Bond covering loss of money, securities and property caused dishonest acts of a Subrecipient’s employees. Coverage limits shall not be less than \$2,000,000.00.

**PHYSICAL ABUSE AND SEXUAL MOLESTATION:**

**Required**     **Not required**

Coverage shall be written on an occurrence basis in an amount of not less than \$1,000,000.00 per occurrence. Annual aggregate limit shall not be less than \$3,000,000.00

**EXCESS/UMBRELLA INSURANCE:**

A combination of primary and excess/umbrella insurance may be used to meet the required limits of insurance.

**ADDITIONAL INSURED:**

All liability insurance, except for Workers' Compensation, Professional Liability, and Network Security and Privacy Liability (if applicable), required under this Grant Agreement must include an additional insured endorsement specifying the State of Oregon, its officers, employees and agents as Additional Insureds, including additional insured status with respect to liability arising out of ongoing operations and completed operations, but only with respect to Subrecipient's activities to be performed under this Grant Agreement. Coverage shall be primary and non-contributory with any other insurance and self-insurance. The Additional Insured endorsement with respect to liability arising out of your ongoing operations must be on ISO Form CG 20 10 07 04 or equivalent and the Additional Insured endorsement with respect to completed operations must be on ISO form CG 20 37 07 04 or equivalent.

**WAIVER OF SUBROGATION:**

Subrecipient shall waive rights of subrogation which Subrecipient or any insurer of Subrecipient may acquire against the Agency or State of Oregon by virtue of the payment of any loss. Subrecipient will obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the Agency has received a waiver of subrogation endorsement from the Subrecipient or the Subrecipient's insurer(s).

**TAIL COVERAGE:**

If any of the required insurance is on a claims made basis and does not include an extended reporting period of at least 24 months, Subrecipient shall maintain either tail coverage or continuous claims made liability coverage, provided the effective date of the continuous claims made coverage is on or before the effective date of this Grant Agreement, for a minimum of 24 months following the later of (i) Subrecipient's completion and Agency's acceptance of all Services required under this Grant Agreement, or, (ii) Agency or Subrecipient termination of this Grant Agreement, or, (iii) The expiration of all warranty periods provided under this Grant Agreement.

**CERTIFICATE(S) AND PROOF OF INSURANCE:**

Subrecipient shall provide to Agency Certificate(s) of Insurance for all required insurance before delivering any Goods and performing any Services required under this Grant Agreement. The Certificate(s) shall list the State of Oregon, its officers, employees and agents as a Certificate holder and as an endorsed Additional Insured. The Certificate(s) shall also include all required endorsements or copies of the applicable policy language effecting coverage required by this Grant Agreement. If excess/umbrella insurance is used to meet the minimum insurance requirement, the Certificate of Insurance must include a list of all policies that fall under the excess/umbrella insurance. As proof of insurance Agency has the right to request copies of insurance policies and endorsements relating to the insurance requirements in this Grant Agreement.

**NOTICE OF CHANGE OR CANCELLATION:**

The Subrecipient or its insurer must provide at least 30 days' written notice to Agency before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

**INSURANCE REQUIREMENT REVIEW:**

Subrecipient agrees to periodic review of insurance requirements by Agency under this agreement and to provide updated requirements as mutually agreed upon by Subrecipient and Agency.

**STATE ACCEPTANCE:**

All insurance providers are subject to Agency acceptance. If requested by Agency, Subrecipient shall provide complete copies of insurance policies, endorsements, self-insurance documents and related insurance documents to Agency's representatives responsible for verification of the insurance coverages required under this Exhibit B.

**EXHIBIT C**  
**Required Federal Terms and Conditions**

**General Applicability and Compliance.** Unless exempt under 45 CFR Part 87 for Faith-Based Organizations (Federal Register, July 16, 2004, Volume 69, #136), or other federal provisions, Subrecipient shall comply with, and, as indicated, cause all Subgrantees to comply with, the following federal requirements to the extent that they are applicable to this Agreement, to Subrecipient, 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.** Subrecipient shall comply and require all Subgrantees 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, Subrecipient expressly agrees to comply and require all Subgrantees 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, (b) Sections 503 and 504 of the Rehabilitation Act of 1973, (c) the Age Discrimination in Employment Act of 1967, and the Age Discrimination Act of 1975, (d) Title IX of the Education Amendment of 1972, (e) the Drug Abuse Office and Treatment Act of 1972, (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, (g) Section 523 and 527 of the Public Health Service Act of 1912, (h) Title VIII of the Civil Rights act of 1968, (i) the Hatch Act (U.S.C. 1501-1508 ad 7328), (j) Davis-Bacon Act (40 U.S.C. 276a to 276a7), (k) the Copeland Act (40 U.S.C. 276c and 18 U.S.C. 874), (l) the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), (m) all other applicable requirements of federal civil rights and rehabilitation statutes, rules and regulations. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to this 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 Subrecipient shall comply and require all Subgrantees to comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended.
- 3. Clean Air, Clean Water, EPA Regulations.** If this Agreement, including amendments, exceeds \$150,000 then Subrecipient shall comply and require all Subgrantees 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 Agency, United States Department of Health and Human Services and the appropriate Regional Office of the Environmental Protection Agency. Subrecipient shall include and require all Subgrantees to include in all Agreements with Subgrantees receiving more than \$150,000, language requiring the Subgrantee to comply with the federal laws identified in this section.
- 4. Other Environmental Standards.** Subrecipient shall comply and require all Subgrantees to comply with all applicable environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National

Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order 11514; (b) protection of wetlands pursuant to Executive Order 11990; (c) evaluation of flood hazards in flood plains in accordance with Executive Order 11988; (d) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et. seq.); (e) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. 7401 et seq.); (f) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (g) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

5. **Energy Efficiency.** Subrecipient shall comply and require all Subgrantees 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).
6. **Truth in Lobbying.** By signing this Agreement, the Subrecipient certifies, to the best of the Subrecipient's knowledge and belief that:
  - a. No federal appropriated funds have been paid or will be paid, by or on behalf of Subrecipient, 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 Subrecipient shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.
  - c. The Subrecipient shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all Subgrantees 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 Subrecipient 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 Subrecipient 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 Subrecipient 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.

