

EMERGENCY SOLUTIONS GRANT AGREEMENT-CARES ACT

THIS EMERGENCY SOLUTIONS GRANT AGREEMENT (“Agreement”) is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the “City”) and **THE DENVER RESCUE MISSION**, a Colorado nonprofit, whose address is 6100 Smith Rd, Denver, CO 80216 (the “Subrecipient”), jointly herein “the Parties” and individually a “Party.”

RECITALS

WHEREAS, in March 2020, Congress passed the Coronavirus Aid, Relief and Economic Security Act (“CARES Act”) to help respond to the COVID-19 outbreak. The CARES Act made available four billion dollars in Emergency Solutions Grant (“ESG”)-CV funds to supplement ESG funding. These ESG-CV funds are used to prevent, prepare for and respond to the COVID-19 pandemic among individuals and families who are homeless or receiving homeless assistance and to support additional homeless assistance and homelessness prevention activities to mitigate the impacts of COVID-19;

WHEREAS, the City has been allocated funds under the ESG-CV program (CFDA 14.231) from the United States Department of Housing and Urban Development (“HUD”), pursuant to subtitle B of title IV of the McKinney-Vento Homeless Assistance Act, 42 U.S.C. 11371–11378, for the rehabilitation or conversion of buildings for use as emergency shelter for the homeless, for the payment of certain expenses related to operating emergency shelters, for essential services related to emergency shelters and street outreach for the homeless, for homelessness prevention and rapid re-housing assistance, and other approved supportive services;

WHEREAS, the use of CARES Act ESG-CV funding to assist homeless individuals and families to secure permanent housing will help mitigate the impact and spread of COVID-19;

WHEREAS, the Subrecipient agrees to assist individuals and families that are homeless or at-risk of homelessness in obtaining approved, appropriate supportive services including, but not limited to, temporary and permanent housing, relocation and stabilization services, rapid re-housing assistance, medical and mental health treatment, counseling supervision, and other essential services; and

WHEREAS, the Subrecipient represents that it is qualified to participate in the ESG program and has the requisite qualifications, expertise and experience in the provision of emergency solutions programs for homeless individuals or families or individuals or families at-risk of homelessness, and is willing to provide services to support those in need.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties incorporate the recitals set forth above and agree as follows:

- 1. COORDINATION AND LIAISON**: The Subrecipient shall fully coordinate all services under the Agreement with the Executive Director (“Director”) of the Department of Housing Stability (“Agency” or “HOST”), or, the Director’s designee.
- 2. GRANT AWARD**: This Agreement is funded by and entered into pursuant to the authority of Subtitle B of Title IV of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11371, *et seq.*) and is subject to the applicable annual appropriations act; the Emergency Solutions Grant program, 24 CFR

Part 576, as now in effect and as may be amended; and all applicable federal laws, regulations, and policies, and any special conditions attached hereto and incorporated herein. The Subrecipient agrees that it shall be bound by the terms and conditions of the grant agreement between the funding entity and the City, attached hereto and incorporated herein as **Exhibit B**, and such other rules, regulations, or requirements as the United States Department of Housing and Urban Development (“HUD”) may reasonably impose. The Subrecipient agrees that participants eligible for its services hereunder will be those who are described in the document captioned, “Homeless Definition” attached as **Exhibit C**. The Subrecipient acknowledges and agrees that this Agreement is contingent upon an allocation and receipt of ESG funds from HUD and the authorization given to the City to use a portion of its allocation in the amount set forth in this Agreement to reimburse the Subrecipient for the provision of its services under this Agreement. The Subrecipient’s failure to perform, as required, may, in addition to other remedies set forth in this Agreement, result in readjustment of the amount of funds the City is otherwise obligated to pay to the Subrecipient pursuant to the terms hereof.

3. **SERVICES TO BE PERFORMED**: The Subrecipient, under the general direction of, and in coordination with, the Director, shall diligently and professionally provide the services and deliver the goods described in the Scope of Work, a copy of which is marked as **Exhibit A**, attached hereto and incorporated herein by reference. The Subrecipient shall faithfully perform the work required under this Agreement in accordance with the standards of care, skill, training, diligence, and judgment provided by highly competent professionals who perform work of a similar nature to the work described in this Agreement. All records, data, specifications, and documentation prepared by the Subrecipient under this Agreement, when delivered to and accepted by the Director, shall become the property of the City.
4. **TERM**: The Term of this Agreement shall commence on January 1, 2021, and expire, unless sooner terminated, on September 30, 2021 (the “Term”). Subject to the Director’s prior written authorization, the Subrecipient shall complete any work in progress as of the expiration date and the Term will extend until the work is completed or earlier terminated by the Director.
5. **COMPENSATION AND PAYMENT**
 - 5.1. **Budget**: The City shall pay, and the Subrecipient shall accept as the sole compensation for services rendered and costs incurred and paid under the Agreement payment not to exceed the line budget amounts set forth in **Exhibit A**. The Subrecipient certifies the budget line items in **Exhibit A** contain reasonable allowable direct costs and allocable indirect costs in accordance with 2 C.F.R. 200, Subpart E. The City shall not allow claims for services furnished by the Subrecipient that are not specifically authorized by this Agreement.
 - 5.2. **Reimbursable Expenses**: There are no reimbursable expenses allowed under the Agreement. All the Subrecipient’s expenses are contained in the budget in **Exhibit A**. The City is not obligated to pay the Subrecipient for any other fees, costs, expenses, or charges of any nature that may be incurred and paid by the Subrecipient in performing services under this Agreement including but not limited to personnel, benefits, contract labor, overhead, administrative costs, operating costs, supplies, equipment, and out-of-pocket expenses.

5.3. Invoicing: The Subrecipient shall provide the City with a monthly invoice in a format and with a level of detail acceptable to the City. Invoices shall be accompanied by documentation of expenses for which reimbursement is sought as well as other supporting documentation required by the City. The City's Prompt Payment Ordinance, §§ 20-107 to 20-118, D.R.M.C., applies to invoicing and payment under this Agreement. Funds will be disbursed in appropriate monthly increments, upon receipt and approval of Subrecipient's monthly invoices and any City required budget documents or reports. The Subrecipient's invoices will include all appropriate supporting documentation that may be pertinent to the services performed or expenses incurred and paid under this Agreement. The Subrecipient's invoices must identify costs and expenses incurred and paid in accordance with the budget contained in **Exhibit A**. Funds payable by the City hereunder shall be distributed to the Subrecipient on a reimbursement basis only for work performed and expenses incurred and paid during the prior month. Invoices submitted for payment must be received by the Agency as detailed in the attached **Exhibit A** or as directed. Invoices submitted for services rendered that are submitted after such deadline are untimely and must be submitted separately to be considered for payment. Payment for such late-submitted invoices shall be made only upon a showing of good cause for the late submission. Timesheets must reflect the amount of time, in hours and quarter-hours, attributable to each activity performed under this Agreement. If the Subrecipient allocates allowable costs to more than one grant, project, or contract, then timesheets must further identify the allocation of allowable costs for each grant, project or contract.

5.4. Timesheets: Timesheets must reflect the amount of time, in hours and tenths of hours, attributable to each activity performed under this Agreement. The Subrecipient must not allocate costs billed to this Agreement to another federal award unless the City notifies the Subrecipient in writing that that the City has shifted costs that are allowable under two or more federal awards in accordance with existing federal statutes, regulations, or the terms and conditions of an applicable federal award. Each invoice requesting payment under this Agreement will contain the following certification, signed by an official who is authorized to legally bind the Subrecipient, which reads as follows: "By signing this report, I certify to the best of my knowledge and belief that this invoice is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of an applicable Federal award or the Federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812)."

5.5. Maximum Contract Amount

5.5.1. Notwithstanding any other provision of the Agreement, the City's maximum payment obligation will not exceed One Million Five Hundred Ninety-Nine Thousand Seven Hundred Fifty-Four Dollars (\$1,599,754.00) (the "Maximum Contract Amount"). The City is not obligated to execute an Agreement or any amendments for any further services, including

any services performed by the Subrecipient beyond that specifically described in **Exhibit A**. Any services performed beyond those in **Exhibit A** or performed outside the Term are performed at the Subrecipient's risk and without authorization under the Agreement.

- 5.5.2.** The City's payment obligation, whether direct or contingent, extends only to funds appropriated annually by the Denver City Council, paid into the Treasury of the City, and encumbered for the purpose of the Agreement. The City does not by this Agreement irrevocably pledge present cash reserves for payment or performance in future fiscal years. The Agreement does not and is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

6. PROGRAM RESTRICTIONS

- 6.1. Funding Contingency:** If federal funds or non-City funds constitute all or some of the funding under this Agreement, the City's obligation to pay the Subrecipient shall be contingent upon such non-City funding continuing to be made available for payment. Payments to be made pursuant to this Agreement shall be made only from non-City grant funds, and the City's liability for such payments shall be limited to the amount remaining of such grant funds. If state, federal or other funds are not appropriated, or otherwise become unavailable to fund this Agreement, the City may, upon written notice, terminate this Agreement, in whole or in part, without incurring further liability. The City will, however, pay for services and goods that are delivered and accepted prior to the effective date of notice of termination, and this termination shall otherwise be treated as if this Agreement were terminated in the public interest.
- 6.2. Recovery of Incorrect Payments:** If, because of any audit or program review relating to the performance of the Subrecipient or its officers, agents or employees under this Agreement, there are any irregularities or deficiencies in any audit or review, then the Subrecipient will, upon notice from the City, correct all identified irregularities or deficiencies within the time frames designated in the City's written notice. If corrections are not made by such date, then the final resolution of identified deficiencies or disputes shall be deemed to be resolved in the City's favor unless the Subrecipient obtains a resolution in its favor from the responsible official conducting the audit or review. In any event, the Subrecipient shall be responsible to indemnify and save harmless the City, its officers, agents, and employees, from and against all disallowed costs. The foregoing in no way limits the Subrecipient's obligation to reimburse the City for any costs or expenses paid under this Agreement that have been determined to be unallowable or disallowed by the Federal Government, State Government, or the City in accordance with applicable federal laws, state laws, or the Charter, ordinances, rules, regulations, policies, and Executive Orders of the City and County of Denver. The closeout of a federal award does not affect the right of the federal agency, the State of Colorado, or the City to disallow costs and recover funds because of a later audit or other review.
- 6.3. Matching Funds:** As required by federal, state, or local law, the Subrecipient shall provide eligible matching funds or in-kind contributions as provided in **Exhibit A**. Prior to using federal funds as a source of matching funds, the Subrecipient shall require approval from the City and the applicable awarding agency. The Subrecipient shall report in writing to the City all contributions

to be applied toward any non-federal match required under this Agreement (“Match Report(s)”). Match Reports shall be submitted every four (4) months from the Term start date and attached to that month’s invoice. The Subrecipient shall be responsible for documenting and maintaining accurate records to the reasonable satisfaction of the City and provide documentation that supports the match consistent with the federal guidelines found in 24 C.F.R. 578, *et seq.* Such contributions shall be recorded on a Match Report and submitted to the City and shall be available along with back up documentation for review at the request of the City. Match Reports shall list all contributions provided by the Subrecipient toward the match requirement and shall list the total amount of contributions made as of the date of the Match Report. The City reserves the right to withhold, adjust and/or reallocate final payments under this Agreement if it determines that the required match is not being met to the City’s satisfaction or the current spending is inconsistent with amounts of non-federal match contributions. The Subrecipient’s Match Report shall be certified to be correct by an authorized representative of the Subrecipient and shall reference the Agreement number as designated below on the City’s signature page.

- 6.4. Closeout Procedures:** The Subrecipient shall comply with all contract closeout procedures directed by the Director to be performed under this Agreement for final reimbursement, including but not limited to final review of payments, invoices, referrals, and required reporting documents, including close-out signature. To complete closeout, the Subrecipient shall timely provide the City with all deliverables, including documentation, and the Subrecipient’s final reimbursement request or invoice.
- 6.5. Client Records:** The use or disclosure by any party of any information concerning a client for any purpose not directly connected with the administration of the applicable award or this Agreement is prohibited except on written consent of the client, their attorney, or parent or guardian.
- 6.6. Provisions Required in Subcontracts:** If the Subrecipient enters into any subcontracts or subawards with other individuals or entities and pays those individuals or entities for such goods or services with federal or state funds, the Subrecipient shall include provisions in its agreements regarding the federal and state laws identified or referenced in this Agreement. The Subrecipient retains full responsibility for complying with the terms of this Agreement, whether the services are provided directly or by a subcontractor, and for including all relevant terms in its subcontracts or subawards.
- 6.7. Grievance Policy:** The Parties desire to ensure that clients are being adequately informed over pending actions concerning their continued participation in the program or activity provided by the Subrecipient. Also, clients must be allowed adequate opportunity to communicate dissatisfaction with the facilities or Services offered by the Subrecipient. To satisfy this requirement, the Subrecipient agrees to provide a written “Grievance Policy” as a mechanism to provide opportunities for the City and its clients to meaningfully communicate problems, dissatisfaction, and concerns and to establish procedures for resolution of grievances. The policy must be communicated to clients upon their initial receipt of Services. The Subrecipient agrees that a formal “Grievance Policy” will be adopted by its governing body and submitted to the

Director for approval at the Director's discretion on or before the commencement of the term of this Agreement. Failure to provide an acceptable Grievance Policy shall constitute a material breach of this Agreement.

7. **EXAMINATION OF RECORDS AND AUDITS**: Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access, and the right to examine, copy and retain copies, at City's election in paper or electronic form, any pertinent books, documents, papers and records related to the Subrecipient's performance pursuant to this Agreement, provision of any goods or services to the City, and any other transactions related to this Agreement. The Subrecipient shall cooperate with City representatives and City representatives shall be granted access to the foregoing documents and information during reasonable business hours and until the latter of five (5) years after the final payment under the Agreement or expiration of the applicable statute of limitations. When conducting an audit of this Agreement, the City Auditor shall be subject to government auditing standards issued by the United States Government Accountability Office by the Comptroller General of the United States, including with respect to disclosure of information acquired during the course of an audit. No examination of records and audits pursuant to this paragraph shall require the Subrecipient to make disclosures in violation of state or federal privacy laws. The Subrecipient shall at all times comply with D.R.M.C. 20-276.
8. **REPORTS**: The Subrecipient shall provide the Agency with the reports described in **Exhibit A** in such a format as may be designated by the City. Reports may be submitted electronically by disk or e-mail, followed by hard copy transmittal. In addition, the Subrecipient shall disclose, in a timely manner, in writing to the City and the federal or state awarding agency, all violations of federal or state criminal law involving fraud, bribery, or gratuity violations potentially affecting the applicable award. The City, the State of Colorado, or the relevant federal agency may impose any penalties for noncompliance allowed under 2 C.F.R. Part 180, 2 C.F.R. § 200.338, and 31 U.S.C. 3321, which may include, without limitation, suspension, or debarment.
9. **PERFORMANCE MONITORING/INSPECTION**: The Subrecipient shall permit the Director to monitor and review the Subrecipient's performance under this Agreement. The Subrecipient shall make available to the City for inspection all files, records, reports, policies, minutes, materials, books, documents, papers, invoices, accounts, payrolls and other data, whether in hard copy or electronic format, used in the performance of any of the services required hereunder or relating to any matter covered by this Agreement to coordinate the performance of services by the Subrecipient in accordance with the terms of this Agreement. All such monitoring and inspection shall be performed in a manner that will not unduly interfere with the services to be provided under this Agreement. The Subrecipient agrees that the reporting and record keeping requirements specified in this Agreement are a material element of performance and that if, in the opinion of the City, the Subrecipient's record keeping practices and/or reporting to the City are not conducted in a timely and satisfactory manner, the City may withhold part or all payments under this Agreement until such deficiencies have been remedied. In the event of a withheld payment, the City agrees to notify the Subrecipient of the deficiencies that must be corrected in order to bring about the release of the withheld payment.

10. STATUS OF SUBRECIPIENT: The Subrecipient is an independent contractor retained to perform professional or technical services for limited periods of time. Neither the Subrecipient nor any of its employees are employees or officers of the City under Chapter 18 of the Denver Revised Municipal Code, or for any purpose whatsoever. The Subrecipient, regardless of reference or title herein, is a subrecipient as defined in 2 C.F.R. Part 200, *et seq.* Unless the context clearly requires otherwise, any reference herein to a “subcontractor” shall also be read to include Subrecipient’s assigns, volunteers, employees, subgrantees, subconsultants, and other third parties performing all or part of the services under this Agreement or under a separate agreement with the Subrecipient.

11. TERMINATION

11.1. The City has the right to terminate the Agreement with cause upon written notice effective immediately, and without cause upon thirty (30) days prior written notice to the Subrecipient. However, nothing gives the Subrecipient the right to perform services under the Agreement beyond the time when its services become unsatisfactory to the Director.

11.2. Notwithstanding the preceding paragraph, the City may terminate the Agreement if the Subrecipient or any of its officers or employees are convicted, plead *nolo contendere*, enter into a formal agreement in which they admit guilt, enter a plea of guilty or otherwise admit culpability to criminal offenses of bribery, kickbacks, collusive bidding, bid-rigging, antitrust, fraud, undue influence, theft, racketeering, extortion or any offense of a similar nature in connection with the Subrecipient’s business. Termination for the reasons stated in this paragraph is effective upon receipt of notice.

11.3. If the funding agreement between the City and the applicable state or federal funding entity is terminated for any reason, the total amount of compensation to be paid to the Subrecipient under this Agreement shall be reduced effective as of the date of termination of the funding agreement, and the Parties will modify or terminate this Agreement as appropriate. Additionally, if the Subrecipient fails to comply with any terms of the applicable federal or state award, then the City may, in its discretion or at the direction of the funding entity, terminate this entire Agreement in whole or in part.

11.4. The City is entering into this Agreement to serve the public interest. If this Agreement ceases to further the City’s public interest, the City, in its sole discretion, may terminate this Agreement, in whole or in part, for convenience by giving written notice to the Contractor.

11.5. Upon termination of the Agreement, with or without cause, the Subrecipient shall have no claim against the City by reason of, or arising out of, incidental or relating to termination, except for compensation for work duly requested and satisfactorily performed as described in the Agreement.

11.6. If the Agreement is terminated, the City is entitled to and will take possession of all materials, equipment, tools, and facilities it owns that are in the Subrecipient’s possession, custody, or control by whatever method the City deems expedient. The Subrecipient shall deliver all documents in any form that were prepared under the Agreement and all other items, materials and documents that have been paid for by the City to the City. These documents and materials are

the property of the City. The Subrecipient shall mark all copies of work product that are incomplete at the time of termination “DRAFT-INCOMPLETE.”

12. REMEDIES FOR NONCOMPLIANCE: If the Subrecipient does not correct an identified default within the specified timeframe, then the City may impose any or all the following remedial actions, in addition to all other remedial actions authorized by law:

- 12.1.** Withhold any or all payments to the Subrecipient, in whole or in part, until the necessary services or corrections in performance are satisfactorily completed during the authorized period to cure default;
- 12.2.** Deny all requests for payment and/or demand reimbursement from the Subrecipient of all payments previously made to the Subrecipient for those services or deliverables that have not been satisfactorily performed and which, due to circumstances caused by or within the control of the Subrecipient, cannot be performed or if performed would be of no value to the Program. Denial of requests for payment and demands for reimbursement shall be reasonably related to the amount of work or deliverables lost to the City;
- 12.3.** Deny in whole or in part any application or proposal from the Subrecipient for funding of the Program for a subsequent program year regardless of source of funds;
- 12.4.** Reduce any application or proposal from the Subrecipient for refunding for the Program for a subsequent program year by any percentage or amount that is less than the total amount of compensation provided in this Agreement regardless of source of funds;
- 12.5.** Refuse to award the Subrecipient, in whole or in part, all additional funds for expanded or additional services under the Program;
- 12.6.** Deny or modify any future awards, grants, or contracts of any nature by the City regardless of funding source for the Subrecipient;
- 12.7.** Modify, suspend, remove, or terminate the Agreement, in whole or in part. If the Agreement, or any portion thereof, is modified, suspended, removed, or terminated, the Subrecipient shall cooperate with the City in the transfer of the Services as reasonably designated by the City; and/or
- 12.8.** If this Agreement is terminated as a result of a default by the Subrecipient, the City may procure, upon such terms and conditions as the City deems appropriate, services similar to those terminated, and the Subrecipient shall be liable to the City for any damages arising from obtaining similar services.

13. WHEN RIGHTS AND REMEDIES NOT WAIVED: In no event will any payment or other action by the City constitute or be construed to be a waiver by the City of any breach of covenant or default that may then exist on the part of the Subrecipient. No payment, other action, or inaction by the City when any breach or default exists will impair or prejudice any right or remedy available to it with respect to any breach or default. No assent, expressed or implied, to any breach of any term of the Agreement constitutes a waiver of any other breach.

14. INSURANCE

- 14.1. General Conditions:** The Subrecipient agrees to secure, at or before the time of execution of this Agreement, the following insurance covering all operations, goods or

services provided pursuant to this Agreement. The Subrecipient shall keep the required insurance coverage in force at all times during the term of the Agreement, including any extension thereof, and during any warranty period. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as "A-VIII" or better. Each policy shall require notification to the City in the event any of the required policies be canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the parties identified in the Notices section of this Agreement. Such notice shall reference the City contract number listed on the signature page of this Agreement. Said notice shall be sent thirty (30) days prior to such cancellation or nonrenewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior. If such written notice is unavailable from the insurer, the Subrecipient shall provide written notice of cancellation, non-renewal and any reduction in coverage to the parties identified in the Notices section by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s) and referencing the City's contract number. The Subrecipient shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the Subrecipient. The Subrecipient shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

- 14.2. Proof of Insurance:** The Subrecipient may not commence services or work relating to this Agreement prior to placement of coverages required under this Agreement. The Subrecipient certifies that the certificate of insurance attached as **Exhibit** __ preferably an ACORD form, complies with all insurance requirements of this Agreement. The City requests that the City's contract number be referenced on the certificate of insurance. The City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of the Subrecipient's breach of this Agreement or of any of the City's rights or remedies under this Agreement. The City's Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements.
- 14.3. Additional Insureds:** For Commercial General Liability, Auto Liability and Excess Liability/Umbrella (if required), the Subrecipient and subcontractor's insurer(s) shall include the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.
- 14.4. Waiver of Subrogation:** For all coverages required under this Agreement, the Subrecipient's insurer shall waive subrogation rights against the City.
- 14.5. Subcontractors and Subawardees:** The Subrecipient shall confirm and document that all subcontractors and/or subawardees (including independent contractors, consultants, suppliers or other entities providing goods or services required by this Agreement) procure and maintain coverage as approved by the Subrecipient and appropriate to their respective

primary business risks considering the nature and scope of services provided.

- 14.6. Workers' Compensation and Employer's Liability Insurance:** The Subrecipient shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims.
- 14.7. Commercial General Liability:** The Subrecipient shall maintain a Commercial General Liability insurance policy with minimum limits of \$1,000,000 for each bodily injury and property damage occurrence, \$2,000,000 products and completed operations aggregate (if applicable), and \$2,000,000 policy aggregate. Policy shall not contain an exclusion for sexual abuse, molestation or misconduct.
- 14.8. Automobile Liability:** The Subrecipient shall maintain Automobile Liability with minimum limits of \$1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in performing services under this Agreement.
- 14.9. Commercial Crime including Client Coverage:** The Subrecipient shall maintain minimum limits of \$1,000,000 in commercial crime coverage. Coverage shall include theft of City's money, securities, or valuable property by the Subrecipient's employees, including any extended definition of employee. Policy shall include Client Coverage. The City and County of Denver shall be named as Loss Payee as their interests may appear.
- 14.10. Cyber Liability:** The Subrecipient shall maintain Cyber Liability coverage with minimum limits of \$1,000,000 per occurrence and \$1,000,000 policy aggregate covering claims involving privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion and network security. If Claims Made, the policy shall be kept in force, or a Tail policy placed, for three (3) years.

15. DEFENSE AND INDEMNIFICATION

- 15.1.** The Subrecipient agrees to defend, indemnify, reimburse and hold harmless City, its appointed and elected officials, agents and employees for, from and against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the work performed under this Agreement ("Claims"), unless such Claims have been specifically determined by the trier of fact to be the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify City for any acts or omissions of the Subrecipient or its subcontractors either passive or active, irrespective of fault, including City's concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of City.
- 15.2.** The Subrecipient's duty to defend and indemnify City shall arise at the time written notice of the Claim is first provided to City regardless of whether Claimant has filed suit on the Claim. The Subrecipient's duty to defend and indemnify City shall arise even if City is the only party sued by claimant and/or claimant alleges that City's negligence or willful misconduct was the sole cause of claimant's damages.

- 15.3.** The Subrecipient shall defend any and all Claims which may be brought or threatened against City and shall pay on behalf of City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of City will be in addition to any other legal remedies available to City and will not be the City's exclusive remedy.
- 15.4.** The Subrecipient shall indemnify, save, and hold harmless the City, against any and all costs, expenses, claims, damages, liabilities, and other amounts (including attorneys' fees and costs) incurred by the City in relation to any claim that any work or deliverable infringes a patent, copyright, trademark, trade secret, or any other intellectual property right.
- 15.5.** Insurance coverage requirements specified in this Agreement in no way lessen or limit the liability of the Subrecipient under the terms of this indemnification obligation. The Subrecipient is responsible to obtain, at its own expense, any additional insurance that it deems necessary for the City's protection.
- 15.6.** This defense and indemnification obligation shall survive the expiration or termination of this Agreement.
- 16. COLORADO GOVERNMENTAL IMMUNITY ACT:** In relation to the Agreement, the City is relying upon and has not waived the monetary limitations and all other rights, immunities and protection provided by the Colorado Governmental Act, C.R.S. § 24-10-101, *et seq.*
- 17. TAXES, CHARGES AND PENALTIES:** The City is not liable for the payment of taxes, late charges or penalties of any nature, except for any additional amounts that the City may be required to pay under the City's prompt payment ordinance D.R.M.C. § 20-107, *et seq.* The Subrecipient shall promptly pay when due, all taxes, bills, debts and obligations it incurs performing the services under the Agreement and shall not allow any lien, mortgage, judgment or execution to be filed against City property.
- 18. ASSIGNMENT; SUBCONTRACTING:** The Subrecipient shall not voluntarily or involuntarily assign any of its rights or obligations, or subcontract or subaward performance obligations, under this Agreement without obtaining the Director's prior written consent. Any assignment or subcontracting without such consent will be ineffective and void and will be cause for termination of this Agreement by the City. The Director has sole and absolute discretion whether to consent to any assignment or subcontracting, or to terminate the Agreement because of unauthorized assignment or subcontracting. In the event of any subcontracting or unauthorized assignment: (i) the Subrecipient shall remain responsible to the City; and (ii) no contractual relationship shall be created between the City and any subconsultant, subcontractor, subawardee, or assign.
- 19. INUREMENT:** The rights and obligations of the Parties to the Agreement inure to the benefit of and shall be binding upon the Parties and their respective successors and assigns, provided assignments are consented to in accordance with the terms of the Agreement.
- 20. NO THIRD-PARTY BENEFICIARY:** Enforcement of the terms of the Agreement and all rights of action relating to enforcement are strictly reserved to the Parties. Nothing contained in the Agreement gives or allows any claim or right of action to any third person or entity. Any person or entity other

than the City or the Subrecipient receiving services or benefits pursuant to the Agreement is an incidental beneficiary only.

21. NO AUTHORITY TO BIND CITY TO CONTRACTS: The Subrecipient lacks any authority to bind the City on any contractual matters. Final approval of all contractual matters that purport to obligate the City must be executed by the City in accordance with the City's Charter and the Denver Revised Municipal Code.

22. SEVERABILITY: Except for the provisions of the Agreement requiring appropriation of funds and limiting the total amount payable by the City, if a court of competent jurisdiction finds any provision of the Agreement or any portion of it to be invalid, illegal, or unenforceable, the validity of the remaining portions or provisions will not be affected, if the intent of the Parties can be fulfilled.

23. CONFLICT OF INTEREST

23.1. No employee of the City shall have any personal or beneficial interest in the services or property described in the Agreement. The Subrecipient shall not hire, or contract for services with, any employee or officer of the City that would be in violation of the City's Code of Ethics, D.R.M.C. § 2-51, *et seq.*, or the Charter §§ 1.2.8, 1.2.9, and 1.2.12.

23.2. The Subrecipient shall not engage in any transaction, activity or conduct that would result in a conflict of interest under the Agreement. The Subrecipient represents that it has disclosed any and all current or potential conflicts of interest. A conflict of interest shall include transactions, activities or conduct that would affect the judgment, actions or work of the Subrecipient by placing the Subrecipient's own interests, or the interests of any party with whom the Subrecipient has a contractual arrangement, in conflict with those of the City. The City, in its sole discretion, will determine the existence of a conflict of interest and may terminate the Agreement if it determines a conflict exists, after it has given the Subrecipient written notice describing the conflict.

24. NOTICES: All notices required by the terms of the Agreement must be hand delivered, sent by overnight courier service, mailed by certified mail, return receipt requested, or mailed via United States mail, postage prepaid, if to the Subrecipient at the address first above written, and if to the City at:

Chief Housing Officer, Department of Housing Stability
201 W. Colfax Ave.
Denver, CO 80202

With a copy to:

Denver City Attorney's Office
1437 Bannock St., Room 353
Denver, Colorado 80202

Notices hand delivered or sent by overnight courier are effective upon delivery. Notices sent by certified mail are effective upon receipt. Notices sent by mail are effective upon deposit with the U.S. Postal Service. The Parties may designate substitute addresses where or persons to whom notices are to be

mailed or delivered. However, these substitutions will not become effective until actual receipt of written notification.

23. NO EMPLOYMENT OF ILLEGAL ALIENS TO PERFORM WORK UNDER THE AGREEMENT

23.1. This Agreement is subject to Division 5 of Article IV of Chapter 20 of the Denver Revised Municipal Code, and any amendments (the “Certification Ordinance”).

23.2. The Subrecipient certifies that:

23.2.1. At the time of its execution of this Agreement, it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement.

23.2.2. It will participate in the E-Verify Program, as defined in § 8-17.5-101(3.7), C.R.S., to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

23.3. The Subrecipient also agrees and represents that:

23.3.1. It shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

23.3.2. It shall not enter into a contract with a subconsultant or subcontractor that fails to certify to the Subrecipient that it shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

23.3.3. It has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement, through participation in the E-Verify Program.

23.3.4. It is prohibited from using the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligations under the Agreement, and it is required to comply with any and all federal requirements related to use of the E-Verify Program including, by way of example, all program requirements related to employee notification and preservation of employee rights.

23.3.5. If it obtains actual knowledge that a subconsultant or subcontractor performing work under the Agreement knowingly employs or contracts with an illegal alien, it will notify such subconsultant or subcontractor and the City within three (3) days. The Subrecipient shall also terminate such subconsultant or subcontractor if within three (3) days after such notice the subconsultant or subcontractor does not stop employing or contracting with the illegal alien, unless during such three-day period the subconsultant or subcontractor provides information to establish that the subconsultant or subcontractor has not knowingly employed or contracted with an illegal alien.

23.3.6. It will comply with any reasonable request made in the course of an investigation by the Colorado Department of Labor and Employment under authority of § 8-17.5-102(5), C.R.S., or the City Auditor, under authority of D.R.M.C. 20-90.3.

23.4. The Subrecipient is liable for any violations as provided in the Certification Ordinance. If the Subrecipient violates any provision of this section or the Certification Ordinance, the City may terminate this Agreement for a breach of the Agreement. If the Agreement is so terminated,

the Subrecipient shall be liable for actual and consequential damages to the City. Any such termination of a contract due to a violation of this section or the Certification Ordinance may also, at the discretion of the City, constitute grounds for disqualifying the Subrecipient from submitting bids or proposals for future contracts with the City.

- 24. DISPUTES:** All disputes between the City and the Subrecipient arising out of or regarding the Agreement will be resolved by administrative hearing pursuant to the procedure established by D.R.M.C. § 56-106(b)-(f). For the purposes of that administrative procedure, the City official rendering a final determination shall be the Director as defined in this Agreement.
- 25. GOVERNING LAW; VENUE:** The Agreement will be construed and enforced in accordance with applicable federal law, the laws of the State of Colorado, and the Charter, Revised Municipal Code, ordinances, regulations and Executive Orders of the City and County of Denver, which are expressly incorporated into the Agreement. Unless otherwise specified, any reference to statutes, laws, regulations, charter or code provisions, ordinances, executive orders, or related memoranda, includes amendments or supplements to same. Venue for any legal action relating to the Agreement will be in the District Court of the State of Colorado, Second Judicial District (Denver District Court).
- 26. NO DISCRIMINATION IN EMPLOYMENT:** In connection with the performance of work under the Agreement, the Subrecipient may not refuse to hire, discharge, promote or demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, gender identity or gender expression, marital status, or physical or mental disability. The Subrecipient shall insert the foregoing provision in all subcontracts and subawards.
- 27. NO DISCRIMINATION IN PROGRAM ASSISTANCE:** In connection with the performance of work under the Agreement, the Subrecipient may not, in providing program assistance, discriminate against a program beneficiary or prospective program beneficiary on the basis of race, color, religion, national origin, gender, age, military status, sexual orientation, gender identity or gender expression, marital status, or physical or mental disability. The Subrecipient shall insert the foregoing provision in all applicable subcontracts and subawards.
- 28. LIMITED ENGLISH PROFICIENCY:** Executive Order 13166, Improving Access to Services for persons with Limited English Proficiency, and resulting agency guidance, states national origin discrimination includes discrimination on the basis of limited English proficiency (“LEP”). To ensure compliance with the Omnibus Crime Control and Safe Streets Act of 1968 and Title VI of the Civil Rights Act of 1964, the Subrecipient must take reasonable steps to ensure that LEP persons have meaningful access to its programs, services, and activities. The Subrecipient shall not charge program participants for the use of an oral or written translator or interpretation services. The Subrecipient shall comply with the City’s requirements concerning the provision of interpreter services under this Agreement.
- 29. FAITH BASED ORGANIZATIONS AND SECTARIAN ACTIVITIES:** The Subrecipient shall not engage in inherently religious activities, such as worship, religious instruction, or proselytizing as part of the programs or services funded under this Agreement.

- 30. COMPLIANCE WITH ALL LAWS:** The Subrecipient shall perform or cause to be performed all services in full compliance with all applicable laws, rules, regulations and codes of the United States, the State of Colorado; and with the Charter, ordinances, rules, regulations and Executive Orders of the City and County of Denver.
- 31. LICENSES, PERMITS, AND OTHER AUTHORIZATIONS:** The Subrecipient shall secure, prior to the Term, and shall maintain, at its sole expense, all licenses, certifications, permits, and other authorizations required to perform its obligations under this Agreement.
- 32. PROHIBITED TERMS:** Any term included in this Agreement that requires the City to indemnify or hold the Subrecipient harmless; requires the City to agree to binding arbitration; limits the Subrecipient's liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any way shall be *void ab initio*.
- 33. LEGAL AUTHORITY:** The Subrecipient represents and warrants that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into the Agreement. Each person signing and executing the Agreement on behalf of the Subrecipient represents and warrants that he has been fully authorized by the Subrecipient to execute the Agreement on behalf of the Subrecipient and to validly and legally bind the Subrecipient to all the terms, performances and provisions of the Agreement. The City shall have the right, in its sole discretion, to either temporarily suspend or permanently terminate the Agreement if there is a dispute as to the legal authority of either the Subrecipient or the person signing the Agreement to enter into the Agreement.
- 34. NO CONSTRUCTION AGAINST DRAFTING PARTY:** The Parties and their respective counsel have had the opportunity to review the Agreement, and the Agreement will not be construed against any Party merely because any provisions of the Agreement were prepared by a particular Party.
- 35. EXHIBITS INCORPORATED BY REFERENCE:** The exhibits attached hereto, as now existing and as may be amended, are hereby expressly incorporated herein by this reference and made a part of this Agreement with the same effect as if set forth in the body hereof. All references to this Agreement shall include the exhibits.
- 36. ORDER OF PRECEDENCE:** In the event of any conflicts or ambiguity between the language of the Agreement and its attachments and exhibits, the language of the Agreement controls, provided that, no term or condition herein supersedes applicable federal or state regulations or law.
- 37. INTELLECTUAL PROPERTY RIGHTS**
- 37.1.** “**Work Product**” means the tangible and intangible results of the goods delivered or services performed pursuant to this Agreement, whether finished or unfinished, including drafts. Work Product includes, but is not limited to, documents, text, software (including source code), research, reports, proposals, specifications, plans, notes, studies, data, images, photographs, negatives, pictures, drawings, designs, models, surveys, maps, materials, ideas, concepts, know-how, information, and any other results of the Work. Work Product does not include any material that was developed prior to the Term that is used, without modification, in the performance of services or the delivery of goods.