## 7. **Audits.**

- a. Subrecipient shall comply, and require any Subgrantee to comply, with applicable audit requirements and responsibilities set forth in this Agreement and applicable state or federal law.
- b. If Subrecipient receives federal awards in excess of \$750,000 in a fiscal year, Subrecipient is subject to audit conducted in accordance with the provisions of 2 CFR part 200, subpart F. Copies of all audits must be submitted to Agency within 30 days of completion.
- c. Subrecipient shall save, protect and hold harmless Agency from the cost of any audits or special investigations performed by the Secretary of State with respect to the funds expended under this Agreement. Subrecipient acknowledges and agrees that any audit costs incurred by Subrecipient as a result of allegations of fraud, waste or abuse are ineligible for reimbursement under this or any other agreement between Subrecipient and State.

- 8. **Debarment and Suspension.** Subrecipient shall not permit any person or entity to be a Subgrantee if the person or entity is listed on the non-procurement portion of the General Service Administration's "List of Parties Excluded from Federal Procurement or Nonprocurement Programs" in accordance with Executive Orders No. 12549 and No. 12689, "Debarment and Suspension". (See 2 CFR Part 180.) This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible

under statutory authority other than Executive Order No. 12549. Subgrantees with awards that exceed the simplified acquisition threshold shall provide the required certification regarding their exclusion status and that of their principals prior to award.

- 9. Drug-Free Workplace.** Subrecipient shall comply and cause all Subgrantees to comply with the following provisions to maintain a drug-free workplace: (i) Subrecipient certifies that it will provide a drug-free workplace by publishing a statement notifying its employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance, except as may be present in lawfully prescribed or over-the-counter medications, is prohibited in Subrecipient's workplace or while providing services to Agency clients. Subrecipient's notice shall specify the actions that will be taken by Subrecipient against its employees for violation of such prohibitions; (ii) Establish a drug-free awareness program to inform its employees about: The dangers of drug abuse in the workplace, Subrecipient's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations; (iii) Provide each employee to be engaged in the performance of services under this Agreement a copy of the statement mentioned in paragraph (i) above; (iv) Notify each employee in the statement required by paragraph (i) above that, as a condition of employment to provide services under this Agreement, the employee will: abide by the terms of the statement, and notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction; (v) Notify Agency 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 Subgrantee to comply with subparagraphs (i) through (vii) above; (ix) Neither Subrecipient, or any of Subrecipient's employees, officers, agents or Subgrantees 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 Subrecipient or Subrecipient's employee, officer, agent or Subgrantee has used a controlled substance, prescription or non-prescription medication that impairs the Subrecipient or Subrecipient's employee, officer, agent or Subgrantee's performance of essential job function or creates a direct threat to Agency clients or others. Examples of abnormal behavior include, but are not limited to: hallucinations, paranoia or violent outbursts. Examples of impairments in physical or mental performance include, but are not limited to: slurred speech, difficulty walking or performing job activities; and (x) Violation of any provision of this subsection may result in termination of the Agreement.
- 10. 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 Subrecipient agrees that it has been provided the following notice:

- a. The federal funding agency reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the Work, and to authorize others to do so, for Federal Government purposes with respect to:
    - (1) The copyright in any Work developed under a grant, subgrant or contract under a grant or subgrant; and
    - (2) Any rights of copyright to which a Subrecipient, Subgrantee or a contractor purchases ownership with grant support.
  - b. The parties are subject to applicable federal regulations governing patents and inventions, including government-wide regulations issued by the Department of Commerce at 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements."
  - c. The parties are subject to applicable requirements and regulations of the federal funding agency regarding rights in data first produced under a grant, subgrant or contract under a grant or subgrant.
- 11. Super Circular Requirements.** 2 CFR Part 200, or the equivalent applicable provision adopted by the awarding federal agency in 2 CFR Subtitle B, including but not limited to the following:
- a. **Property Standards.** 2 CFR 200.313, or the equivalent applicable provision adopted by the awarding federal agency in 2 CFR Subtitle B, which generally describes the required maintenance, documentation, and allowed disposition of equipment purchased with federal funds.
  - b. **Procurement Standards.** When procuring goods or services (including professional consulting services), applicable state procurement regulations found in the Oregon Public Contracting Code, ORS chapters 279A, 279B and 279C or 2 CFR §§ 200.318 through 200.326, or the equivalent applicable provision adopted by the awarding federal agency in 2 CFR Subtitle B, as applicable.
  - c. **Contract Provisions.** The contract provisions listed in 2 CFR Part 200, Appendix II, or the equivalent applicable provision adopted by the awarding federal agency in 2 CFR Subtitle B, that are hereby incorporated into this Exhibit, are, to the extent applicable, obligations of Subrecipient, and Subrecipient shall also include these Agreement provisions in its contracts with non-Federal entities
- 12. Federal Whistleblower Protection.** Recipient shall comply, and ensure the compliance by subcontractors or Subgrantees, with 41 U.S.C. 4712, Enhancement of contractor protection from reprisal for disclosure of certain information. Therefore, in part, Subrecipient, its Subgrantees, and contractors shall, inform its or their employees, in writing, in the predominant language of the workforce, of the employee whistleblower rights and protections under 41 USC 4712.
- 13. System for Award Management (SAM) reporting (41 USC § 2313).**
- The Subrecipient must comply with applicable requirements regarding the System for Award Management (SAM), currently accessible at <https://www.sam.gov>. This includes applicable requirements regarding registration with SAM, as well as maintaining current information in

SAM. The Subrecipient also must comply with applicable restrictions on subawards ("subgrants") to first-tier Subgrantees (first-tier "subgrantees"), including restrictions on subawards to entities that do not acquire and provide (to the Subrecipient) the unique entity identifier required for SAM registration.