- 37.2. Copyrights:** To the extent that the Work Product (or any portion of the Work Product) would not be considered works made for hire under the U.S. Copyright Act, 17 U.S.C. §101, et seq., and applicable law, the Subrecipient hereby assigns to the City, the entire right, title, and interest in and to copyrights in all Work Product and all works based upon, derived from, or incorporating the Work Product; all copyright applications, registrations, extensions, or renewals relating to all Work Product and all works based upon, derived from, or incorporating the Work Product; and all moral rights or similar rights with respect to the Work Product throughout the world. To the extent that the Subrecipient cannot make any of the assignments required by this section, the Subrecipient hereby grants to the City a perpetual, irrevocable, royalty-free license to use, modify, copy, publish, display, perform, transfer, distribute, sell, and create derivative works of the Work Product and all works based upon, derived from, or incorporating the Work Product by all means and methods and in any format now known or invented in the future. The City may assign and license its rights under this license.
- 37.3. Patents:** In addition, the Subrecipient grants to the City (and to recipients of Work Product distributed by or on behalf of the City) a perpetual, worldwide, no-charge, royalty-free, irrevocable patent license to make, have made, use, distribute, sell, offer for sale, import, transfer, and otherwise utilize, operate, modify and propagate the contents of the Work Product. Such license applies only to those patent claims licensable by the Subrecipient that are necessarily infringed by the Work Product alone, or by the combination of the Work Product with anything else used by the City.
- 37.4. Assignments and Assistance:** Whether or not the Subrecipient is under contract with the City at the time, the Subrecipient shall execute applications, assignments, and other documents, and shall render all other reasonable assistance requested by the City, to enable the City to secure patents, copyrights, licenses and other intellectual property rights related to the Work Product. The Parties intend the Work Product to be works made for hire. The Subrecipient assigns to the City and its successors and assigns, the entire right, title, and interest in and to all causes of action, either in law or in equity, for past, present, or future infringement of intellectual property rights related to the Work Product and all works based on, derived from, or incorporating the Work Product.
- 37.5. Exclusive Property of the City:** Except to the extent specifically provided elsewhere in this Agreement, any pre-existing City records, software, research, reports, studies, photographs, negatives or other documents, drawings, models, materials, data and information shall be the exclusive property of the City (collectively, "City Materials"). The City shall not use, willingly allow, cause or permit Work Product or City Materials to be used for any purpose other than the performance of the Subrecipient's obligations in this Agreement without the prior written consent of the City. Upon termination of this Agreement for any reason, the Subrecipient shall provide all Work Product and City Materials to the City in a form and manner as directed by the City.
- 37.6. Exclusive Property of the Subrecipient:** The Subrecipient retains the exclusive rights, title, and ownership to any and all pre-existing materials owned or licensed to the Subrecipient including, but not limited to, all pre-existing software, licensed products, associated source code,

machine code, text images, audio and/or video, and third-party materials, delivered by the Subrecipient under this Agreement, whether incorporated in a deliverable or necessary to use a deliverable (collectively, “Subrecipient Property”). Subrecipient Property shall be licensed to the City as set forth in this Agreement or a City approved license agreement: (i) entered into as exhibits to this Agreement, (ii) obtained by the City from the applicable third-party vendor, or (iii) in the case of open source software, the license terms set forth in the applicable open source license agreement.

37.7. Federal License: The Subrecipient acknowledges that pursuant to federal law, the Federal Government may reserve ownership or a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, all copyrighted material and all material which can be copyrighted under this Agreement.

37.8. Restrictions on City Intellectual Property: The Subrecipient will not use, reproduce, transmit, copy, distribute, alter, modify, register, or incorporate any registered or unregistered trademark or service mark, logo, seal, flag, official insignia, name, icon, copyright, patent, or domain name of the Agency or the City without, in each case, the prior written permission of the Director and the City’s Director of Marketing, or their designated representatives. Upon receipt of such permission, the Subrecipient shall fully coordinate all logo use with the City’s Director of Marketing or, if and as directed, with a designated employee of the Agency.

38. SURVIVAL OF CERTAIN PROVISIONS: The terms of the Agreement and any exhibits and attachments that by reasonable implication contemplate continued performance, rights, or compliance beyond expiration or termination of the Agreement survive the Agreement and will continue to be enforceable. Without limiting the generality of this provision, the Subrecipient’s obligations to provide insurance and to indemnify the City will survive for a period equal to any and all relevant statutes of limitation, plus the time necessary to fully resolve any claims, matters, or actions begun within that period.

39. ADVERTISING AND PUBLIC DISCLOSURE: The Subrecipient shall not include any reference to the Agreement or to services performed pursuant to the Agreement in any of the Subrecipient’s advertising or public relations materials without first obtaining the written approval of the Director. Any oral presentation or written materials related to services performed under the Agreement will be limited to services that have been accepted by the City. The Subrecipient shall notify the Director in advance of the date and time of any presentation. Nothing in this provision precludes the transmittal of any information to City officials.

40. CONFIDENTIAL INFORMATION

40.1. “Confidential Information” means all information or data disclosed in written or machine recognizable form and is marked or identified at the time of disclosure as being confidential, proprietary, or its equivalent. Each of the Parties may disclose (a “Disclosing Party”) or permit the other Party (the “Receiving Party”) access to the Disclosing Party’s Confidential Information in accordance with the following terms. Except as specifically permitted in this Agreement or with the prior express written permission of the Disclosing Party, the Receiving Party shall not: (i) disclose, allow access to, transmit, transfer or otherwise make available any Confidential

Information of the Disclosing Party to any third party other than its employees, subcontractors, agents and consultants that need to know such information to fulfil the purposes of this Agreement, and in the case of non-employees, with whom it has executed a non-disclosure or other agreement which limits the use, reproduction and disclosure of the Confidential Information on terms that afford at least as much protection to the Confidential Information as the provisions of this Agreement; or (ii) use or reproduce the Confidential Information of the Disclosing Party for any reason other than as reasonably necessary to fulfil the purposes of this Agreement. This Agreement does not transfer ownership of Confidential Information or grant a license thereto. The City will retain all right, title, and interest in its Confidential Information.

- 40.2.** The Subrecipient shall provide for the security of Confidential Information and information which may not be marked, but constitutes personally identifiable information, HIPAA, CJIS, or other federally or state regulated information (“Regulated Data”) in accordance with all applicable laws, rules, policies, publications, and guidelines. If the Subrecipient receives Regulated Data outside the scope of the Agreement, it shall promptly notify the City.
- 40.3.** Confidential Information that the Receiving Party can establish: (i) was lawfully in the Receiving Party’s possession before receipt from the Disclosing Party; or (ii) is or becomes a matter of public knowledge through no fault of the Receiving Party; or (iii) was independently developed or discovered by the Receiving Party; or (iv) was received from a third party that was not under an obligation of confidentiality, shall not be considered Confidential Information under this Agreement. The Receiving Party will inform necessary employees, officials, subcontractors, agents, and officers of the confidentiality obligations under this Agreement, and all requirements and obligations of the Receiving Party under this Agreement shall survive the expiration or earlier termination of this Agreement.
- 40.4.** Nothing in this Agreement shall in any way limit the ability of the City to comply with any laws or legal process concerning disclosures by public entities. The Parties understand that all materials exchanged under this Agreement, including Confidential Information, may be subject to the Colorado Open Records Act., § 24-72-201, *et seq.*, C.R.S., (the “Act”). In the event of a request to the City for disclosure of confidential materials, the City shall advise the Subrecipient of such request in order to give the Subrecipient the opportunity to object to the disclosure of any of its materials which it marked as, or otherwise asserts is, proprietary or confidential. If the Subrecipient objects to disclosure of any of its material, the Subrecipient shall identify to the City the legal basis under the Act for any right to withhold. In the event of any action or the filing of a lawsuit to compel disclosure, the Subrecipient agrees to intervene in such action or lawsuit to protect and assert its claims of privilege against disclosure of such material or waive the same. If the matter is not resolved, the City will tender all material to the court for judicial determination of the issue of disclosure. The Subrecipient further agrees to defend, indemnify and save and hold harmless the City, its officers, agents and employees, from any claim, damages, expense, loss or costs arising out of the Subrecipient’s intervention to protect and assert its claim of privilege against disclosure under this Article, including but not limited to, prompt reimbursement to the City of all reasonable attorney fees, costs, and damages that the City may incur directly or may

be ordered to pay.

41. PERSONAL INFORMATION AND DATA PROTECTION

41.1. Compliance with Data Protection Laws: The Subrecipient shall comply with all applicable international, federal, state, local laws, rules, regulations, directives, and policies relating to data protection, use, collection, disclosures, processing, and privacy as they apply to the Subrecipient under this Agreement, including, without limitation, applicable industry standards or guidelines based on the data's classification relevant to the Subrecipient's performance hereunder and, when applicable, the most recent iterations of § 24-73-101, *et seq.*, C.R.S., IRS Publication 1075, the Health Information Portability and Accountability Act (HIPAA), the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy for all Criminal Justice Information, the Colorado Consumer Protection Act, and the Payment Card Industry Data Security Standard (PCI-DSS), (collectively, "Data Protection Laws"). If the Subrecipient becomes aware that it cannot reasonably comply with the terms or conditions contained herein due to a conflicting law or policy, the Subrecipient shall promptly notify the City.

41.2. Safeguarding Protected Information: "Protected Information" means data, regardless of form, that has been designated as private, proprietary, protected, or confidential by law, policy, or the City. Protected Information includes, but is not limited to, employment records, protected health information, student records, education records, criminal justice information, personal financial records, research data, trade secrets, classified government information, other regulated data, and personally identifiable information as defined by §§ 24-73-101(4)(b) and 6-1-716(1)(g)(I)(A), C.R.S., as amended. Protected Information shall not include public records that by law must be made available to the public pursuant to the Colorado Open Records Act § 24-72-201, *et seq.*, C.R.S. To the extent there is any uncertainty as to whether data constitutes Protected Information, the data in question shall be treated as Protected Information until a determination is made by the City or an appropriate legal authority. Unless the City provides security protection for the information it discloses to the Subrecipient, the Subrecipient shall implement and maintain reasonable security procedures and practices that are both appropriate to the nature of the Protected Information disclosed and that are reasonably designed to help safeguard Protected Information from unauthorized access, use, modification, disclosure, or destruction. Disclosure of Protected Information does not include disclosure to a third party under circumstances where the City retains primary responsibility for implementing and maintaining reasonable security procedures and practices appropriate to the nature of the Protected Information, and the City implements and maintains technical controls reasonably designed to safeguard Protected Information from unauthorized access, modification, disclosure, or destruction or effectively eliminate the third party's ability to access Protected Information, notwithstanding the third party's physical possession of Protected Information. If the Subrecipient has been contracted to maintain, store, or process personal information on the City's behalf, the Subrecipient is a "Third-Party Service Provider" as defined by § 24-73-103(1)(i), C.R.S.

- 41.3. Data Access and Integrity:** The Subrecipient shall implement and maintain all appropriate administrative, physical, technical, and procedural safeguards necessary and appropriate to ensure compliance with the standards, guidelines, and Data Protection Laws applicable to the Subrecipient's performance hereunder to ensure the security and confidentiality of all data. The Subrecipient shall protect against threats or hazards to the security or integrity of data; protect against unauthorized disclosure, access to, or use of any data; restrict access to data as necessary; and ensure the proper use of data. The Subrecipient shall not engage in "data mining" except as specifically and expressly required by law or authorized in writing by the City. All data and Protected Information shall be maintained and securely transferred in accordance with industry standards. Unless otherwise required by law, the City has exclusive ownership of all data it discloses under the Agreement, and the Subrecipient shall have no right, title, or interest in data obtained in connection with the services provided herein.
- 41.4. Data Retention, Transfer, Litigation Holds, and Destruction:** Using appropriate and reliable storage media, the Subrecipient shall regularly backup data used in connection with this Agreement and retain such backup copies consistent with the Subrecipient's data retention policies. Upon termination of the Agreement, the Subrecipient shall securely delete or securely transfer all data, including Protected Information, to the City in an industry standard format as directed by the City; however, this requirement shall not apply to the extent the Subrecipient is required by law to retain data, including Protected Information. Upon the City's request, the Subrecipient shall confirm the data disposed of, the date disposed of, and the method of disposal. With respect to any data in the Subrecipient's exclusive custody, the City may request that the Subrecipient preserve such data outside of its usual record retention policies. The City will promptly coordinate with the Subrecipient regarding the preservation and disposition of any data and records relevant to any current or anticipated litigation, and the Subrecipient shall continue to preserve the records until further notice by the City. Unless otherwise required by law or regulation, when paper or electronic documents are no longer needed, the Subrecipient shall destroy or arrange for the destruction of such documents within its custody or control that contain Protected Information by shredding, erasing, or otherwise modifying the Protected Information in the paper or electronic documents to make it unreadable or indecipherable.
- 41.5. Software and Computing Systems:** At its reasonable discretion, the City may prohibit the Subrecipient from the use of certain software programs, databases, and computing systems with known vulnerabilities to collect, use, process, store, or generate data and information, with Protected Information, received as a result of the Subrecipient's services under this Agreement. The Subrecipient shall fully comply with all requirements and conditions, if any, associated with the use of software programs, databases, and computing systems as reasonably directed by the City. The Subrecipient shall not use funds paid by the City for the acquisition, operation, or maintenance of software in violation of any copyright laws or licensing restrictions. The Subrecipient shall maintain commercially reasonable network security that, at a minimum, includes network firewalls, intrusion detection/prevention, enhancements or updates consistent with evolving industry standards, and periodic penetration testing.

- 41.6. Background Checks:** The Subrecipient will ensure that, prior to being granted access to Protected Information, the Subrecipient's agents, employees, subcontractors, volunteers, or assigns who perform work under this Agreement have all undergone and passed all necessary criminal background screenings, have successfully completed annual instruction of a nature sufficient to enable them to effectively comply with all data protection provisions of this Agreement and Data Protection Laws, and possess all qualifications appropriate to the nature of the employees' duties and the sensitivity of the data.
- 41.7. Subcontractors and Employees:** If the Subrecipient engages a subcontractor under this Agreement, the Subrecipient shall impose data protection terms that provide at least the same level of data protection as in this Agreement and to the extent appropriate to the nature of the services provided. The Subrecipient shall monitor the compliance with such obligations and remain responsible for its subcontractor's compliance with the obligations of this Agreement and for any of its subcontractors acts or omissions that cause the Subrecipient to breach any of its obligations under this Agreement. Unless the Subrecipient provides its own security protection for the information it discloses to a third party, the Subrecipient shall require the third party to implement and maintain reasonable security procedures and practices that are appropriate to the nature of the Protected Information disclosed and that are reasonably designed to protect it from unauthorized access, use, modification, disclosure, or destruction. Any term or condition within this Agreement relating to the protection and confidentiality of any disclosed data shall apply equally to both the Subrecipient and any of its subcontractors, agents, assigns, employees, or volunteers. Upon request, the Subrecipient shall provide the City copies of its record retention, data privacy, and information security policies.
- 41.8. Security Breach:** If the Subrecipient becomes aware of an unauthorized acquisition or disclosure of unencrypted data, in any form, that compromises the security, access, confidentiality, or integrity of Protected Information or data maintained or provided by the City ("Security Breach"), the Subrecipient shall notify the City in the most expedient time and without unreasonable delay. The Subrecipient shall fully cooperate with the City regarding recovery, lawful notices, investigations, remediation, and the necessity to involve law enforcement, as determined by the City and Data Protection Laws. The Subrecipient shall preserve and provide all information relevant to the Security Breach to the City; provided, however, the Subrecipient shall not be obligated to disclose confidential business information or trade secrets. The Subrecipient shall indemnify, defend, and hold harmless the City for any and all claims, including reasonable attorneys' fees, costs, and expenses incidental thereto, which may be suffered by, accrued against, charged to, or recoverable from the City in connection with a Security Breach or lawful notices.
- 41.9. Request for Additional Protections and Survival:** In addition to the terms contained herein, the City may reasonably request that the Subrecipient protect the confidentiality of certain Protected Information or other data in specific ways to ensure compliance with Data Protection Laws and any changes thereto. Unless a request for additional protections is mandated by a change in law, the Subrecipient may reasonably decline the City's request to provide additional

protections. If such a request requires the Subrecipient to take steps beyond those contained herein, the Subrecipient shall notify the City with the anticipated cost of compliance, and the City may thereafter, in its sole discretion, direct the Subrecipient to comply with the request at the City's expense; provided, however, that any increase in costs that would increase the Maximum Contract Amount must first be memorialized in a written amendment complying with City procedures. Obligations contained in this Agreement relating to the protection and confidentiality of any disclosed data shall survive termination of the Agreement, and the Subrecipient shall continue to safeguard all data for so long as the data remains confidential or protected and in the Subrecipient's possession or control.