**14. Requirement to report breach of personally identifiable information (PII) per OMB M-17-12.**

The Subrecipient (and any Subgrantee at any tier) must have written procedures in place to respond in the event of breach (as defined in OMB M-17-12) if it (or a Subgrantee) -- 1) creates, collects, uses, processes, stores, maintains, disseminates, discloses, or disposes of personally identifiable information (PII) (as defined in 2 C.F.R. 200.79) within the scope of a grant-funded program or activity, or 2) uses or operates a Federal information system. The Subrecipient's breach procedures must include a requirement to report actual or imminent breach of PII to Grantor no later than 24 hours after an occurrence of an actual breach, or the detection of an imminent breach.

**EXHIBIT D**  
**EMERGENCY SOLUTIONS GRANTS (ESG) PROGRAM UNDER THE CARES ACT**  
**APPLICABLE RULES, STATUTES, WAIVERS, AND ALTERNATIVE REQUIREMENTS**

This Section describes the statutes, regulations, waivers, and alternative requirements that apply to ESG-CV grants. The CARES Act authorizes the Secretary to waive, or specify alternative requirements for, any provision of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary or the use by the recipient of these amounts, except for requirements related to fair housing, nondiscrimination, labor standards, and the environment. The Notice describes when temporary emergency shelter is exempt from environmental review and outlines standards for temporary emergency shelter. Regulatory waiver authority is also provided by 24 CFR 5.110 and 91.600. For the reasons stated with each waiver or alternative requirement established in this Notice, HUD has determined that good cause exists for each waiver or alternative requirement and that the waiver or alternative is necessary to prevent, prepare for, and respond to coronavirus. Except as otherwise stated in this Notice, waivers and alternative requirements shall be deemed to be effective as of the date a State or unit of local government began preparing for coronavirus, which HUD shall presume to be January 21, 2020 – the date the first confirmed case was reported in the United States. However, each recipient must maintain adequate documentation to assure these waivers and alternative requirements are used only with respect to ESG- or ESG-CV-eligible activities the recipient or its subrecipients implemented to prevent, prepare for, and respond to coronavirus, including documentation demonstrating when their particular state or local government began preparing for coronavirus, such as notes on formal planning meetings or calls. Certain alternative requirements established by this Notice that limit activities in comparison with the requirements in 24 CFR 576 and the CARES Act are not retroactive.

**A. Means of Carrying Out Grant Activities.** In general, the requirements at 24 CFR 576.202 apply, except that:

1. *States may use up to 100 percent of grant funds awarded to carry out activities directly.* The requirements at Section 412 of the McKinney-Vento Act and 24 CFR 576.202(a), which provide that States must subgrant all of their funds except those used to carry out HMIS activities and administrative activities to units of general purpose are waived to ensure that enough entities with capacity are available to administer ESG-CV funds and to provide additional administrative efficiency to States. States may use up to 100 percent of grant funds awarded to carry out activities directly. However, before a State can use this flexibility to carry out ESG activities directly, the State's consolidated plan/action plan must specify the activities the State will carry out and the amount allocated for those activities, whether in the State's initial FY 2020 action plan submission or an amendment to its most recently approved action plan, and the State must submit the new certifications that HUD is providing in the Appendices to this Notice, as further explained in section VI, to account for this new program flexibility.

2. *States and local governments may subaward funds to public housing agencies and local redevelopment authorities.* As authorized by Section 414(c) of the McKinney-Vento Act, a local government may subaward funds it receives to a public housing agency, as defined under section 3(b)(6) of the United States Housing Act of 1937, or to a local redevelopment authority, as defined under state law. Where the recipient is a State, the requirement at Section 412 of the

McKinneyVento Act, further defined at 24 CFR 576.202(a), is waived, to allow states to subaward funds it receives to a public housing agency, as defined under section 3(b)(6) of the United States Housing Act of 1937, or to a local redevelopment authority, as defined under state law to ensure that there are enough entities with capacity available to administer ESG-CV funds. ESG-CV recipients who subaward funds are responsible for ensuring grants are carried out in accordance to this notice.

## **B. Obligation, Expenditure, and Payment Requirements and Recapture Process.**

1. *Obligation Deadlines.* To assure that all funding and flexibilities provided by the CARES Act and HUD under this Notice can be used as necessary to prevent, prepare for, and respond to coronavirus, HUD is waiving the regulatory obligation deadlines and standards for meeting those deadlines and establishing alternative requirements as follows. ESG-CV funds must be obligated by the recipient in accordance with 24 CFR 576.203(a)(1) and (2), except as provided below. The applicable period for obligating ESG-CV funds begins on the date HUD signed the recipient's grant agreement for the first allocation of ESG-CV funds. The obligation deadlines below apply to the both the first and second allocation of ESG-CV funds. HUD is also providing further flexibility for recipients (including states and non-states) to provide additional time to identify entities that have capacity and expertise to mitigate the impacts of coronavirus, including those who have not previously or recently received ESG funding.

a. Recipients that are states have:

- (i) 180 days from the date HUD signs the grant agreement to obligate funds for activities it will carry out directly, as permitted in Section III.A.1. This obligation may be evidenced by a written designation of a department within the government to carry out an eligible activity directly; and
- (ii) up to 240 days from the date HUD signs the grant agreement to obligate ESG-CV funds to subrecipients. Recipients must maintain in the program records a description of any changes the recipient implemented to identify and select new subrecipients.

b. Recipients that are metropolitan cities, urban counties, or territories may have up to 240 days from the date HUD signs the grant agreement to obligate ESG-CV funds. Recipients must maintain in their program records a description of any changes the recipient implemented to identify and select new subrecipients.

2. *Expenditures.* The requirements at 24 CFR 576.203(b) generally apply, except that the provision that all of the recipient's grant must be expended for eligible activity costs within 24 months after the date HUD signs the grant agreement with the recipient is waived and the following alternative requirements are established:

a. Before drawing down funds for an activity, the recipient must enter complete, up-to-date information on that activity in the Integrated Disbursement and Information System (IDIS), including the total funding allocated to that activity and a description of how the activity prevents, prepares for, and responds to coronavirus . This requirement is necessary to assure the use of funds for eligible activities to prevent, prepare for, and respond to coronavirus and facilitate compliance with the CARES Act's reporting requirement, which is described in section III.G.2 of this Notice.

b. *Overall Deadline for Expending First and Second Allocations.* All funds awarded to a recipient through the first and second allocations of ESG-CV funds must be expended for eligible activity costs by September 30, 2022. Establishing this standardized expenditure deadline for all recipients discourages recipients from delaying their expenditure deadline by delaying the execution of their grant agreements, thus making funds more quickly available to prevent, prepare for, and respond to coronavirus.

c. *Progressive Expenditure Deadlines and Recapture Provisions.* To ensure ESG-CV funds are spent quickly on eligible activities to address the public health and economic crises caused by coronavirus, the following alternative requirements are established:

- (i) HUD may recapture up to 20 percent of a recipient's total award, including first and second allocation amounts, if the recipient has not expended at least 20 percent of that award by September 30, 2021.
- (ii) HUD may recapture up to 80 percent of a recipient's total award, including first and second allocation amounts, if the recipient has not expended at least 80 percent of that award by March 31, 2022.
- (iii) Prior to recapturing funds as described above, HUD will follow the enforcement process described in 24 CFR 576.501 and provide the recipient with an opportunity to provide a spending plan demonstrating to HUD's satisfaction that all of the recipient's ESG-CV funds from the first and second allocations will be expended by September 30, 2022.

d. *Reallocation process.* HUD reserves its discretion to make subsequent waivers and alternative requirements to assure recaptured funds are reallocated in a manner consistent with the statutory purposes and conditions for ESG-CV funds.

**C. Match.** As provided by the CARES Act, ESG-CV funds are not subject to the match requirements that otherwise apply to the Emergency Solutions Grants program.

**D. Program Income.** Because ESG-CV program income cannot be used as match without the ESG matching requirement, HUD is waiving the ESG provisions for program income under 24 CFR 576.2 and 576.407(c)(1) and establishing alternative requirements, as follows:

- 1. Program income is defined as provided by 2 CFR 200.80, except that:
  - a. Program income includes any amount of a security or utility deposit returned to the recipient or subrecipient, as provided by 24 CFR 576.2; and
  - b. Costs that are incidental to generating program income and not charged to the ESG-CV grant or subgrant may be deducted from gross income to determine program income, as allowed under 2 CFR 200.307(b).
- 2. As allowed under 2 CFR 200.307(e), program income may be treated as an addition to recipient's grant (or the subrecipient's subgrant, if the income is generated by the subrecipient's activities), provided that the program income is used in accordance with the purposes and conditions of that grant or subgrant. Program income otherwise must be deducted from allowable costs as provided by 2 CFR 200.307(e)(1).

These changes to the otherwise applicable program income requirements are necessary to maximize the capacity and efficiency of ESG-CV recipients and subrecipients to prevent, prepare for, and respond to coronavirus.

**E. Program Components and Eligible Activities.** The requirements of 24 CFR Part 576 – Subpart B apply, except that:

1. *Emergency Shelter and Street Outreach cap.* As provided by the CARES Act, the cap established for street outreach and emergency shelter activities in section 576.100(b) does not apply. Recipients may expend as much of their funding on street outreach and emergency shelter activities as needed to prevent, prepare for, and respond to coronavirus among people experiencing homelessness including mitigating the impacts caused by coronavirus. HUD strongly encourages recipients to coordinate housing and services for those individuals with the Continuum of Care in their geographical region.

2. *Pre-Award Costs.* To account for the urgent activities and costs ESG recipients and subrecipients have undertaken to prevent, prepare for, and respond to coronavirus, the recipient is authorized to use ESG-CV funds to cover or reimburse costs incurred before the period of performance provided that the cost to be covered or reimbursed would be otherwise allowable under the flexibilities and requirements established for ESG-CV funds and was incurred by a recipient or subrecipient on or after January 21, 2020 to prevent, prepare for, and respond to coronavirus. In addition, where this Notice limits activities in comparison with 24 CFR Part 576 (e.g., the maximum rental assistance per program participant in Section III.E.5.b.(i)@ of this Notice), a recipient may cover or reimburse costs incurred before the period of performance, provided that the cost to be covered or reimbursed 11 would be otherwise allowable under 24 CFR Part 576 and either:

- (a) The costs were incurred prior to the publication of this Notice; or
- (b) For costs not incurred prior to the publication of this Notice, the recipient has included the activities in its substantial amendment or action plan for ESG-CV funds, which has been submitted to HUD and not disapproved prior to the publication of this Notice. An environmental review, as applicable, must be completed and a Request for Release of Funds must be approved in accordance with 24 CFR Part 58 and Section III.E.6 of this Notice, prior to a commitment to cover or reimburse with ESG funds.

3. *Additional Eligible Activities.* In addition to the eligible activities listed in 24 CFR 576 – Subpart B, funds may be used for the following activities:

- a. *Temporary emergency shelters.* As permitted by the CARES Act, ESG-CV funds may be used to pay for temporary emergency shelters for individuals and families experiencing homelessness in order to prevent, prepare for, and respond to coronavirus.
  - (i) Eligible costs include:
    - (a) Leasing existing real property or temporary structures to be used as temporary emergency shelters;
    - (b) Acquisition of real property (e.g. hotels, ancillary structures, parking lots). The total amount of