- 42. TIME IS OF THE ESSENCE:** The Parties agree that in the performance of the terms, conditions, and requirements of this Agreement, time is of the essence.
- 43. PARAGRAPH HEADINGS:** The captions and headings set forth herein are for convenience of reference only and shall not be construed to define or limit the terms and provisions hereof.
- 44. CITY EXECUTION OF AGREEMENT:** The Agreement will not be effective or binding on the City until it has been fully executed by all required signatories of the City and County of Denver, and if required by Charter, approved by the City Council.
- 45. AGREEMENT AS COMPLETE INTEGRATION-AMENDMENTS:** The Agreement is the complete integration of all understandings between the Parties as to the subject matter of the Agreement. No prior, contemporaneous or subsequent addition, deletion, or other modification has any force or effect, unless embodied in the Agreement in writing. No oral representation by any officer or employee of the City at variance with the terms of the Agreement or any written amendment to the Agreement will have any force or effect or bind the City.
- 46. USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS:** The Subrecipient shall cooperate and comply with the provisions of Executive Order 94 and its Attachment A concerning the use, possession or sale of alcohol or drugs. Violation of these provisions or refusal to cooperate with implementation of the policy can result in contract personnel being barred from City facilities and from participating in City operations.
- 47. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS:** The Subrecipient consents to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature under the Agreement, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.
- 48. Attached Exhibits Incorporated:** The following attached exhibits are hereby incorporated into and made a material part of this Agreement: **Exhibit A**, Scope of Work; **Exhibit B**, Grant Award; **Exhibit C**, Homeless Definition; **Exhibit D**, Grant Program Provisions; **Exhibit E**, Certificate of Insurance; **Exhibit F**, Waivers and Alternative Requirements for the Emergency Solutions Grants Program Under

the CARES Act; **Exhibit G**, Federal Provisions; **Exhibit H**, Program Components Quick Reference; and **Exhibit I**, 24 CFR Parts 91 and 576.

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Contract Control Number: HOST-202158684
Contractor Name: THE DENVER RESCUE MISSION

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of:

SEAL

CITY AND COUNTY OF DENVER:

ATTEST:

By:

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

Attorney for the City and County of Denver

By:

By:

By:

Contract Control Number:
Contractor Name:

HOST-202158684
THE DENVER RESCUE MISSION

By:  _____
7EFD7B896A84418...

Name: Brad Meuli
(please print)

Title: Pres/CEO
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

SCOPE OF WORK
DEPARTMENT OF HOUSING STABILITY
The Denver Rescue Mission
HOST-202158684

I. INTRODUCTION

Period of Performance Start and End Dates: January 1, 2021 to September 30, 2021

Project Description:

The purpose of this contract agreement is to provide a U.S. Department of Housing and Urban Development, Emergency Solutions Grant-Corona Virus program (ESG-CV), passed through the State of Colorado, Department of Local Affairs, to the Department of Housing Stability (HOST) and sub awarded to The Denver Rescue Mission (DRM) for a nine month term to fund the amount of \$1,599,754. These funds will be provided to DRM, to be utilized for emergency shelter activities at the DRM Shelter locations.

This subaward is not for Research and Development.

Funding Source:	State of Colorado
Project Name:	State ESG-CV Emergency Shelter
Contractor Address:	6100 Smith Road, Denver, CO 80216
Organization Type:	Non-Profit

II. SERVICES DESCRIPTION

- A. DRM will provide around the clock shelter for adult men experiencing homelessness at the DRM 48th Avenue Shelter and overflow. The services included are;
1. On-site staffing for client care and intake for clients who meet entry requirements. Clients accessing 24-hour shelter will have access to:
 - a. Shelter
 - b. Laundry services
 - c. Meals
 - d. Restrooms
 - e. Showers
 - f. Secure storage for belongings
 - g. One on One Case management if they choose to engage
 2. Operational management and critical incident response to provide support and ensure safety
 3. Custodial and laundry services in support of daily operations related to COVID-19 health and safety concerns

4. Three meals per day will be prepared, transported and served to individuals experiencing homelessness
- B. DRM will provide day shelter services to those experiencing homelessness at the Lawrence Street Community Center (LSCC) located at 2222 Lawrence Street, Denver, Colorado. The services included are;
1. On-site staffing for day-time operations and food preparation
 2. DRM will provide three meals per day for individuals\
 3. Custodial services in support of daily operations related to COVID-19 health and safety concerns
 4. Access to Peer Navigation
- C. DRM will provide the Next Step Case Management and Support Program to those accessing around the clock shelter at multiple DRM sites. The Next Step program includes the following services.
1. Case management services are available to adult men accessing shelter
 2. The Next Step Case Management and Support Program utilizes a 22-point strategy to facilitate a pathway out of homelessness for individuals wanting to engage in case management
 3. The Next Step Case Management and Support Program team will partner with other agencies providing appropriate support and services for individuals
 4. Individuals currently participating in the Next Step Case Management and Support Program have 24-hour access to shelter and its benefits.
- D. Definitions and Terms
1. ESG-CV funds are to be used to prevent, prepare for, and respond to the coronavirus pandemic (COVID-19) among individuals and families who are homeless or receiving homeless assistance; and to support additional homeless assistance and homelessness prevention activities to mitigate the impacts of COVID-19.
 2. CARES Act Provisions
 - a. Up to 10 percent of funds may be used for administrative costs, as opposed to 7.5 percent as provided by 24 CFR 576.108(a)
 - b. The funds are exempt from the ESG match requirements, including 24 CFR 576.201;
 - c. While we encourage you to offer treatment and supportive services when necessary to assist vulnerable homeless populations, individuals and families experiencing homelessness must not be required to receive treatment or perform any other prerequisite activities as a condition for receiving shelter, housing, or other services for which these funds are used, notwithstanding 24 CFR 576.401(e)
 3. Emergency shelter means any facility, the primary purpose of which is to provide a temporary shelter for the homeless in general or for specific

populations of the homeless and which does not require occupants to sign leases or occupancy agreements. Any project funded as an emergency shelter under a Fiscal Year 2010 Emergency [Shelter] grant may continue to be funded under ESG.

4. According to this criteria, if the day shelter's primary purpose is to provide temporary shelter for the homeless in general or specific subpopulations of the homeless, and the day shelter does not require occupants to sign leases or occupancy agreements, then the day shelter meets the emergency shelter definition and may be funded as an emergency shelter under ESG. Also, the primary purpose must be evident in the shelter's features; at a minimum, homeless people must be able to stay in the facility for as many hours as it is open
5. In addition, for a day shelter to use ESG funds to serve people as an emergency shelter, the facility must follow the requirements that apply to ESG recipients and subrecipients with respect to those funds and activities. For example:
 - a. Each client must be homeless and must be evaluated for eligibility and assistance needed. This evaluation must be conducted in accordance with 24 CFR § 576.401(a);
 - b. Each client's eligibility and homeless status must be documented in accordance with the requirements in 24 CFR § 576.500(b);
 - c. Client and activity data must be entered into the local HMIS. This must be completed in accordance with the requirements in 24 CFR § 576.400(f); and
 - d. The shelter must follow the written standards (required under 24 CFR § 576.400(e)) related to emergency shelters and essential services, including:
 - i. Policies and procedures for admission, diversion, referral, and discharge by emergency shelters assisted under ESG, including standards regarding length of stay, if any, and safeguards to meet the safety and shelter needs of special populations, e.g., victims of domestic violence, dating violence, sexual assault, and stalking; and individuals and families who have the highest barriers to housing and are likely to be homeless the longest; and
 - ii. Policies and procedures for assessing, prioritizing, and reassessing individuals' and families' needs for essential services related to emergency shelter.
6. **Note:** If a shelter serves both eligible and ineligible clients under ESG, then the shelter's eligible costs must be allocated in proportion to "the relative benefits received," as set forth in the OMB Cost Principles. For more information about this, please see OMB Circular A-122: http://www.whitehouse.gov/omb/circulars_a122_2004

7. Eligible costs for Emergency Shelter:

- a. Renovation, including major rehabilitation or conversion, of a building to serve as an emergency shelter. The emergency shelter must be owned by a government entity or private nonprofit organization. The shelter must serve homeless persons for at least 3 or 10 years, depending on the type of renovation and the value of the building. Note: Property acquisition and new construction are ineligible ESG activities. There are exemptions for ESG-CV funding.
- b. Essential Services, including case management, childcare, education services, employment assistance and job training, outpatient health services, legal services, life skills training, mental health services, substance abuse treatment services, transportation, and services for special populations.
 - i. Program participant means an individual or family who is assisted under ESG-CV program.
 - ii. Case management. The cost of assessing, arranging, coordinating, and monitoring the delivery of individualized services to meet the needs of the program participant is eligible. Component services and activities consist of: using the centralized or coordinated assessment system as required under § 576.400(d); conducting the initial evaluation required under § 576.401(a), including verifying and documenting eligibility; counseling; developing, securing, and coordinating services and obtaining Federal, State, and local benefits; monitoring and evaluating program participant progress; providing information and referrals to other providers; providing ongoing risk assessment and safety planning with victims of domestic violence, dating violence, sexual assault, and stalking; and developing an individualized housing and service plan, including planning a path to permanent housing stability.
 - iii. Outpatient health services. Eligible costs are for the direct outpatient treatment of medical conditions and are provided by licensed medical professionals. Emergency Solutions Grant (ESG) funds may be used only for these services to the extent that other appropriate health services are unavailable within the community. Eligible treatment consists of assessing a program participant's health problems and developing a treatment plan; assisting program participants to understand their health needs; providing directly or assisting program participants to obtain appropriate medical treatment, preventive medical care, and health maintenance services, including emergency medical

- services; providing medication and follow-up services; and providing preventive and non-cosmetic dental care.
- iv. Mental health services. Eligible costs are the direct outpatient treatment by licensed professionals of mental health conditions. ESG funds may only be used for these services to the extent that other appropriate mental health services are unavailable or inaccessible within the community. Mental health services are the application of therapeutic processes to personal, family, situational, or occupational problems in order to bring about positive resolution of the problem or improved individual or family functioning or circumstances. Problem areas may include family and marital relationships, parent-child problems, or symptom management. Eligible treatment consists of crisis interventions; individual, family, or group therapy sessions; the prescription of psychotropic medications or explanations about the use and management of medications; and combinations of therapeutic approaches to address multiple problems.
 - v. Substance abuse treatment services. Eligible substance abuse treatment services are designed to prevent, reduce, eliminate, or deter relapse of substance abuse or addictive behaviors and are provided by licensed or certified professionals. ESG funds may only be used for these services to the extent that other appropriate substance abuse treatment services are unavailable or inaccessible within the community. Eligible treatment consists of client intake and assessment, and outpatient treatment for up to 30 days. Group and individual counseling and drug testing are eligible costs. Inpatient detoxification and other inpatient drug or alcohol treatment are not eligible costs.
- c. Shelter Operations, including maintenance, rent, repair, security, fuel, equipment, insurance, utilities, food, furnishings, and supplies necessary for the operation of the emergency shelter. Where no appropriate emergency shelter is available for a homeless family or individual, eligible costs may also include a hotel or motel voucher for that family or individual.
 - d. See 24 CFR 576.103. for more information
8. The following DO NOT qualify as eligible emergency shelters for ESG:
 - a. A doctor's office or other facility where a person can only stay for the time of his/her appointment;
 - b. Multi-purpose service centers serving all people in need; or
 - c. Stand-alone food pantries/soup kitchens/cafeterias.
 9. Communities should fund activities in day shelters that are targeted to people who are sleeping on the streets or in emergency shelter.

10. Note also that the costs of services such as case management and mental health services provided to homeless persons in the shelter would be eligible under essential services, as long as the costs comply with the rule (see 24 CFR § 576.100(d) and § 576.102, especially). The costs of providing laundry facilities or meals in the shelter would be eligible under shelter operations, as long as the costs comply with the rule (see 24 CFR § 576.100(d) and 576.102, especially).
11. For emergency shelter, beneficiaries must meet the “homeless” definition in 24 CFR 576.2. For essential services related to emergency shelter, beneficiaries must be “homeless” and staying in an emergency shelter (which could include a day shelter).
 - a. See HUD Homeless Definitions: https://files.hudexchange.info/resources/documents/HomelessDefinition_RecordkeepingRequirementsandCriteria.pdf

III. ROLES AND RESPONSIBILITIES FOR BOTH PARTIES

- A. Contractor will:
 1. Work with City to host any city-designated sensitivity training on an annual basis.
 2. Provide any online modular sensitivity training developed and provided by the City to all new direct-service staff within 15 days of hire date. Ensure direct-service staff complete training refresher on a biennial basis.
- B. The City will:
 1. Provide signage that includes information about the City and County of Denver’s Anti-Discrimination Office.

IV. EQUITY ACCESS AND OUTCOMES

The Department of Housing Stability, in alignment with the Mayor’s Office of Social Equity and Innovation, values racial equity and inclusiveness and seeks to reflect this value in our funding practices. Our commitment to producing racially equitable housing outcomes is paramount to HOST’s overall mission of Denver residents being healthy, housed and connected. HOST requires all programs it funds to report on the demographic characteristics of households served by the program throughout the duration of the contract in coordination with other required reporting. The contractor will also report on the demographics of staff working on this program throughout the duration of this contract. Specific information outlining the required data systems to be used and data to be collected are contained within the scope of work of this contract. This information will help HOST monitor demographic trends in who is served. The underlying objective of collecting and disaggregating data and outcomes by race is to understand who is currently served by HOST funded programs. This information will help inform future evaluation on any potential disparate impacts across HOST programs, as well as strategies to help address equity in access to and outcomes from programs where appropriate. Additionally, HOST program and contract staff will be reviewing data, and will discuss your program’s progress or challenges towards racially equitable services and outcomes at site visits and monitoring.

5. Outcome Measure: Average nights households use overnight shelter within reporting period
 - a. Source: HMIS
6. Process Measure: Number and percentage of households served who are engaged in individualized rehousing services (case management)
 - a. Source: HMIS
 - b. Benchmark: At least 50% of all guests served within the reporting period
7. Outcome Measure: Number and percentage of all households who exit to a stable or permanent housing solution
 - a. Source: HMIS
 - b. Benchmark: At least 30% of households who exit the shelter program
 - c. Note: This will be measured from the destination at exit field in HMIS, categories will be grouped into permanent housing, stable housing, and other destinations.
8. Outcome Measure: Number and percentage of households engaged in rehousing services who exit to a stable or permanent housing solution
 - a. Source: HMIS
 - b. Benchmark: At least 60% of households who exit the shelter program
 - c. Note: This will be measured from the destination at exit field in HMIS, categories will be grouped into permanent housing, stable housing, and other destinations.

VII. Reporting

- A. Data collection is required and must be completed demonstrating eligibility and progress toward meeting the indicators contained in this Scope of Work. Disbursement of funds is contingent based on the ability to collect the required information.
- B. Contractor will submit reports via the online portal provided to the contractor (unless otherwise specified). Reports will be due on the 15th day of the month following the end of the reporting period unless otherwise specified.
- C. The portal provides the Contractor with an online form in which to enter data for the reporting period. Supplemental forms and information may be required by HOST. The online portal and any supplemental requirements provide HOST with the quantitative and qualitative information necessary to determine Contractor's progress towards meeting the indicators contained in this Scope of Work. Submitted forms will be reviewed by the designated Program Officer for completeness, clarity and accuracy.
- D. Upon execution of this contract, HOST will provide a user guide for using the portal along with the required login information. Prior to the due date for the first required report, HOST shall provide training as needed or requested by the Contractor to support the online portal.
- E. Contractor may be required to submit a Contract Summary Report at the end of the contract period within 30 days after the Term End Date of this contract agreement.

F. INDICATORS

1. HOST Required

- a. Qualitative narrative report on program successes and challenges
- b. Participant success stories
- c. Money Leveraged (Funds by source)
- d. Number of Households served:
 - i. Unduplicated households proposed to be served over contract term:
 - ii. Total households served this report period
 - iii. Unduplicated households served this report period
 - iv. Unduplicated households served contract period to date
- e. Number of households served who are experiencing homelessness
- f. Number of households by race and ethnicity of head of household:
- g. Number of households that include someone age 62 and older
- h. Number of households that include a person with a disability
- i. Income Levels of people/family: *optional for Homelessness Resolution program types that do not require income collection (e.g., shelter)

2. Specific to this Scope of Work

- a. Contractor must complete and upload Consolidated Annual Performance and Evaluation Report (CAPER) to the appropriate HUD system within 30 days of program completion. A link will be provided by the Program Officer

VIII. HUD Grantee Program Requirements

A. The Federal Funding Accountability and Transparency Act (FFATA)

1. In the business or organization's preceding completed fiscal year, the business or organization The Denver Rescue Mission did not receive: (1) 80 percent or more of annual gross revenues in U.S. federal contracts, subcontracts, loans, grants, subgrants, and/or cooperative agreements; and (2) \$25,000,000 or more in annual gross revenues from U.S. federal contracts, subcontracts, loans, grants, subgrants, and/or cooperative agreements:
 - a. Name/Amount

B. Integrated Disbursement and Information System Reporting

A nationwide database, Integrated Disbursement and Information System (IDIS) is utilized to capture HUD information for reporting and to monitor grantees progress.

HOST will provide the format of the performance report to the Contractor. The information reported must include progress on the indicators outlined in this Scope of Work. The report includes current and cumulative (year-to-date) indicator information. Information on the overall progress of the program and/or project should be reported in the narrative section of the report. An explanation must be included in the narrative section of the report, if the project is not being performed in a timely manner.