- ESG-CV funds used for acquisition must not exceed \$2.5 million per real property;
- (c) Renovation (including major rehabilitation and conversion) of real property (e.g., hotels) into temporary emergency shelters. Eligible costs include labor, tools, and other costs for renovation;
  - (d) Shelter operations costs including the costs of maintenance (including minor or routine repairs), rent, security, fuel, equipment, insurance, utilities, food, furnishings, supplies necessary for the operation of the temporary emergency shelter;
  - (e) Services, including essential services under 24 CFR 576.102(a)(1), housing search and placement services under 24 CFR 576.105(b)(1), and housing search and counseling services as provided under 24 CFR 578.53(e)(8); except as otherwise stated in this Notice or 24 CFR part 576.408; and,
  - (f) Other shelter costs HUD pre-approves in writing.
- (ii) Requirements:
- (a) As permitted by the CARES Act, the use of funds for these shelters will not be subject to the habitability standards under section 417(c) of the McKinney-Vento Act, shelter standards at 24 CFR 576.403(b), or the environmental review requirements that otherwise apply to the use of ESG funds if the shelters have been determined by State or local health officials to be necessary to prevent, prepare for, and respond to coronavirus. Recipients and subrecipients must still comply with nondiscrimination and applicable accessibility requirements, including requirements under Section 504 of the Rehabilitation Act, the Americans with Disabilities Act, the Fair Housing Act, and their implementing regulations. See also 24 CFR 576.407(a);
  - (b) These temporary emergency shelters shall not be subject to the minimum periods of use required by section 416(c)(1) of the McKinney-Vento Act and 24 CFR 576.102(c) and shall be considered as excluded by law from any certifications recipients submit pursuant to 24 CFR 91.225(c)(1) through (c)(4) or 91.325(c)(4)(i) through (c)(4)(iv); however, if funds were used for acquisition or renovation (including conversion or major rehabilitation), the property's use and disposition will be subject to the real property requirements in 2 CFR 200.311;
  - (c) In general, funds may be used to support temporary emergency shelters to prevent, prepare for, and respond to coronavirus until January 31, 2022. This January 31, 2022 limit will ensure that ESG-CV funds are available to serve more individuals and families with assistance to prevent, prepare for, and respond to coronavirus. However, upon written request by the recipient, HUD may grant an exception to the January 31, 2022 limit, if the recipient demonstrates:
    - (i) Why additional funding for a longer period of time is necessary and what planned activities the recipient will forgo to continue funding the temporary emergency shelter;
    - (ii) The number of additional months the recipient will fund the temporary emergency shelter; and
    - (iii) The plan for connecting program participants to permanent housing when the temporary emergency shelter is no longer funded;
- (d) In addition to the records required at 24 CFR 576.500, the recipient must retain documentation that the property or structure or portion of a structure used as temporary emergency shelter met the definition of temporary emergency shelter during the time it was so used. For example, a recipient could document that the property is typically a hotel and is

only being used as an emergency shelter for the period of time that public health officials determine special measures are needed to prevent the spread of coronavirus;

- (e) Whether or not services are provided as part of temporary emergency shelter, the recipient or subrecipient must assure that for each program participant receiving shelter, the individual or family's service needs are evaluated as required by 24 CFR 576.401(a) and appropriate services are made available as needed in accordance with 24 CFR 576.401(d)), and a program participant in temporary emergency shelter shall be eligible to receive essential services from the recipient or subrecipients other than the program participant's shelter provider;
- (f) A temporary emergency shelter may provide space for program participants to receive services consistent with 24 CFR 576.401(d) even if the services are not ESG-funded or not funded as part of the shelter project;
- (g) Program participants cannot be required to sign leases or occupancy agreements, receive treatment, or perform any other prerequisite activities as a condition for staying in any shelter or receiving services; and
- (h) In all other respects, the funding and operation of temporary emergency shelters must comply with the ESG-CV requirements for emergency shelters under this Notice and 24 CFR part 576.

c. *Training.* As permitted by the CARES Act, ESG-CV funds may be used for training on infectious disease prevention and mitigation for staff working directly to prevent, prepare for, and respond to coronavirus among persons who are homeless or at risk of homelessness and the use of funding shall not be considered administrative costs for purposes of the 10 percent cap. In addition, the limitations on eligible activities provided in section 415(a) of the McKinney-Vento Homeless Assistance Act and 24 CFR part 576, subpart B are waived and alternative requirements are established to the extent necessary to authorize ESG-CV funds to be used for training on infectious disease prevention and mitigation for homeless assistance providers, including those who do not receive funding through the CARES Act, to help them best prevent, prepare for, and respond to coronavirus among persons who are homeless or at risk of homelessness. These training costs are eligible as a standalone activity and are not to be charged to an activity under 24 CFR 576.101 to 24 CFR 576.109.

d. *Hazard Pay.* As permitted by the CARES Act, funds may be used to pay hazard pay for recipient or subrecipient-staff working directly to prevent, prepare for, and respond to coronavirus among persons who are homeless or at risk of homelessness. Examples of recipient or subrecipient staff working directly in support of coronavirus response include emergency shelter intake staff, street outreach teams, emergency shelter maintenance staff, emergency shelter security staff, staff providing essential services (e.g., outpatient health or mental health, housing navigators), and staff in proximity to persons with coronavirus or working in locations with a high likelihood of contracting coronavirus.

e. *Handwashing Stations and Portable Bathrooms.* The limitations on eligible activities provided in section 415(a) of the McKinney-Vento Homeless Assistance Act and 24 CFR part 576, subpart B are waived and alternative requirements are established to the extent necessary to authorize ESGCV funds to be used under 24 CFR 576.101(a) for installing and maintaining handwashing stations and bathrooms (e.g., porta potties) in outdoor locations for people experiencing unsheltered homelessness. Allowing ESG-CV funds to pay for the costs of handwashing stations and bathroom

facilities will help prevent the spread of coronavirus by providing people living in unsheltered locations regular access to bathrooms and the ability to wash their hands.

f. *Landlord Incentives.* The limitations on eligible activities under section 415(a) of the McKinney-Vento Act and 24 CFR 576.105 are waived and alternative requirements are established to the extent necessary to authorize ESG-CV funds to be used under 24 CFR 576.105 to add the eligible cost of paying for landlord incentives as reasonable and necessary to obtain housing for individuals and families experiencing homelessness and at risk of homelessness. However, a recipient may not use ESG-CV funds to pay the landlord incentives set forth below in an amount that exceeds three times the rent charged for the unit. Waiving the limitation on eligible costs under housing relocation and stabilization services to pay for the costs of landlord incentives will increase the number of housing units available to people experiencing homelessness or at risk of homelessness, especially in tight rental markets and obtaining and maintaining housing is critical to preventing the spread of coronavirus and helping mitigate the economic impact of the crisis. The limitation to three times the rent charged for each unit ensures enough ESG-CV funds remain available to provide other eligible activities necessary to prevent the spread of coronavirus. Eligible landlord incentive costs include:

- (i) Signing bonuses equal to up to 2 months of rent;
- (ii) Security deposits equal to up to 3 months of rent;
- (iii) Paying the cost to repair damages incurred by the program participant not covered by the security deposit or that are incurred while the program participant is still residing in the unit; and,
- (iv) Paying the costs of extra cleaning or maintenance of a program participant's unit or appliances.

g. *Volunteer Incentives.* The limitations on eligible activities provided in section 415(a) of the McKinney-Vento Homeless Assistance Act and 24 CFR part 576, subpart B are waived and alternative requirements are established to the extent necessary to authorize ESG-CV funds to be used under 24 CFR 576.101(a), 24 CFR 576.102(a)(1), and 24 CFR 576.105(b) for cost of providing reasonable incentives to volunteers (e.g., cash or gift cards) who have been and are currently helping to provide necessary street outreach, emergency shelter, essential services, and housing relocation and stabilization services during the coronavirus outbreak. Waiving this requirement to allow the payment of reasonable costs of volunteer incentives will increase the number of people available to provide the needed services and connections to housing to individuals and families experiencing homelessness to prevent the spread of coronavirus.

5. *Waivers, Alternative Requirements and Statutory Flexibilities for Existing Eligible Activities.*

a. *Emergency Shelters.* The requirements at 24 CFR 576.102 apply, except funds may be used only for the costs of providing emergency shelter during the period beginning on the date the recipient or subrecipient began preventing, preparing for, and responding to coronavirus and ending on January 31, 2022, and only for those costs that are necessary to prevent, prepare for, and respond to coronavirus. This alternative requirement will ensure that ESG-CV funds are used efficiently to provide more individuals and families with assistance needed to prevent, prepare for, and respond to coronavirus.

b. *Short-Term and Medium-Term Rental Assistance.*

- (i) 24 CFR 576.106(a)(2), where medium-rent is defined as “for more than 3 months but not more than 24 months of rent” is waived and an alternative requirement is established where medium-term is established as for more than 3 months but not more than 12 months. This alternative requirement

will allow more households to receive rapid re-housing and homelessness prevention assistance, which is necessary to prevent, prepare for, and respond to coronavirus.

(ii) The requirement at 24 CFR 576.106(d) that prohibits rental assistance where the rent for the unit exceeds the Fair Market Rent established by HUD, as provided under 24 CFR Part 888, is waived so long as the rent complies with HUD's standards of rent reasonableness, as established under 24 CFR 982.507. Waiving this requirement will allow recipients to help program participants move quickly into housing or retain their existing housing, which is especially critical at reducing the spread of coronavirus and responding to coronavirus. This waiver provides additional flexibility beyond the waiver made available to the ESG Program on March 31, 2020 and extended to ESGCV funds on May 22, 2020 by permitting ESG recipients to provide rental assistance for program participants, whose current rent exceeds FMR and by allowing recipients to use this waiver as needed throughout the period they are providing rental assistance to prevent, prepare for, and respond to coronavirus.

c. *Administrative Costs.* As permitted by the CARES Act, a recipient may use up to 10 percent of its total ESG-CV grant for administrative costs specified in 24 CFR 576.108.

d. *No Cap for Emergency Shelter and Street Outreach Activities.* As permitted in the CARES Act, ESG-CV funds may be used for emergency shelter and street outreach activities without regard to the spending cap established by section 415(b) of the McKinney-Vento Act and 24 CFR Part 576.100(b). The same flexibility applies to using ESG-CV funds to establish and operate temporary emergency shelters.

e. *Hotel/Motel Costs.* As permitted under 24 CFR 576.102(a)(3), eligible costs include a hotel or motel voucher for homeless individuals and families where no appropriate emergency shelter is available. Additionally, the limitations on eligible activities provided in section 415(a) of the McKinney-Vento Act and 24 CFR part 576, subpart B are waived and alternative requirements are established to the extent necessary to authorize ESG-CV funds to be used for the following hotel or motel costs for individuals and families experiencing homelessness, receiving rapid re-housing assistance under the Continuum of Care (CoC) or ESG programs, receiving homelessness prevention under the ESG program, or residing in permanent supportive housing: The recipient or subrecipient may pay for a hotel or motel room directly or through a hotel or motel voucher. Additionally, funds can be used to pay for cleaning of hotel and motel rooms used by program participants as well as to repair damages caused by program participants above normal wear and tear of the room. These flexibilities are provided to allow recipients to secure hotel and motel rooms more quickly to be available when needed to prevent the spread of coronavirus (for example, when a program participant needs to isolate to keep from spreading the virus to other shelter occupants or household members).

f. *Helping current ESG program participants maintain housing.* In order to ensure current program participants receiving homelessness prevention and rapid re-housing assistance do not lose their housing during the coronavirus public health crisis and the subsequent economic downturn caused by the crisis, the requirements in 24 CFR 576.105(c) and 576.106(a) are waived and alternative requirements are established as follows:

(i) The requirement at 24 CFR 576.105(c) limiting the total period of time for which any program participant may receive the services under paragraph (b) to 24 months during any 3-year period is

waived solely for those program participants who reach their 24-month maximum assistance during the period beginning on the presumed start of this crisis, January 21, 2020 – the date the first confirmed case was reported in the United States, and ending 6 months from the date of publication of this Notice, provided that the services are only extended for these program participants for up to a maximum of an additional 6 months; and

(ii) The requirement at 24 CFR 576.106(a) limiting the total number of months a program participant can receive rental assistance to 24 months in a 3-year period is waived solely for those program participants who reach their 24-month maximum during the period beginning on the presumed start of this crisis, January 21, 2020 – the date the first confirmed case was reported in the United States, and ending 6 months from the date of publication of this Notice, provided that the rental assistance is only extended for these program participants for up to a maximum of an additional 6 months.