IX. Homeless Management Information System (HMIS)

The Contractor agrees to fully comply with the rules and regulations required by the U.S. Department of Housing and Urban Development (HUD) which govern the Homeless Management Information System (HMIS)¹. HUD requires recipients and sub-recipients of McKinney-Vento Act funds to collect electronic data on their homeless clients through HMIS. Programs that receive funding through McKinney-Vento that produce an Annual Progress Report (APR) must also collect program level data elements. These programs include funding from HUD Continuum of Care (CoC), SHP (a.k.a. S+C), Section 8 Mod Rehab, Emergency Solutions Grant (ESG), and Housing Opportunities for Persons With AIDS (HOPWA), Projects for Assistance in Transition from Homelessness (PATH), Runaway Homeless Youth (RHY) and Veteran's Administration (VA).

The contractor, in addition to the HUD requirements, shall conform to the HMIS policies and procedures established and adopted by the Metro Denver Homeless Initiative (MDHI) Continuum of Care (CoC). These are outlined in the COHMIS Policies and Procedures², and the COHMIS Security, Privacy and Data Quality Plan³.

Metro Denver Homeless Initiative (MDHI) is the implementing organization for the (HMIS). The HMIS software is called Clarity.

Contractor's aggregate HMIS performance data for projects may be shared with the funder and the community to improve system performance and assist with monitoring. MDHI will monitor contractor compliance and performance on an annual basis through a site visit.

Technical assistance and training resources for HMIS are available to the Contractor via the COHMIS Helpdesk.

XI. FINANCIAL ADMINISTRATION

A. Compensation and Methods of Payment

1. Disbursements shall be processed through the Department of Housing Stability (HOST) and the City and County of Denver's Department of Finance.
2. The method of payment to the Contractor by HOST shall be in accordance with established HOST procedures for line-item reimbursements. Voucher requests for reimbursement of costs should be submitted on a regular and timely basis in accordance with HOST policies. Vouchers should be submitted within thirty (30) days of the actual service, expenditure or payment of expense.
3. The Contractor shall be reimbursed for services provided under this Agreement according to the approved line-item reimbursement budget

¹ <https://www.hudexchange.info/programs/hmis/hmis-data-and-technical-standards/>

² <https://cohmis.zendesk.com/hc/en-us/articles/360013991371-Policy-Procedures>

³ <https://cohmis.zendesk.com/hc/en-us/articles/360013991371-Policy-Procedures>

4. Invoices and reports shall be completed and submitted on or before the 15th of each month following the month services were rendered 100% of the time. Contractor shall use HOST's preferred invoice template, if requested. HOST Financial Services may require a Cost Allocation Plan and budget narrative for detailed estimated description and allocation of funds. This is dependent upon funding source and program requirements.
5. Invoices shall be submitted to HOST at hostap@denvergov.org or by US Mail to:
Attn: Department of Housing Stability
Financial Services Team
201 W. Colfax Ave.
Denver CO 80202

B. Budget Modification Requests

1. HOST may, at its option, restrict the transfer of funds among cost categories, programs, functions or activities at its discretion as deemed appropriate by program staff, HOST executive management or its designee.
2. Minor modifications to the services provided by the Contractor or changes to each line item budget equal to or less than a ten percent (10%) threshold, which do not increase the total funding to the Contractor, will require notification to HOST program staff and upon approval may be submitted with the next monthly draw. Minor modifications to the services provided by Contractor, or changes to each line item budget in excess of the ten percent (10%) threshold, which do not increase the total funding to Contractor, may be made only with prior written approval by HOST program staff. Such budget and service modifications will require submittal by Contractor of written justification and new budget documents. All other contract modifications will require an amendment to this Agreement executed in the same manner as the original Agreement.
3. The Contractor understands that any budget modification requests under this Agreement must be submitted to HOST no sooner than 30 days of contract agreement start date and prior to the last Quarter of the Contract Period, unless waived in writing by the HOST Director.
4. Budget modification requests are limited to two per each fiscal year of a contract agreement term budget modifications may be submitted per contract year. Exceptions to this limit may be made by the HOST Executive Director or their designee.

C. Vouchering Requirements

1. In order to meet Government requirements for current, auditable books at all times, it is required that all vouchers be submitted monthly to HOST in order to be paid. Expenses cannot be reimbursed until the funds under this contract have been encumbered.

2. No more than four (4) vouchers may be submitted per contract per month, without prior approval from HOST.
3. All vouchers for all Agreements must be correctly submitted within thirty (30) days of the Agreement end date to allow for correct and prompt closeout.
4. City and County of Denver Forms shall be used in back-up documents whenever required in the Voucher Processing Policy.
5. For contracts subject to Federal Agreements, only allowable costs determined in accordance with 2 CFR Chapter I, Chapter II, Parts 200, 215, 220, 225 and 230, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" (the "OMB Omni Circular") applicable to the organization incurring the cost will be reimbursed.
6. The reimbursement request, or draw request, for personnel and non-personnel expenses should be submitted to the City on a monthly basis, no later than the 15th day of the following month for expenses incurred in the prior month. The request for reimbursement should include:
 - a. Amount of the request in total and by line item;
 - b. Period of services for current reimbursement;
 - c. Budget balance in total and by line item;
 - d. Authorization for reimbursement by the contract signatory (i.e., executive director or assistant director).
7. If another person has been authorized by the Contractor to request reimbursement for services provided by this contract, then the authorization should be forwarded in writing to HOST prior to the draw request.
8. The standardized HOST "Expense Certification Form" should be included with each payment request to provide the summary and authorization required for reimbursement.

D. Payroll

1. A summary sheet should be included to detail the gross salary of the employee, amount of the salary to be reimbursed, the name of the employee, and the position of the employee. If the employee is reimbursed only partially by this contract, the amount of salary billed under other contracts with the City or other organizations should be shown on the timesheet as described below. Two items are needed for verification of payroll: (1) the amount of time worked by the employee for this pay period; and (2) the amount of salary paid to the employee, including information on payroll deductions.
2. The amount of time worked will be verified with timesheets. The timesheets must include the actual hours worked under the terms of this contract, and the actual amount of time worked under other programs. The total hours worked during the period must reflect all actual hours worked under all programs including leave time. The employee's name, position, and signature, as well as a signature by an appropriate supervisor, or executive director, must be

included on the timesheets. If an electronic time system is used, signatures are not required. If the timesheet submitted indicates that the employee provided services payable under this contract for a portion of the total time worked, then the amount of reimbursement requested must be calculated and documented in the monthly reimbursement request.

3. A payroll registers or payroll ledger from the accounting system will verify the amount of salary. Copies of paychecks are acceptable if they include the gross pay and deductions.

E. Fringe Benefits

1. Fringe benefits paid by the employer can be requested by applying the FICA match of 7.65 percent to the gross salary -less pre-tax deductions, if applicable, paid under this contract. Fringe benefits may also include medical plans, retirement plans, worker's compensation, and unemployment insurance. Fringe benefits that exceed the FICA match may be documented by 1) a breakdown of how the fringe benefit percentage was determined prior to first draw request; or 2) by submitting actual invoices for the fringe benefits. If medical insurance premiums are part of the estimates in item #1, one-time documentation of these costs will be required with the breakdown. Payroll taxes may be questioned if they appear to be higher than usual.
2. Fringe benefits include, but are not limited to, the costs of leave (vacation, family-related, sick or military), employee insurance, pensions, and unemployment benefit plans. The cost of fringe benefits are allowable if they are provided under established written leave policies, the costs are equitably allocated to all funding sources, including HOST awards; and, the accounting basis (cash or accrual) selected for costing each type of leave is consistently followed by the vendor. HOST does not allow payments for unused leave when an employee retires or terminates employment.

F. General Reimbursement Requirements

1. Invoices: All non-personnel expenses need dated and readable invoices. The invoices must be from a vendor separate from the Contractor and must state what goods or services were provided and the delivery address. Verification that the goods or services were received should also be submitted, this may take the form of a receiving document or packing slips, signed and dated by the individual receiving the good or service. Copies of checks written by the Contractor, or documentation of payment such as an accounts payable ledger which includes the check number shall be submitted to verify that the goods or services are on a reimbursement basis.
2. Mileage: A detailed mileage log with destinations and starting and ending mileage must accompany mileage reimbursement. The total miles reimbursed and per mile rate must be stated. Documentation of mileage reimbursement to the respective employee must be included with the voucher request.

3. Cell Phone: If the monthly usage charge is exceeded in any month, an approval from the Executive Director or designee will be required.
4. Administration and Overhead Cost: Other non-personnel line items, such as administration, or overhead need invoices, and an allocation to this program documented in the draw request. An indirect cost rate can be applied if the Contractor has an approved indirect cost allocation plan. The approved indirect cost rate must be submitted to and approved by HOST.
5. Service Period and Closeout: All reimbursed expenses must be incurred during the time period within the contract. The final payment request must be received by HOST within thirty (30) days after the end of the service period stated in the contract.

G. Program Income

1. For contracts subject to Federal Agreements, program income includes, without limitation, income from fees for services performed, from the use or rental of real or personal property acquired with contract funds, from the sale of commodities or items fabricated under a contract agreement, and from payments of principal and interest on loans made with contract funds.
2. Program income may be deducted from total allowable costs to determine net allowable costs and may be used for current reimbursable costs under the terms of this contract. Program income which was not anticipated at the time of the award may be used to reduce the award contribution rather than to increase the funds committed to the project. ALL PROGRAM INCOME GENERATED DURING ANY GIVEN PERIOD SUBMITTED FOR PAYMENT SHALL BE DOCUMENTED ON THE VOUCHER REQUEST.
3. The Contractor, at the end of the program, may be required to remit to the City all or a part of any program income balances (including investments thereof) held by the Contractor (except AS PRE-APPROVED IN WRITING BY HOST, INCLUDING those needed for immediate cash needs).

H. Financial Management Systems

The Contractor must maintain financial systems that meet the following standards:

1. Financial reporting must be accurate, current, and provide a complete disclosure of the financial results of financially assisted activities and be made in accordance with federal and/or city financial reporting requirements.
2. Accounting records must be maintained which adequately identify the source and application of the funds provided for financially assisted activities. The records must contain information pertaining to contracts and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income. Accounting records shall provide accurate, separate, and complete disclosure of fund status.

3. Effective internal controls and accountability must be maintained for all contract cash, real and personal property, and other assets. Adequate safeguards must be provided on all property and it must be assured that it is used solely for authorized purposes.
4. Actual expenditures or outlays must be compared with budgeted amounts and financial information must be related to performance or productivity data, including the development of cost information whenever appropriate or specifically required.
5. For contracts subject to Federal Agreements, applicable OMB Omni Circular cost principles, agency program regulations, and the terms of the agreement will be followed in determining the reasonableness, allowability and allocability of costs.
6. Source documents such as cancelled checks, paid bills, payrolls, time and attendance records, contract documents, etc., shall be provided for all disbursements. The Contractor will maintain auditable records, i.e., records must be current and traceable to the source documentation of transactions.
7. For contracts subject to Federal Agreements, the Contractor shall maintain separate accountability for HOST funds as referenced in 2 C.F.R. 200.
8. The Contractor must properly report to Federal, State, and local taxing authorities for the collection, payment, and depositing of taxes withheld. At a minimum, this includes Federal and State withholding, State Unemployment, Worker's Compensation (staff only), City Occupational Privilege Tax, and FICA.
9. A proper filing of unemployment and worker's compensation (for staff only) insurance shall be made to appropriate organizational units.
10. The Contractor shall participate, when applicable, in HOST provided staff training sessions in the following financial areas including, but not limited to Budgeting and Cost Allocation Plans, and Vouchering Process.

I. Audit Requirements

1. For Federal Agreements subject to 2 C.F.R. 200, a copy of the final audit report must be submitted to the HOST Financial Manager within the earliest of thirty (30) calendar days after receipt of the auditor's report, or nine (9) months after the end of the period audited.
2. A management letter, if issued, shall be submitted to HOST along with the reporting package prepared in accordance with 2 C.F. R. 200. If the management letter is not received by the subrecipient at the same time as the Reporting Package, the Management Letter is also due to HOST within thirty (30) days after receipt of the Management Letter, or nine (9) months after the end of the audit period, whichever is earlier. If the Management Letter has

matters related to HOST funding, the Contactor shall prepare and submit a Corrective Action Plan to HOST in accordance with 2 C.F.R. 200 for each applicable management letter matter.

3. All audit related material and information, including reports, packages, management letters, correspondence, etc., shall be submitted to **HOST Financial Services Team**.
4. The Contractor will be responsible for all Questioned and Disallowed Costs.
5. The Contractor may be required to engage an audit committee to determine the services to be performed, review the progress of the audit and the final audit findings, and intervene in any disputes between management and the independent auditors. The Contractor shall also institute policy and procedures for its sub recipients that comply with these audit provisions, if applicable.

J. Procurement

1. The Contractor shall follow the City Procurement Policy to the extent that it requires that at least three (3) documented quotations be secured for all purchases or services (including insurance) supplies, or other property that costs more than ten thousand dollars (\$10,000) in the aggregate.
2. The Contractor will maintain records sufficient to detail the significant history of procurement. These records will include but are not limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.
3. For contracts subject to federal agreements, if there is a residual inventory of unused supplies exceeding five thousand dollars (\$5,000) in total aggregate upon termination or completion of award, and if the supplies are not needed for any other federally sponsored programs or projects the Contractor will compensate the awarding agency for its share.

K. Bonding

1. If applicable, for contracts subject to federal agreements, HOST may require adequate fidelity bond coverage, in accordance with 2 C.F.R. 200, where the subrecipient lacks sufficient coverage to protect the Federal Government's interest.

L. Records Retention

1. In addition to the records requirements contained in the Agreement, the Contractor (or subrecipient) must also retain for seven (7) years financial records pertaining to the contract award. The retention period for the records of each fund will start on the day the single or last expenditure report for the period, except as otherwise noted, was submitted to the awarding agency.

2. The awarding agency and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access, upon reasonable notice, to any pertinent books, documents, papers, or other records which are pertinent to the contract, in order to make audits, examinations, excerpts, and transcripts.

M. Contract Close-Out

1. All Contractors are responsible for completing required HOST contract close-out forms and submitting these forms to their appropriate HOST Contract Specialist within sixty (60) days after the Agreement end date, or sooner if required by HOST in writing.
2. Contract close out forms will be provided to the Contractor by HOST within thirty (30) days prior to end of contract.
3. HOST will close out the award when it determines that all applicable administrative actions and all required work of the contract have been completed. If Contractor fails to perform in accordance with this Agreement, HOST reserves the right to unilaterally close out a contract, “unilaterally close” means that no additional money may be expended against the contract.

N. Collection of Amounts Due

1. Any funds paid to a Contractor in excess of the amount to which the Contractor is determined to be entitled under the terms of the award constitute a debt to the Federal Government and the City. If not paid within a reasonable period after demand HOST may: 1) make an administrative offset against other requests for reimbursements; 2) withhold advance payments otherwise due to the Contractor; or 3) other action permitted by law.

XII. Budget

Program Budget and Cost Allocation

Contractor Name: The Denver Rescue Mission ESG-CV
Project : Shelters
Contract Dates: 1/1/2021 to 9/30/2021
Program Year: 2021