*g. HMIS Lead Activities.* The limitations on eligible activities provided in section 415(a) of the McKinney-Vento Act and 24 CFR Part 576, subpart B are waived to the extent necessary to authorize ESG funds to be used under 24 CFR 576.107 to pay for HMIS costs beyond where they are related to collecting data on ESG program participants and ESG program activities to the extent they are necessary to help the geographic area prevent, prepare for, and respond to coronavirus. Additionally, 24 CFR 576.107 that limits recipients to paying for the costs at 24 CFR 576.107(b) is waived to allow recipients that are not the HMIS Lead, as designated by the Continuum of Care, to pay for costs at 24 CFR 576.107(b), either directly or by sub-granting to the HMIS Lead if the HMIS Lead is an eligible subrecipient to the extent that the HMIS costs are necessary to help the geographic area prevent, prepare for, and respond to coronavirus. This waiver and these alternative requirements provide additional flexibility beyond the waiver made available to the ESG Program on March 31, 2020 and extended to ESG-CV funds on May 22, 2020 by permitting ESG recipients who are not also HMIS Leads to pay for the costs eligible at 24 CFR 576.107(b) and lifting the 6-month limit on the waiver so that this flexibility applies throughout the period the recipient or subrecipient uses funds to prevent, prepare for, and respond to coronavirus. Additionally, this waiver provides additional flexibility for ESG funds to be used on HMIS costs even when they are not related to ESG program participants or ESG activities when necessary to collect and report better data about the impact of coronavirus across the community. These flexibilities will allow communities to collect data that is necessary to coordinate and report on activities to prevent, prepare for, and respond to coronavirus among individuals and families experiencing homelessness, at risk of homelessness, and receiving homeless assistance.

*h. Legal Services.* Legal services established in 24 CFR 576.102(a)(1)(vi) and 24 CFR 576.105(b)(4) are limited to those services necessary to help program participants obtain housing or keep a program participant from losing housing where they currently reside.

**F. Program Requirements.** The requirements at 24 CFR part 576, subpart E apply, except as otherwise established in this Notice.

1. *Consultation with the Continuum of Care.* As provided under the CARES Act, ESG-CV funds are not subject to the CoC consultation requirements at 24 CFR 576.400(a).

2. *Coordination with other targeted homeless services.* To ensure funds are deployed quickly to

address the immediate public health crisis and prevent the spread of coronavirus, the coordination requirements at 24 CFR 576.400(b) are waived.

3. *System and Program Coordination with Mainstream Resources.* To ensure funds are deployed quickly to address the immediate public health crisis and prevent the spread of coronavirus, the coordination requirements at 24 CFR 576.400(c) are waived.

4. *Centralized or Coordinated Assessment, Written Standards for Administering Assistance, and HMIS.* With respect to costs incurred between January 21, 2020 and June 30, 2020 that are allowable under this Notice but not under 24 CFR Part 576, the requirements to use the CoC's centralized or coordinated assessment under 24 CFR 576.400(d), administer the assistance in accordance with written standards as provided under 24 CFR 576.400(e), and participate in HMIS under Section 416(f) of the McKinney-Vento Act and 24 CFR 576.400(f) are waived for the first 60 days of the project's operation. HUD has determined this waiver is necessary to allow jurisdictions to quickly implement activities necessary to prevent the spread of coronavirus and account for the time needed to integrate these activities into centralized or coordinated assessment and HMIS, and revise the written standards for administering assistance to account for the new program flexibilities.

5. *Housing Stability Case Management.* As required by 24 CFR 576.401(a) and (c), the recipient and its subrecipient must determine the available services and assistance that each ESG-CV program participant will need to achieve independent living and avoid further housing instability or homelessness, and the recipient and its subrecipient must assist each ESG-CV program participant, as needed, to obtain those services and assistance. However, HUD is making an across-the-board waiver of the ESG requirement in 24 CFR 576.401(e)(1) that housing stability case managers to meet not less than once per month with each program participant receiving homelessness prevention or rapid re-housing assistance. HUD is waiving this requirement for all program participants receiving this assistance after qualifying as homeless, in order to be consistent with the CARES Act prohibition stated in section III.F.10. Additionally, HUD is waiving the requirement for all program participants receiving assistance after qualifying as at risk of homelessness, in order to prevent the spread of coronavirus and reduce the barriers to providing the homelessness prevention that is necessary to respond to coronavirus. This waiver provides additional regulatory relief beyond the waiver HUD made available on March 31, 2020 for annual ESG funds and extended on May 22, 2020 for annual ESG funds and ESG-CV funds, by lifting the 3-month limitation established May 22, 2020, and making the waiver of 24 CFR 576.401(e)(1) apply throughout the period the recipient or subrecipient uses funds to prevent, prepare for, and respond to coronavirus.

6. *Shelter and Housing Standards.* The lead-based paint remediation requirements of 24 CFR 576.403(a) apply to all shelters for which ESG-CV funds are used and all housing occupied by program participants. The habitability requirements at 24 CFR 576.403(b) do not apply to temporary emergency shelters that have been determined by State or local health officials to be necessary to prevent, prepare for, and respond to coronavirus. However, recipients and subrecipients must still comply with nondiscrimination and applicable accessibility requirements, including requirements under Section 504 of the Rehabilitation Act, the Fair Housing Act, the Americans with Disabilities Act, and their implementing regulations. See also 24 CFR 576.407(a). All other shelters and housing for which ESG-CV funds must meet the applicable standards in 24 CFR 576.403(b) and 576.403(c).