Budget Category	Agency Total (All Funding)		Program Costs HOST State ESG-CV		Total Project Costs requested		Other Non-Federal Funding		Agency Total		Budget Narrative
	Total	Amount	%	Subtotal	%	Amount	%	Amount	%		
Personnel: Name and Job Title											
48th Director	\$ 71,250.00		0.00%	\$0	0.00%	\$ 71,250.00	100.00%	\$71,250	100.00%	Full-time employees' salaries and wages will be reimbursed at cost. HOST will not pay for bonuses, severances, or payouts of leave when an employee separates from their job.	
48th Associate Director	\$ 54,000.00		0.00%	-	0.00%	\$ 54,000.00	100.00%	54,000	100.00%	Full-time employees' salaries and wages will be reimbursed at cost. HOST will not pay for bonuses, severances, or payouts of leave when an employee separates from their job.	
48th Case Managers	\$ 256,089.00		0.00%	-	0.00%	\$ 256,089.00	100.00%	256,089	100.00%	Full-time employees' salaries and wages will be reimbursed at cost. HOST will not pay for bonuses, severances, or payouts of leave when an employee separates from their job.	
48th Peer Navigators	\$ 128,044.00		0.00%	-	0.00%	\$ 128,044.00	100.00%	128,044	100.00%	Full-time employees' salaries and wages will be reimbursed at cost. HOST will not pay for bonuses, severances, or payouts of leave when an employee separates from their job.	
48th Supervisors	\$ 109,141.00		0.00%	\$0	0.00%	\$ 109,141.00	100.00%	\$109,141	100.00%	Full-time employees' salaries and wages will be reimbursed at cost. HOST will not pay for bonuses, severances, or payouts of leave when an employee separates from their job.	
LSCC Guest Services	\$ 217,360.00		0.00%	-	0.00%	\$ 217,360.00	100.00%	217,360	100.00%	Full-time employees' salaries and wages will be reimbursed at cost. HOST will not pay for bonuses, severances, or payouts of leave when an employee separates from their job.	
LSCC Custodians	\$ 44,000.00		0.00%	-	0.00%	\$ 44,000.00	100.00%	44,000	100.00%	Full-time employees' salaries and wages will be reimbursed at cost. HOST will not pay for bonuses, severances, or payouts of leave when an employee separates from their job.	
Asst. Director Homelessness Resoultion	\$ 61,750.00		0.00%	-	0.00%	\$ 61,750.00	100.00%	61,750	100.00%	Full-time employees' salaries and wages will be reimbursed at cost. HOST will not pay for bonuses, severances, or payouts of leave when an employee separates from their job.	
Emergency Services Coordinators	\$ 1,538,597.00	\$ 898,631.00	58.41%	\$898,631	58.41%	\$ 639,966.00	41.59%	\$1,538,597	100.00%	Full-time employees' salaries and wages will be reimbursed at cost. HOST will not pay for bonuses, severances, or payouts of leave when an employee separates from their job.	
48th Guest Services	\$181,792.00		0.00%	-	0.00%	\$181,792.00	100.00%	181,792	100.00%	Full-time employees' salaries and wages will be reimbursed at cost. HOST will not pay for bonuses, severances, or payouts of leave when an employee separates from their job.	
48th 2nd entrance Guest Services East	\$ 53,352.00		0.00%	-	0.00%	\$ 53,352.00	100.00%	53,352	100.00%	Full-time employees' salaries and wages will be reimbursed at cost. HOST will not pay for bonuses, severances, or payouts of leave when an employee separates from their job.	
Custodians	\$ 562,597.00	\$ 293,436.00	52.16%	293,436	52.16%	\$ 269,161.00	47.84%	562,597	100.00%	Full-time employees' salaries and wages will be reimbursed at cost. HOST will not pay for bonuses, severances, or payouts of leave when an employee separates from their job.	
Total Salary:	\$3,277,972	\$1,192,067	36.37%	\$1,192,067	36.37%	2,085,905	63.63%	\$509,383	15.54%		
Fringe Benefits	\$721,154	\$262,255	36.37%	\$262,255	36.37%	\$458,899	63.63%	\$721,154	100.00%	Fringe benefits and payroll taxes will be reimbursed at cost. Fringe includes employer portion of the following items: payroll taxes; insurance (medical, dental, vision, disability, accident & life insurance, and workers' compensation); and pension or retirement plans.	
Total Salary and Fringe:	\$3,999,126	\$1,454,322	36.37%	\$1,454,322	36.37%	2,544,804	63.63%	\$1,230,537	30.77%		
Other Direct Costs											
	Total	Amount	%	Subtotal	%	Amount	%	Amount	%		
Program/Project Supplies	\$ 420,000.00		0.00%	\$0	0.00%	\$ 420,000.00	100.00%	\$420,000	100.00%	Program/Project-related supplies directly related to program function. This includes PPE, specialized program items, laundry supplies, cleaning supplies, sanitizer, storage bags, etc	
Meals at 48th	\$ 1,542,100.00		0.00%	\$0	0.00%	\$1,542,100.00	100.00%	1,542,100		Meals provided to clients.	
Staff Program/Project Training	\$ 22,450.00		0.00%	\$0	0.00%	\$ 22,450.00	100.00%	22,450		Program-related training materials and registration fees.	
Facilities	\$ 16,000.00		0.00%	\$0	0.00%	\$ 16,000.00	100.00%	16,000	100.00%	Specific office space dedicated for use for the program only and not a shared space. Associated expenses can be allocated proportionately based on actual size or percentage of the building space. Associated expenses can include rent, lease, utilities and building maintenance costs.	
Total Other Direct Costs	\$2,000,550	\$0	0.00%	\$0	0.00%	\$2,000,550	100.00%	2,000,550	100.00%		
Indirect Costs	\$599,968	\$145,432	24.24%	\$145,432	24.24%	454,535	75.76%	\$599,967	100.00%	Indirect rate is 10% of Total Direct Costs.	
Total Project Cost (Direct + Indirect)	\$6,599,644	\$1,599,754	24.24%	\$1,599,754	24.24%	\$4,999,889	75.76%	\$6,599,643	100.00%		
Program Income (through funded activities)			#DIV/0!	-	#DIV/0!		#DIV/0!	-	#DIV/0!		
Non-Project:	Total	Amount	%	Subtotal	%	Amount	%				
Total Non-Project Cost	-	-	#DIV/0!	-	#DIV/0!	-	#DIV/0!	-	#DIV/0!		
Grand Total	\$6,599,644	\$1,599,754	24%	\$1,599,754	24.24%	\$4,999,889	75.76%	\$6,599,643	100.00%		

STATE OF COLORADO GRANT AGREEMENT

COVER PAGE

State Agency Department of Local Affairs, for the benefit of the Division of Housing.	Contract Encumbrance Number H1ESG91231		
Grantee City and County of Denver	CMS #166361 Agreement Performance Beginning Date Effective Date Initial Agreement Expiration Date September 30, 2021		
Agreement Maximum Amount \$1,654,622.22	Fund Expenditure End Date September 30, 2021		
Funding Program: Emergency Solutions Grant – CARES Act (ESG-CV)	Funding Source: Federal Catalog of Federal Domestic Assistance #: 14.231		
Agreement Authority: Authority for this Agreement arises from CRS §24-32-705(1)(i). Authority exists in the law and funds have been budgeted, appropriated and otherwise made available pursuant to the federal Emergency Solutions Grants Program, 24 CFR Parts 91 and 576 and Public Law 116-136, the federal Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”), and a sufficient unencumbered balance thereof remains available for payment and the required approvals, clearance, and coordination have been accomplished from and with appropriate agencies.			
Agreement Purpose: To prevent, prepare for, and respond to coronavirus, among individuals and families who are homeless or receiving homeless assistance and to support additional homeless assistance and homelessness prevention activities to mitigate the impacts created by coronavirus under the Emergency Solutions Grants (ESG) program.			
Exhibits - The following Exhibits and attachments are included with this Agreement: Exhibit A, Applicable Laws Exhibit B, Statement of Project Exhibit C, Federal Provisions Exhibit D, FAQ Exhibit E, [Reserved] Exhibit F, [Reserved] Exhibit G, Sample Option Letter Form 1, [Reserved]			
Order of Precedence In the event of a conflict or inconsistency between this Agreement and any Exhibit or attachment, such conflict or inconsistency shall be resolved by reference to the documents in the following order of priority: <ol style="list-style-type: none"> 1. Exhibit C, Federal Provisions 2. Colorado Special Provisions in §19 of the main body of this Agreement. 3. The provisions of the other sections of the main body of this Agreement. 4. Exhibit B, Statement of Project 5. Exhibit A, Applicable Laws 6. Exhibit D, FAQ 7. Exhibit G, Sample Option Letter 			
Principal Representatives <table style="width: 100%; border: none;"> <tr> <td style="width: 50%; border: none;"> For the State: Alison George, Director Division of Housing Department of Local Affairs 1313 Sherman Street, Rm 320 Denver, CO 80203 Alison.george@state.co.us </td> <td style="width: 50%; border: none;"> For Grantee: Britta Fisher, Executive Director Department of Housing and Stability City and County of Denver 201 West Colfax Denver, CO 80202 Britta.Fisher@denvergov.org </td> </tr> </table>		For the State: Alison George, Director Division of Housing Department of Local Affairs 1313 Sherman Street, Rm 320 Denver, CO 80203 Alison.george@state.co.us	For Grantee: Britta Fisher, Executive Director Department of Housing and Stability City and County of Denver 201 West Colfax Denver, CO 80202 Britta.Fisher@denvergov.org
For the State: Alison George, Director Division of Housing Department of Local Affairs 1313 Sherman Street, Rm 320 Denver, CO 80203 Alison.george@state.co.us	For Grantee: Britta Fisher, Executive Director Department of Housing and Stability City and County of Denver 201 West Colfax Denver, CO 80202 Britta.Fisher@denvergov.org		

Exhibit B

SIGNATURE PAGE

THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT

Each person signing this Agreement represents and warrants that the signer is duly authorized to execute this Agreement and to bind the Party authorizing such signature.

<p style="text-align: center;">GRANTEE CITY AND COUNTY OF DENVER</p> <p>DocuSigned by: </p> <p>By: <u>C7B9CE609A444ED...</u> Britta Fisher, Executive Director 2/8/2021 12:03 PM MST Date: _____</p>	<p style="text-align: center;">STATE OF COLORADO Jared S. Polis, Governor DEPARTMENT OF LOCAL AFFAIRS Rick M. Garcia, Executive Director</p> <p>By: _____ Rick M. Garcia, Executive Director Date: _____</p>
	<p style="text-align: center;">DIVISION OF HOUSING Contract Reviewer</p> <p>By: _____ Kristin Toombs, Director Office of Homeless Initiatives Date: _____</p>
<p>In accordance with §24-30-202, C.R.S., this Agreement is not valid until signed and dated below by the State Controller or an authorized delegate.</p> <p style="text-align: center;">STATE CONTROLLER Robert Jaros, CPA, MBA, JD</p> <p>By: _____ Yingtse Cha, Controller Delegate</p> <p>Effective Date: _____</p>	

Exhibit B

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1. PARTIES

This Agreement is entered into by and between Grantee named on the Cover Page for this Agreement (the “Grantee”), and the STATE OF COLORADO (the “State”) acting by and through the Department of Local Affairs (“DOLA”) for the benefit of the Division of Housing (“DOH”). Grantee and the State agree to the terms and conditions in this Agreement.

2. TERM AND EFFECTIVE DATE**A. Effective Date**

This Agreement shall not be valid or enforceable until the Effective Date, and the Grant Funds shall be expended by the Fund Expenditure End Date shown on the Cover Page for this Agreement. The State shall not be bound by any provision of this Agreement before the Effective Date, and shall have no obligation to pay Grantee for any Work performed or expense incurred before the Effective Date, except as described in **§5.D**, or after the Fund Expenditure End Date.

Exhibit B

B. Initial Term

The Parties' respective performances under this Agreement shall commence on the Agreement Performance Beginning Date shown on the Cover Page for this Agreement and shall terminate on the Initial Agreement Expiration Date shown on the Cover Page for this Agreement (the "Initial Term") unless sooner terminated or further extended in accordance with the terms of this Agreement.

C. Extension Terms - State's Option

The State, at its discretion, shall have the option to extend the performance under this Agreement beyond the Initial Term for a period, or for successive periods, of one (1) year or less at the same rates and under the same terms specified in this Agreement (each such period an "Extension Term"). In order to exercise this option, the State shall provide written notice to Grantee in a form substantially equivalent to Sample Option Letter attached to this Agreement. The total duration of this Agreement including the exercise of any options to extend shall not exceed five (5) years from its Effective Date without approval of the Colorado Office of the State Controller.

D. End of Term Extension

If this Agreement approaches the end of its Initial Term, or any Extension Term then in place, the State, at its discretion, upon written notice to Grantee as provided in §14, may unilaterally extend such Initial Term or Extension Term for a period not to exceed two (2) months (an "End of Term Extension"), regardless of whether additional Extension Terms are available or not. The provisions of this Agreement in effect when such notice is given shall remain in effect during the End of Term Extension. The End of Term Extension shall automatically terminate upon execution of a replacement Agreement or modification extending the total term of this Agreement.

E. Early Termination in the Public Interest

The State is entering into this Agreement to serve the public interest of the State of Colorado as determined by its Governor, General Assembly, or Courts. If this Agreement ceases to further the public interest of the State, the State, in its discretion, may terminate this Agreement in whole or in part. A determination that this Agreement should be terminated in the public interest shall not be equivalent to a State right to terminate for convenience. This subsection shall not apply to a termination of this Agreement by the State for breach by Grantee, which shall be governed by §12.A.i.

i. Method and Content

The State shall notify Grantee of such termination in accordance with §14. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Agreement, and shall include, to the extent practicable, the public interest justification for the termination.

ii. Obligations and Rights

Upon receipt of a termination notice for termination in the public interest, Grantee shall be subject to the rights and obligations set forth in §12.A.i.a.

Exhibit B

iii. Payments

If the State terminates this Agreement in the public interest, the State shall pay Grantee an amount equal to the percentage of the total reimbursement payable under this Agreement that corresponds to the percentage of Work satisfactorily completed and accepted, as determined by the State, less payments previously made. Additionally, if this Agreement is less than sixty percent (60%) completed, as determined by the State, the State may reimburse Grantee for a portion of actual out-of-pocket expenses, not otherwise reimbursed under this Agreement, incurred by Grantee which are directly attributable to the uncompleted portion of Grantee's obligations, provided that the sum of any and all reimbursement shall not exceed the maximum amount payable to Grantee hereunder.

F. Grantee's Termination Under Federal Requirements

Grantee may request termination of this Grant by sending notice to the State, or to the Federal Awarding Agency with a copy to the State, which includes the reasons for the termination and the effective date of the termination. If this Grant is terminated in this manner, then Grantee shall return any advanced payments made for work that will not be performed prior to the effective date of the termination.

G. Termination by State for Reasons Other than Breach

Due to the emergency nature of these funds, the State reserves the right to suspend or terminate this Agreement or to reduce the amount of the Grant Funds for any reason or no reason upon notice to the Grantee of no fewer than five (5) business days.

3. DEFINITIONS

The following terms shall be construed and interpreted as follows:

- A. "Agreement"** means this agreement, including all attached Exhibits, all documents incorporated by reference, all referenced statutes, rules and cited authorities, and any future modifications thereto.
- B. "Award"** means an award by a Recipient to a Subrecipient funded in whole or in part by a Federal Award. The terms and conditions of the Federal Award flow down to the Award unless the terms and conditions of the Federal Award specifically indicate otherwise.
- C. "Breach of Agreement"** means the failure of a Party to perform any of its obligations in accordance with this Agreement, in whole or in part or in a timely or satisfactory manner. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Grantee, or the appointment of a receiver or similar officer for Grantee or any of its property, which is not vacated or fully stayed within thirty (30) days after the institution of such proceeding, shall also constitute a breach. If Grantee is debarred or suspended under §24-109-105, C.R.S. at any time during the term of this Agreement, then such debarment or suspension shall constitute a breach.
- D. "Budget"** means the budget for the Work described in **Exhibit B, §5.2**.
- E. "Business Day"** means any day in which the State is open and conducting business, but shall not include Saturday, Sunday or any day on which the State observes one of the holidays listed in §24-11-101(1), C.R.S.

Exhibit B

- F. “**CJI**” means criminal justice information collected by criminal justice agencies needed for the performance of their authorized functions, including, without limitation, all information defined as criminal justice information by the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy, as amended and all Criminal Justice Records as defined under §24-72-302, C.R.S.
- G. “**CORA**” means the Colorado Open Records Act, §§24-72-200.1, *et seq.*, C.R.S.
- H. “**Effective Date**” means the date on which this Agreement is approved and signed by the Colorado State Controller or designee, as shown on the Signature for this Agreement.
- I. “**End of Term Extension**” means the time period defined in §2.D.
- J. “**Exhibits**” means the exhibits and attachments included with this Contract as shown on the Cover Page for this Agreement.
- K. “**Extension Term**” means the time period defined in §2.C.
- L. “**Federal Award**” means an award of Federal financial assistance or a cost-reimbursement contract, under the Federal Acquisition Regulations or by a formula or block grant, by a Federal Awarding Agency to the Recipient. “Federal Award” also means an agreement setting forth the terms and conditions of the Federal Award. The term does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program.
- M. “**Federal Awarding Agency**” means a Federal agency providing a Federal Award to a Recipient. The United States Department of Housing and Urban Development is the Federal Awarding Agency for the Federal Award which is the subject of this Agreement.
- N. “**Goods**” means any movable material acquired, produced, or delivered by Grantee as set forth in this Agreement and shall include any movable material acquired, produced, or delivered by Grantee in connection with the Services.
- O. “**Grant Funds**” means the funds that have been appropriated, designated, encumbered, or otherwise made available for payment by the State under this Agreement.
- P. “**Incident**” means any accidental or deliberate event that results in or constitutes an imminent threat of the unauthorized access, loss, disclosure, modification, disruption, or destruction of any communications or information resources of the State, which are included as part of the Work, as described in §§24-37.5-401, *et seq.*, C.R.S. Incidents include, without limitation (i) successful attempts to gain unauthorized access to a State system or State Information regardless of where such information is located; (ii) unwanted disruption or denial of service; (iii) the unauthorized use of a State system for the processing or storage of data; or (iv) changes to State system hardware, firmware, or software characteristics without the State’s knowledge, instruction, or consent.
- Q. “**Initial Term**” means the time period defined in §2.B.
- R. “**Matching Funds**” means the funds provided Grantee as a match required to receive the Grant Funds.
- S. “**Party**” means the State or Grantee, and “Parties” means both the State and Grantee.

Exhibit B

- T. “**PCI**” means payment card information including any data related to credit card holders’ names, credit card numbers, or the other credit card information as may be protected by state or federal law.
- U. “**PII**” means personally identifiable information including, without limitation, any information maintained by the State about an individual that can be used to distinguish or trace an individual’s identity, such as name, social security number, date and place of birth, mother’s maiden name, or biometric records; and any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information. PII includes, but is not limited to, all information defined as personally identifiable information in §24-72-501, C.R.S.
- V. “**PHI**” means any protected health information, including, without limitation any information whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual. PHI includes, but is not limited to, any information defined as Individually Identifiable Health Information by the federal Health Insurance Portability and Accountability Act.
- W. “**Project**” means the overall project described in Exhibit B including, without limitation, the Work and the Services.
- X. “**Subject Property**” means real property that Grant Funds are used to acquire; or to which Grant Funds are used to make on-site improvements; or on which Grant Funds are used to construct, rehabilitate, clear or demolish improvements.
- Y. “**Recipient**” means the State agency shown on the Signature and Cover Page of this Agreement, for the purposes of this Federal Award.
- Z. “**Services**” means the services to be performed by Grantee as set forth in this Agreement, and shall include any services to be rendered by Grantee in connection with the Goods.
- AA. “**State Confidential Information**” means any and all State Records not subject to disclosure under CORA. State Confidential Information shall include, but is not limited to, PII, PHI, PCI, Tax Information, CJI, and State personnel records not subject to disclosure under CORA. State Confidential Information shall not include information or data concerning individuals that is not deemed confidential but nevertheless belongs to the State, which has been communicated, furnished, or disclosed by the State to Contractor which (i) is subject to disclosure pursuant to CORA; (ii) is already known to Contractor without restrictions at the time of its disclosure to Contractor; (iii) is or subsequently becomes publicly available without breach of any obligation owed by Contractor to the State; (iv) is disclosed to Contractor, without confidentiality obligations, by a third party who has the right to disclose such information; or (v) was independently developed without reliance on any State Confidential Information.
- BB. “**State Fiscal Rules**” means that fiscal rules promulgated by the Colorado State Controller pursuant to §24-30-202(13) (a), C.R.S.
- CC. “**State Fiscal Year**” means a 12-month period beginning on July 1 of each calendar year and ending on June 30 of the following calendar year. If a single calendar year follows the term, then it means the State Fiscal Year ending in that calendar year.