7. *Environmental Review Requirements.* Except as otherwise provided in this notice for temporary emergency shelters that have been determined by State or local health officials to be necessary to prevent, prepare for, and respond to coronavirus, “responsible entities” (as defined in 24 CFR 58.2) must assume all of the responsibilities with respect to environmental review, decision making, and action required under 24 CFR Part 58. Also, as required by 24 CFR 58.4(a), when a State distributes funds to a responsible entity, the State must provide for appropriate procedures by which these responsible entities will evidence their assumption of environmental responsibilities. In accordance with these requirements and section 100261(3) of the MAP-21 Act, 24 CFR 576.407(d) does not apply. Environmental regulations at 24 CFR 58.22 prohibit ESG recipients and any other participant in the development process from committing HUD or non-HUD funds to a project until the environmental compliance review process has been successfully completed or until receipt of the Authority to Use Grant Funds, if applicable. In addition, until the environmental compliance review process has been successfully completed or until receipt of the Authority to Use Grant Funds, neither a recipient nor any participant in the development process may commit non-HUD funds on or undertake an activity or project if the activity or project would have an adverse environmental impact or limit the choice of reasonable alternatives. Emergency Environmental Review Procedures: HUD’s environmental review regulations in 24 CFR Part 58 include two provisions that may be relevant to environmental review procedures for activities to prevent, prepare for, or respond to coronavirus. The first is 24 CFR § 58.34(a)(10), which provides an exemption for certain activities undertaken in response to a national or locally declared public health emergency. The second is a streamlined public notice and comment period in the regulation at 24 CFR 58.33, which may apply in some cases for emergency activities undertaken to prevent, prepare for, or respond to coronavirus. The application of these two provisions following a presidentially-declared or locally-declared public health emergency are discussed in the Notice, *Guidance on conducting environmental review pursuant to 24 Part 58 for activities undertaken in response to the public health emergency as a result of COVID-19* (available at: <https://www.hud.gov/sites/dfiles/OCHCO/documents/2020-07cpdn.pdf>).

8. *Procurement.* As provided by the CARES Act, the recipient may deviate from the applicable procurement standards (e.g., 24 CFR 576.407(c) and (f) and 2 CFR 200.317-200.326) when procuring goods and services to prevent, prepare for, and respond to coronavirus. If the recipient deviates from its procurement standards then the recipient must establish alternative written procurement standards, and maintain documentation on the alternative procurement standards used to safeguard against fraud, waste, and abuse in the procurement of goods and services to prevent, prepare for, and respond to coronavirus. This alternative requirement is necessary to ensure the funds are used efficiently and effectively to prevent, prepare for, and respond to coronavirus. Notwithstanding this flexibility, the debarment and suspension regulations at 2 CFR part 180 and 2 CFR part 2424 apply as written.

9. *Prohibition Against Duplication of Benefits.* Section 312 (42 U.S.C. 5155) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. 5121 et seq.) prohibits duplication of benefits for programs that provide financial assistance to people or entities suffering losses because of a major disaster or emergency. “Duplication of benefits” occurs when Federal financial assistance is provided to a person or entity through a program to address losses resulting from a Federally-declared emergency or disaster, and the person or entity has received (or would receive, by acting reasonably to obtain available assistance) financial assistance for the same

costs from any other source (including insurance), and the total amount received exceeds the total need for those costs. Recipients must establish and maintain adequate procedures to prevent any duplication of benefits with ESG-CV funds. HUD will issue additional guidance to facilitate compliance with this requirement.

10. *Provision of Supportive Services.* Although HUD strongly encourages the use of supportive services when necessary, as required by the CARES Act, individuals and families experiencing homelessness must not be required to receive treatment or perform any other prerequisite activities as a condition for receiving shelter, rental assistance, or other services provided with ESG-CV funds.

**G. Reporting Requirements.** The requirements at 24 CFR 576.500 apply except as otherwise established in this notice

1. *Reporting Requirement.* Recipients will be required to report on uses of the ESG-CV funds, in their Consolidated Annual Performance and Evaluation Report (CAPER) and through submission of project data to the Sage Homeless Management Information System (HMIS) Repository. HUD is waiving 24 CFR 91.520(a) to allow recipients up to 180 days from their program year end date to submit their CAPER to allow additional time for reporting as recipients respond to coronavirus.

2. *Additional CARES Act Reporting.* Section 15011 of the CARES Act requires that recipients of \$150,000 or more of CARES Act funding submit, not later than 10 days after the end of each calendar quarter, a report containing information regarding the amount of funds received; the amount of funds obligated or expended for each project or activity; a detailed list of all such projects or activities, including a description of the project or activity; and detailed information on any subcontracts or subgrants awarded by the recipient. As outlined in the Office of Management and Budget (OMB) memorandum, M-20-21, existing reporting requirements are anticipated to meet the requirements of section 15011, but the content and format for this reporting is still under development and will need to be reviewed against current program practices. The Department will work in coordination with OMB to ensure that this requirement can be fulfilled by recipients of CARES Act funding in a manner that utilizes to the greatest extent possible existing reporting streams, providing the necessary transparency and accountability with minimal additional burden. If additional reporting is necessary, further guidance will be released by the Department in the near future.



**EXHIBIT E**  
**FEDERAL REPORT INFORMATION**  
**Information required by 2 CFR § 200.331(a)(1)**

Federal Award Identification:

- (i) Subrecipient name (which must match registered name in DUNS): \_\_\_\_\_
- (ii) Subrecipient's DUNS number: \_\_\_\_\_
- (iii) Federal Award Identification Number (FAIN): \_\_\_\_\_
- (iv) Federal Award Date: \_\_\_\_\_
- (v) Sub-award Period of Performance Start and End Date: From \_\_\_\_\_ to \_\_\_\_\_
- (vi) Total Amount of Federal Funds Obligated by this Agreement: \$\_\_\_\_\_
- (vii) Total Amount of Federal Funds Obligated to the Subrecipient by the pass-through entity including this Agreement: \$\_\_\_\_\_
- (viii) Total Amount of Federal Award committed to the Subrecipient by the pass-through entity: \$\_\_\_\_\_
- (ix) Federal award project description: \_\_\_\_\_
- (x) Name of Federal awarding agency, pass-through entity, and contact information for awarding official of the Pass-through entity:
  - (a) Name of pass-through entity: \_\_\_\_\_
  - (b) Contact information for awarding official of the pass-through entity: \_\_\_\_\_
- (xi) CFDA Number and Name: \_\_\_\_\_  
Amount: \_\_\_\_\_
- (xii) Is Award R&D? \_\_\_\_\_
- (xiii) Indirect cost rate for the Federal award: \_\_\_%