Exhibit B

- DD.** “**State Records**” means any and all State data, information, and records, regardless of physical form, including, but not limited to, information subject to disclosure under CORA.
- EE.** “**Subcontractor**” means third-parties, if any, engaged by Grantee to aid in performance of the Work. “Subcontractor” also includes sub-grantees of grant funds.
- FF.** “**Subrecipient**” means a non-Federal entity that receives a sub-award from a Recipient to carry out part of a Federal program, but does not include an individual that is a beneficiary of such program. A Subrecipient may also be a recipient of other Federal Awards directly from a Federal Awarding Agency. For the purposes of this Agreement, Grantee is a Subrecipient.
- GG.** “**Tax Information**” means federal and State of Colorado tax information including, without limitation, federal and State tax returns, return information, and such other tax-related information as may be protected by federal and State law and regulation. Tax Information includes, but is not limited to all information defined as federal tax information in Internal Revenue Service Publication 1075.
- HH.** “**Uniform Guidance**” means the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR Part 200, commonly known as the “Super Circular, which supersedes requirements from OMB Circulars A-21, A-87, A-110, A-122, A-89, A-102, and A-133, and the guidance in Circular A-50 on Single Audit Act follow-up.
- II.** “**Work**” means the Goods delivered and Services performed pursuant to this Agreement.
- JJ.** “**Work Product**” means the tangible and intangible results of the Work, whether finished or unfinished, including drafts. Work Product includes, but is not limited to, documents, text, software (including source code), research, reports, proposals, specifications, plans, notes, studies, data, images, photographs, negatives, pictures, drawings, designs, models, surveys, maps, materials, ideas, concepts, know-how, information, and any other results of the Work. “Work Product” does not include any material that was developed prior to the Effective Date that is used, without modification, in the performance of the Work.

Any other term used in this Agreement that is defined in an Exhibit shall be construed and interpreted as defined in that Exhibit.

4. STATEMENT OF WORK

Grantee shall complete the Work as described in this Agreement and in accordance with the provisions of **Exhibit B**. The State shall have no liability to compensate Grantee for the delivery of any goods or the performance of any services that are not specifically set forth in this Agreement.

5. PAYMENTS TO GRANTEE

A. Maximum Amount

Payments to Grantee are limited to the unpaid, obligated balance of the Grant Funds. The State shall not pay Grantee any amount under this Agreement that exceeds the Agreement Maximum for each State Fiscal Year shown on the Cover Page of this Agreement.

Exhibit B

B. Payment Procedures

i. Invoices and Payment

- a. The State shall pay Grantee in the amounts and in accordance with the schedule and other conditions set forth in **Exhibit B**. Satisfactory performance of the terms of this Agreement is a condition precedent to the State's obligation to pay Grantee.
- b. Grantee shall initiate payment requests by invoice to the State, in a form and manner approved by the State.
- c. The State shall pay each invoice within forty-five (45) days following the State's receipt of that invoice, so long as the amount invoiced correctly represents Work completed by Grantee and previously accepted by the State during the term that the invoice covers. If the State determines that the amount of any invoice is not correct, then Grantee shall make all changes necessary to correct that invoice.
- d. The acceptance of an invoice shall not constitute acceptance of any Work performed or deliverables provided under this Agreement.

ii. Interest

Amounts not paid by the State within forty-five (45) days of the State's acceptance of the invoice shall bear interest on the unpaid balance beginning on the 45th day at the rate of one percent (1%) per month, as required by §24-30-202(24) (a), C.R.S., until paid in full; provided, however, that interest shall not accrue on unpaid amounts that the State disputes in writing. Grantee shall invoice the State separately for accrued interest on delinquent amounts, and the invoice shall reference the delinquent payment, the number of day's interest to be paid and the interest rate.

iii. Payment Disputes

If Grantee disputes any calculation, determination or amount of any payment, Grantee shall notify the State in writing of its dispute within thirty (30) days following the earlier to occur of Grantee's receipt of the payment or notification of the determination or calculation of the payment by the State. The State will review the information presented by Grantee and may make changes to its determination based on this review. The calculation, determination or payment amount that results from the State's review shall not be subject to additional dispute under this subsection. No payment subject to a dispute under this subsection shall be due until after the State has concluded its review, and the State shall not pay any interest on any amount during the period it is subject to dispute under this subsection.

iv. Available Funds-Contingency-Termination

The State is prohibited by law from making commitments beyond the term of the current State Fiscal Year. Payment to Grantee beyond the current State Fiscal Year is contingent on the appropriation and continuing availability of Grant Funds in any subsequent year (as provided in the Colorado Special Provisions). If federal funds or funds from any other non-State funds constitute all or some of the Grant Funds, the State's obligation to pay Grantee shall be contingent upon such non-State funding continuing to be made available for payment. Payments to be made pursuant to this Agreement shall be made only from Grant Funds, and the State's liability for such payments shall be limited to the amount remaining of such Grant Funds. If State, federal

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or other funds are not appropriated, or otherwise become unavailable to fund this Agreement, the State may, upon written notice, terminate this Agreement, in whole or in part, without incurring further liability. The State shall, however, remain obligated to pay for Services and Goods that are delivered and accepted prior to the effective date of notice of termination, and this termination shall otherwise be treated as if this Agreement were terminated in the public interest as described in **§2.E**.

v. **Federal Recovery**

The close-out of a Federal Award does not affect the right of the Federal Awarding Agency or the State to disallow costs and recover funds on the basis of a later audit or other review. Any cost disallowance recovery is to be made within the Record Retention Period, as defined below.

C. **Matching Funds**

[Reserved].

D. **Payment of Grantee Costs.**

The State shall pay Grantee's allowable costs, not exceeding the maximum total amount described in **Exhibit B** and **§5.A** for all allowable costs described in this Grant and shown in the Budget in **Exhibit B**, except that Grantee may adjust the amounts between each line item of the Budget as provided for in **§4.3** of **Exhibit B**, without formal modification to this Agreement as long as the Grantee provides notice to the State of the change, the change does not modify the total maximum amount of this Agreement or the maximum amount for any state fiscal year, and the change does not modify any requirements of the Work. The State shall reimburse Grantee for the federal share of properly documented allowable costs related to the Work after review and approval thereof, subject to the provisions of this Agreement and **Exhibit B**. However, any costs incurred by Grantee prior to the Effective Date shall not be reimbursed absent specific allowance of pre-agreement costs pursuant to **§5.3** of **Exhibit B**. Grantee's costs for Work performed after the Fund Expenditure End Date shown on the Cover Page for this Agreement, or after any phase performance period end date for a respective phase of the Work, shall not be reimbursable. The State shall only reimburse allowable costs described in this Agreement and shown in the Budget if those costs are:

- i. Reasonable and necessary to accomplish the Work and for the Goods and Services provided; and
- ii. Equal to the actual net cost to Grantee (i.e. the price paid minus any items of value received by Grantee that reduce the cost actually incurred).

E. **Close-Out**

DOLA shall not release final payment until Grantee has met its close-out obligations, which include, without limitation, completion of the Project, and compliance with all monitoring reporting requirements. Grantee shall close out this Award within thirty (30) days after the Fund Expenditure End Date shown on the Signature and Cover Page for this Agreement. To complete close-out, Grantee shall submit to the State all deliverables (including documentation) as defined in this Agreement and Grantee's final reimbursement request or invoice. The State may withhold up to 10% of allowable costs until all final documentation has been submitted and accepted by the State as complete. If the Federal Awarding Agency has not closed this Federal Award within one year and 90 days after the Fund Expenditure

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End Date shown on the Signature and Cover Page for this Agreement due to Grantee's failure to submit required documentation, then Grantee may be prohibited from applying for new Federal Awards through the State until such documentation is submitted and accepted.

6. REPORTING - NOTIFICATION

A. Periodic Reports

In addition to any reports required pursuant to §§6, 7 & 16 of this Agreement, Grantee shall comply with all reporting requirements of **Exhibit B**.

B. Litigation Reporting

If Grantee is served with a pleading or other document in connection with an action before a court or other administrative decision making body, and such pleading or document relates to this Agreement or may affect Grantee's ability to perform its obligations under this Agreement, Grantee shall, within ten (10) days after being served, notify the State of such action and deliver copies of such pleading or document to the State's principal representative identified on the Cover Page.

C. Performance and Final Status

Grantee shall submit all financial, performance and other reports to the State as provided in §7 of **Exhibit B**.

D. Violations Reporting

Grantee shall immediately notify the State in writing, as provided in §14, of any civil lawsuit, criminal charge or notice of violation, currently pending, hereinafter filed or entered in a court of law, against Grantee, a principal of Grantee, the Responsible Administrator, or Other Key Personnel identified in §§4.1 and 4.2 of **Exhibit B**, involving theft, fraud, bribery, gratuity violations, embezzlement, professional negligence or malfeasance. The State or the Federal Awarding Agency may impose any penalties for noncompliance allowed under 2 CFR Part 180 and 31 U.S.C. 3321, which may include, without limitation, suspension or debarment.

7. GRANTEE RECORDS

A. Maintenance

Grantee shall make, keep, maintain, and allow inspection and monitoring by the State of a complete file of all records, documents, communications, notes and other written materials, electronic media files, and communications, pertaining in any manner to the Work or the delivery of Services (including, but not limited to the operation of programs) or Goods hereunder. Grantee shall maintain such records for a period (the "Record Retention Period") of six (6) years following the Project Close-Out Date, as defined in §2 of **Exhibit B** or six (6) years following termination of this Agreement, whichever is longer. If any litigation, claim, or audit related to this Award starts before expiration of the Record Retention Period, the Record Retention Period shall extend until all litigation, claims, or audit findings have been resolved and final action taken by the State or Federal Awarding Agency. The Federal Awarding Agency, a cognizant agency for audit, oversight or indirect costs, and the State, may notify Grantee in writing that the Record Retention Period shall be extended. For records for real property and equipment, the Record Retention Period shall extend three years following final disposition of such property.

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B. Inspection

Grantee shall permit the State to audit, inspect, examine, excerpt, copy and transcribe Grantee Records during the Record Retention Period. Grantee shall make Grantee Records available during normal business hours at Grantee's office or place of business, or at other mutually agreed upon times or locations, upon no fewer than two (2) Business Days' notice from the State, unless the State determines that a shorter period of notice, or no notice, is necessary to protect the interests of the State.

C. Monitoring

The State will monitor Grantee's performance of its obligations under this Agreement using procedures as determined by the State. The federal government and any other duly authorized agent of a governmental agency, in its discretion, may monitor Contractor's performance of its obligations under this Agreement using procedures as determined by that governmental entity. Grantee shall allow the State to perform all monitoring required by the Uniform Guidance, based on the State's risk analysis of Grantee and this Agreement. The State shall have the right, in its sole discretion, to change its monitoring procedures and requirements at any time during the term of this Agreement. The State shall monitor Grantee's performance in a manner that does not unduly interfere with Grantee's performance of the Work.

D. Final Audit Report

Grantee shall promptly submit to the State a copy of any final audit report of an audit performed on Grantee's records that relates to or affects this Agreement or the Work, whether the audit is conducted by Grantee or a third party. Additionally, if Grantee is required to perform a single audit under 2 CFR 200.501, *et seq.*, then Grantee shall submit a copy of the results of that audit to the State within the same timelines as the submission to the federal government.

8. CONFIDENTIAL INFORMATION-STATE RECORDS

A. Confidentiality

Grantee shall keep confidential, and cause all Subcontractors to keep confidential, all State Records, unless those State Records are publicly available. Grantee shall not, without prior written approval of the State, use, publish, copy, disclose to any third party, or permit the use by any third party of any State Records, except as otherwise stated in this Agreement, permitted by law or approved in Writing by the State. Grantee shall provide for the security of all State Confidential Information in accordance with all policies promulgated by the Colorado Office of Information Security and all applicable laws, rules, policies, publications, and guidelines. If Grantee or any of its Subcontractors will or may receive the following types of data, Grantee or its Subcontractors shall provide for the security of such data according to the following: **(i)** the most recently promulgated IRS Publication 1075 for all Tax Information and in accordance with the Safeguarding Requirements for Federal Tax Information attached to this Agreement as an Exhibit, if applicable, **(ii)** the most recently updated PCI Data Security Standard from the PCI Security Standards Council for all PCI, **(iii)** the most recently issued version of the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy for all CJI, and **(iv)** the federal Health Insurance Portability and Accountability Act for all PHI and the HIPAA Business Associate Agreement attached to this Agreement, if applicable. Grantee shall immediately forward any request or demand for State Records to the State's principal representative.

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B. Other Entity Access and Nondisclosure Agreements

Grantee may provide State Records to its agents, employees, assigns and Subcontractors as necessary to perform the Work, but shall restrict access to State Confidential Information to those agents, employees, assigns and Subcontractors who require access to perform their obligations under this Agreement. Grantee shall ensure all such agents, employees, assigns, and Subcontractors sign agreements containing nondisclosure provisions at least as protective as those in this Agreement, and that the nondisclosure provisions are in force at all times the agent, employee, assign or Subcontractor has access to any State Confidential Information. Grantee shall provide copies of those signed nondisclosure provisions to the State upon execution of the nondisclosure provisions.

C. Use, Security, and Retention

Grantee shall use, hold and maintain State Confidential Information in compliance with any and all applicable laws and regulations in facilities located within the United States, and shall maintain a secure environment that ensures confidentiality of all State Confidential Information wherever located. Grantee shall provide the State with access, subject to Grantee's reasonable security requirements, for purposes of inspecting and monitoring access and use of State Confidential Information and evaluating security control effectiveness. Upon the expiration or termination of this Agreement, Grantee shall return State Records provided to Grantee or destroy such State Records and certify to the State that it has done so, as directed by the State. If Grantee is prevented by law or regulation from returning or destroying State Confidential Information, Grantee warrants it will guarantee the confidentiality of, and cease to use, such State Confidential Information.

D. Incident Notice and Remediation

If Grantee becomes aware of any Incident, it shall notify the State immediately and cooperate with the State regarding recovery, remediation, and the necessity to involve law enforcement, as determined by the State. Unless Grantee can establish that none of Grantee or any of its agents, employees, assigns or Subcontractors are the cause or source of the Incident, Grantee shall be responsible for the cost of notifying each person who may have been impacted by the Incident. After an Incident, Grantee shall take steps to reduce the risk of incurring a similar type of Incident in the future as directed by the State, which may include, but is not limited to, developing and implementing a remediation plan that is approved by the State at no additional cost to the State. The State may adjust or direct modifications to this plan, in its sole discretion and Grantee shall make all modifications as directed by the State. If Grantee cannot produce its analysis and plan within the allotted time, the State, in its sole discretion, may perform such analysis and produce a remediation plan, and Grantee shall reimburse the State for the reasonable costs thereof.

E. Safeguarding PII

If Grantee or any of its Subcontractors will or may receive PII under this Agreement, Grantee shall provide for the security of such PII, in a manner and form acceptable to the State, including, without limitation, State non-disclosure requirements, use of appropriate technology, security practices, computer access security, data access security, data storage encryption, data transmission encryption, security inspections, and audits. Grantee shall be a "Third-Party Service Provider" as defined in §24-73-103(1)(i), C.R.S. and shall maintain security procedures and practices consistent with §§24-73-101, *et seq.*, C.R.S.

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F. Health Insurance Portability and Accountability Act of 1996 (HIPAA)

DOLA is not a covered entity under HIPAA for purposes of this Grant. If the Grantee is a covered entity under HIPAA, it shall comply with the requirements of HIPAA, and in all instances shall comply with all other federal and state laws protecting the confidentiality of patient information.

9. CONFLICTS OF INTEREST**A. Actual Conflicts of Interest**

Grantee shall not engage in any business or activities, or maintain any relationships that conflict in any way with the full performance of the obligations of Grantee under this Agreement. Such a conflict of interest would arise when a Grantee or Subcontractor's employee, officer or agent were to offer or provide any tangible personal benefit to an employee of the State, or any member of his or her immediate family or his or her partner, related to the award of, entry into or management or oversight of this Agreement.

B. Apparent Conflicts of Interest

Grantee acknowledges that, with respect to this Agreement, even the appearance of a conflict of interest shall be harmful to the State's interests. Absent the State's prior written approval, Grantee shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Grantee's obligations under this Agreement.

C. Disclosure to the State

If a conflict or the appearance of a conflict arises, or if Grantee is uncertain whether a conflict or the appearance of a conflict has arisen, Grantee shall submit to the State a disclosure statement setting forth the relevant details for the State's consideration. Failure to promptly submit a disclosure statement or to follow the State's direction in regard to the actual or apparent conflict constitutes a breach of this Agreement.

10. INSURANCE

Grantee shall obtain and maintain, and ensure that each Subcontractor shall obtain and maintain, insurance as specified in this section at all times during the term of this Agreement. All insurance policies required by this Agreement that are not provided through self-insurance shall be issued by insurance companies as approved by the State.

A. Workers' Compensation

Workers' compensation insurance as required by state statute, and employers' liability insurance covering all Grantee or Subcontractor employees acting within the course and scope of their employment.

B. General Liability

Commercial general liability insurance covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows:

- i.** \$1,000,000 each occurrence;
- ii.** \$1,000,000 general aggregate;
- iii.** \$1,000,000 products and completed operations aggregate; and

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- iv. \$50,000 any one (1) fire.

C. Automobile Liability

Automobile liability insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit of \$1,000,000 each accident combined single limit.

D. Protected Information

This section shall | shall not apply to this Grant.

Liability insurance covering all loss of State Confidential Information, such as PII, PHI, PCI, Tax Information, and CJI, and claims based on alleged violations of privacy rights through improper use or disclosure of protected information with minimum limits as follows:

- i. \$1,000,000 each occurrence; and
- ii. \$2,000,000 general aggregate.

E. Professional Liability Insurance

This section shall | shall not apply to this Grant.

Professional liability insurance covering any damages caused by an error, omission or any negligent act with minimum limits as follows:

- i. \$1,000,000 each occurrence; and
- ii. \$1,000,000 general aggregate.

F. Crime Insurance

Crime insurance including employee dishonesty coverage with minimum limits as follows:

- i. \$1,000,000 each occurrence; and
- ii. \$1,000,000 general aggregate.

G. Umbrella Liability Insurance

For construction projects exceeding \$10,000,000, Grantee and Subcontractors shall maintain umbrella/excess liability insurance on an occurrence basis in excess of the underlying insurance described in **§10.A** through **§10.E** above. Coverage shall follow the terms of the underlying insurance, included the additional insured and waiver of subrogation provisions. The amounts of insurance required in subsections above may be satisfied by the Grantee and Subcontractor purchasing coverage for the limits specified or by any combination of underlying and umbrella limits, so long as the total amount of insurance is not less than the limits specified in each section previously mentioned. The insurance shall have a minimum amount of \$5,000,000 per occurrence and \$5,000,000 in the aggregate.

H. Property Insurance

If Grant Funds are provided for the acquisition, construction, or rehabilitation of real property, insurance on the buildings and other improvements now existing or hereafter erected on the premises and on the fixtures and personal property included in the Subject Property against loss by fire, other hazards covered by the so called "all risk" form of policy and such other perils as State shall from time to time require with respect to properties of the nature and in the geographical area of the Subject Properties, and to be in an amount at least equal to the replacement cost value of the Subject Property. Grantor will at its sole cost and

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expense, from time to time and at any time, at the request of State provide State with evidence satisfactory to State of the replacement cost of the Subject Property.

I. Flood Insurance

If the Subject Property or any part thereof is at any time located in a designated official flood hazard area, flood insurance insuring the buildings and improvements now existing or hereafter erected on the Subject Property and the personal property used in the operation thereof in an amount equal to the lesser of the amount required for property insurance identified in §10.H above, or the maximum limit of coverage made available with respect to such buildings and improvements and personal property under applicable federal laws and the regulations issued thereunder.

J. Builder's Risk Insurance

This section shall | shall not apply to this Grant.

Grantee and/or Subcontractor shall purchase and maintain property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial construction/rehabilitation costs, plus value of subsequent modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made or until no person or entity other than the property owner has an insurable interest in the property.

- i. The insurance shall include interests of the property owner, Grantee, and Subcontractors in the Project as named insureds.
- ii. All associated deductibles shall be the responsibility of the Grantee, and Subcontractor. Such policy may have a deductible clause but not to exceed \$10,000.
- iii. Property insurance shall be on an "all risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Grantee's and Subcontractor's services and expenses required as a result of such insured loss.
- iv. Builders Risk coverage shall include partial use by Grantee and/or property owner.
- v. The amount of such insurance shall be increased to include the cost of any additional work to be done on the Project, or materials or equipment to be incorporated in the Project, under other independent contracts let or to be let. In such event, Subcontractor shall be reimbursed for this cost as his or her share of the insurance in the same ratio as the ratio of the insurance represented by such independent contracts let or to be let to the total insurance carried.

K. Pollution Liability Insurance

If Grantee and/or its Subcontractor is providing directly or indirectly work with pollution/environmental hazards, they must provide or cause those conducting the work to

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provide Pollution Liability Insurance coverage. The Pollution Liability policy must include contractual liability coverage. The policy limits shall be in the amount of \$1,000,000 with maximum deductible of \$25,000 to be paid by the Grantee's Subcontractor.

L. Additional Insured

The State shall be named as additional insured on all commercial general liability policies (leases and construction contracts require additional insured coverage for completed operations) required of Grantee and Subcontractors.

M. Primacy of Coverage

Coverage required of Grantee and each Subcontractor shall be primary over any insurance or self-insurance program carried by Grantee or the State.

N. Cancellation

All commercial insurance policies shall include provisions preventing cancellation or non-renewal, except for cancellation based on non-payment of premiums, without at least 30 days prior notice to Grantee and Grantee shall forward such notice to the State in accordance with §14 within seven (7) days of Grantee's receipt of such notice.

O. Subrogation Waiver

All commercial insurance policies secured or maintained by Grantee or its Subcontractors in relation to this Agreement shall include clauses stating that each carrier shall waive all rights of recovery under subrogation or otherwise against Grantee or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

P. Public Entities

If Grantee is a "public entity" within the meaning of the Colorado Governmental Immunity Act, §24-10-101, *et seq.*, C.R.S. (the "GIA"), Grantee shall maintain, in lieu of the liability insurance requirements stated above, at all times during the term of this Agreement such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA. If a Subcontractor is a public entity within the meaning of the GIA, Grantee shall ensure that the Subcontractor maintain at all times during the terms of this Agreement, in lieu of the liability insurance requirements stated above, such liability insurance, by commercial policy or self-insurance, as is necessary to meet the Subcontractor's obligations under the GIA.

Q. Certificates

For each commercial insurance plan provided by Grantee under this Agreement, Grantee shall provide to the State certificates evidencing Grantee's insurance coverage required in this Agreement within seven (7) Business Days following the Effective Date. Grantee shall provide to the State certificates evidencing Subcontractor insurance coverage required under this Agreement within seven (7) Business Days following the Effective Date, except that, if Grantee's subcontract is not in effect as of the Effective Date, Grantee shall provide to the State certificates showing Subcontractor insurance coverage required under this Agreement within seven (7) Business Days following Grantee's execution of the subcontract. No later than fifteen (15) days before the expiration date of Grantee's or any Subcontractor's coverage, Grantee shall deliver to the State certificates of insurance evidencing renewals of coverage. At any other time during the term of this Agreement, upon request by the State,

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Grantee shall, within seven (7) Business Days following the request by the State, supply to the State evidence satisfactory to the State of compliance with the provisions of this section.

11. BREACH OF AGREEMENT

In the event of a Breach of Agreement, the aggrieved Party shall give written notice of Breach of Agreement to the other Party. If the notified Party does not cure the breach, at its sole expense, within thirty (30) days after the delivery of written notice, the Party may exercise any of the remedies as described in §12 for that Party. Notwithstanding any provision of this Agreement to the contrary, the State, in its discretion, need not provide notice or a cure period and may immediately terminate this Agreement in whole or in part or institute any other remedy in this Agreement in order to protect the public interest of the State; or if Grantee is debarred or suspended under §24-109-105, C.R.S., the State, in its discretion, need not provide notice or cure period and may terminate this Agreement in whole or in part or institute any other remedy in this Agreement as of the date that the debarment or suspension takes effect.

12. REMEDIES

A. State's Remedies

If Grantee is in breach under any provision of this Agreement and fails to cure such breach, the State, following the notice and cure period set forth in §11, shall have all of the remedies listed in this section in addition to all other remedies set forth in this Agreement or at law. The State may exercise any or all of the remedies available to it, in its discretion, concurrently or consecutively.

i. Termination for Breach

In the event of Grantee's uncured breach, the State may terminate this entire Agreement or any part of this Agreement. Additionally, if Grantee fails to comply with any terms of the Federal Award, then the State may, in its discretion or at the direction of a Federal Awarding Agency, terminate this entire Agreement or any part of this Agreement. Grantee shall continue performance of this Agreement to the extent not terminated, if any.

a. Obligations and Rights

To the extent specified in any termination notice, Grantee shall not incur further obligations or render further performance past the effective date of such notice, and shall terminate outstanding orders and subcontracts with third parties. However, Grantee shall complete and deliver to the State all Work not cancelled by the termination notice, and may incur obligations as necessary to do so within this Agreement's terms. At the request of the State, Grantee shall assign to the State all of Grantee's rights, title, and interest in and to such terminated orders or subcontracts. Upon termination, Grantee shall take timely, reasonable and necessary action to protect and preserve property in the possession of Grantee but in which the State has an interest. At the State's request, Grantee shall return materials owned by the State in Grantee's possession at the time of any termination. Grantee shall deliver all completed Work Product and all Work Product that was in the process of completion to the State at the State's request.

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b. Payments

Notwithstanding anything to the contrary, the State shall only pay Grantee for accepted Work received as of the date of termination. If, after termination by the State, the State agrees that Grantee was not in breach or that Grantee's action or inaction was excusable, such termination shall be treated as a termination in the public interest, and the rights and obligations of the Parties shall be as if this Agreement had been terminated in the public interest under **§2.E**.

c. Damages and Withholding

Notwithstanding any other remedial action by the State, Grantee shall remain liable to the State for any damages sustained by the State in connection with any breach by Grantee, and the State may withhold payment to Grantee for the purpose of mitigating the State's damages until such time as the exact amount of damages due to the State from Grantee is determined. The State may withhold any amount that may be due Grantee as the State deems necessary to protect the State against loss including, without limitation, loss as a result of outstanding liens and excess costs incurred by the State in procuring from third parties replacement Work as cover.

ii. Remedies Not Involving Termination

The State, in its discretion, may exercise one or more of the following additional remedies:

a. Suspend Performance

Suspend Grantee's performance with respect to all or any portion of the Work pending corrective action as specified by the State without entitling Grantee to an adjustment in price or cost or an adjustment in the performance schedule. Grantee shall promptly cease performing Work and incurring costs in accordance with the State's directive, and the State shall not be liable for costs incurred by Grantee after the suspension of performance.

b. Withhold Payment

Withhold payment to Grantee until Grantee corrects its Work.

c. Deny Payment

Deny payment for Work not performed, or that due to Grantee's actions or inactions, cannot be performed or if they were performed are reasonably of no value to the state; provided, that any denial of payment shall be equal to the value of the obligations not performed.

d. Removal

Demand immediate removal of any of Grantee's employees, agents, or Subcontractors from the Work whom the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable or whose continued relation to this Agreement is deemed by the State to be contrary to the public interest or the State's best interest.

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e. Intellectual Property

If any Work infringes, or if the State in its sole discretion determines that any Work is likely to infringe, a patent, copyright, trademark, trade secret or other intellectual property right, Grantee shall, as approved by the State **(i)** secure that right to use such Work for the State and Grantee; **(ii)** replace the Work with noninfringing Work or modify the Work so that it becomes noninfringing; or, **(iii)** remove any infringing Work and refund the amount paid for such Work to the State.

f. Technical Assistance

State may elect to conduct on-site monitoring and work closely with Grantee until the Project is back on schedule. State shall provide prior written notice to Grantee if its elects to conduct on-site monitoring, which shall be conducted during normal business hours and shall not unduly disrupt Grantee's business operations.

B. Grantee's Remedies

If the State is in breach of any provision of this Agreement and does not cure such breach, Grantee, following the notice and cure period in §11 and the dispute resolution process in §13 shall have all remedies available at law and equity.

13. DISPUTE RESOLUTION**A. Initial Resolution**

Except as herein specifically provided otherwise, disputes concerning the performance of this Agreement which cannot be resolved by the designated Agreement representatives shall be referred in writing to a senior departmental management staff member designated by the State and a senior manager designated by Grantee for resolution. This §13 shall not apply to a suspension or termination of this Agreement made by the State pursuant to §2.G.

B. Resolution of Controversies

If the initial resolution described in §13.A fails to resolve the dispute within ten (10) Business Days, Grantee shall submit any alleged breach of this Agreement by the State to the Procurement Official of the Department of Local Affairs as described in §24-101-301(30), C.R.S. for resolution following the same resolution of controversies process as described in §24-106-109, C.R.S. and §§24-109-101.1 through 24-109-505, C.R.S. (the "Resolution Statutes"), except that if Grantee wishes to challenge any decision rendered by the Procurement Official, Grantee's challenge shall be an appeal to the executive director of the Department of Personnel and Administration, or their delegate, in the same manner as described in the Resolution Statutes before Grantee pursues any further action. Except as otherwise stated in this Section, all requirements of the Resolution Statutes shall apply including, without limitation, time limitations regardless of whether the Colorado Procurement Code applies to this Agreement.

14. NOTICES AND REPRESENTATIVES

Each individual identified as a Principal Representative on the Cover Page for this Agreement shall be the principal representative of the designating Party. All notices required or permitted to be given under this Agreement shall be in writing, and shall be delivered **(A)** by hand with receipt required, **(B)** by certified or registered mail to such Party's principal representative at the address

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set forth on the Cover Page for this Agreement or (C) as an email with read receipt requested to the principal representative at the email address, if any, set forth on the Cover Page for this Agreement. If a Party delivers a notice to another through email and the email is undeliverable, then, unless the Party has been provided with an alternate email contact, the Party delivering the notice shall deliver the notice by hand with receipt required or by certified or registered mail to such Party's principal representative at the address set forth on the Cover Page for this Agreement. Either Party may change its principal representative or principal representative contact information, or may designate specific other individuals to receive certain types of notices in addition to or in lieu of a principal representative, by notice submitted in accordance with this section without a formal amendment to this Agreement. Unless otherwise provided in this Agreement, notices shall be effective upon delivery of the written notice.

15. RIGHTS IN WORK PRODUCT AND OTHER INFORMATION**A. Work Product****i. Copyrights**

[Reserved].

ii. Patents

[Reserved].

iii. Assignments and Assistance

Whether or not Grantee is under contract with the State at the time, Grantee shall execute applications, assignments, and other documents, and shall render all other reasonable assistance requested by the State, to enable the State to secure patents, copyrights, licenses and other intellectual property rights related to the Work Product. The Parties intend the Work Product to be works made for hire. Grantee assigns to the State and its successors and assigns, the entire right, title, and interest in and to all causes of action, either in law or in equity, for past, present, or future infringement of intellectual property rights related to the Work Product and all works based on, derived from, or incorporating the Work Product.

B. Exclusive Property of the State

Except to the extent specifically provided elsewhere in this Agreement, any pre-existing State Records, State software, research, reports, studies, photographs, negatives or other documents, drawings, models, materials, data and information shall be the exclusive property of the State (collectively, "State Materials"). Grantee shall not use, willingly allow, cause or permit Work Product or State Materials to be used for any purpose other than the performance of Grantee's obligations in this Agreement without the prior written consent of the State. Upon termination of this Agreement for any reason, Grantee shall provide all Work Product and State Materials to the State in a form and manner as directed by the State.

C. Exclusive Property of Grantee

Grantee retains the exclusive rights, title, and ownership to any and all pre-existing materials owned or licensed to Grantee including, but not limited to, all pre-existing software, licensed products, associated source code, machine code, text images, audio and/or video, and third-party materials, delivered by Grantee under this Agreement, whether incorporated in a Deliverable or necessary to use a Deliverable (collectively, "Grantee Property"). Grantee

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Property shall be licensed to the State as set forth in this Agreement or a State approved license agreement: (i) entered into as exhibits to this Agreement, (ii) obtained by the State from the applicable third-party vendor, or (iii) in the case of open source software, the license terms set forth in the applicable open source license agreement.

16. STATEWIDE CONTRACT MANAGEMENT SYSTEM

If the maximum amount payable to Grantee under this Agreement is \$100,000 or greater, either on the Effective Date or at any time thereafter, this section shall apply. Grantee agrees to be governed by and comply with the provisions of §§24-106-103, 24-102-206, 24-106-106, and 24-106-107, C.R.S. regarding the monitoring of vendor performance and the reporting of Agreement performance information in the State's Agreement management system ("Contract Management System" or "CMS"). Grantee's performance shall be subject to evaluation and review in accordance with the terms and conditions of this Agreement, Colorado statutes governing CMS, and State Fiscal Rules and State Controller policies.

17. RESTRICTIONS ON PUBLIC BENEFITS

This section shall | shall not apply to this Grant.

Grantee shall confirm that any individual natural person is lawfully present in the United States pursuant to 8 U.S.C. §§1601, *et seq.*, when such individual applies for public benefits provided under this Grant by requiring the applicant to:

- A. Produce a verification document in accordance with 62 Fed. Reg. 221 (November 17, 1997), pp. 61,363 - 61,371; and,
- B. Execute a Residency Declaration, attached as Form 1, or a substantially similar form as determined by the State.

18. GENERAL PROVISIONS

A. Applicable Laws

At all times during the performance of this Grant, Grantee shall comply with all applicable Federal and State laws and their implementing regulations, currently in existence and as hereafter amended including, without limitation, those set forth on **Exhibit A**, Applicable Laws. Grantee also shall require compliance with such laws and regulations by Subcontractors under subcontracts permitted by this Grant.

B. Assignment

Grantee's rights and obligations under this Agreement are personal and may not be transferred or assigned without the prior, written consent of the State. Any attempt at assignment or transfer without such consent shall be void. Any assignment or transfer of Grantee's rights and obligations approved by the State shall be subject to the provisions of this Agreement.

C. Subcontracts

Grantee shall submit to the State a copy of each such subgrant or subcontract upon request by the State. All subgrants and subcontracts entered into by Grantee in connection with this Agreement shall comply with all applicable federal and state laws and regulations, shall provide that they are governed by the laws of the State of Colorado, and shall be subject to all provisions of this Agreement.

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D. Binding Effect

Except as otherwise provided in **§17.B** and **Exhibit B**, all provisions of this Agreement, including the benefits and burdens, shall extend to and be binding upon the Parties' respective successors and assigns.

E. Authority

Each Party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such Party's obligations have been duly authorized.

F. Captions and References

The captions and headings in this Agreement are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions. All references in this Agreement to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

G. Counterparts

This Agreement may be executed in multiple, identical, original counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

H. Entire Understanding

This Agreement represents the complete integration of all understandings between the Parties related to the Work, and all prior representations and understandings related to the Work, oral or written, are merged into this Agreement. Prior or contemporaneous additions, deletions, or other changes to this Agreement shall not have any force or effect whatsoever, unless embodied herein.

I. Digital Signatures

If any signatory signs this agreement using a digital signature in accordance with the Colorado State Controller Contract, Grant and Purchase Order Policies regarding the use of digital signatures issued under the State Fiscal Rules, then any agreement or consent to use digital signatures within the electronic system through which that signatory signed shall be incorporated into this Agreement by reference.

J. Jurisdiction and Venue

[Reserved].

K. Modification

Except as otherwise provided in this Agreement, any modification to this Agreement shall only be effective if agreed to in a formal amendment to this Agreement, properly executed and approved in accordance with applicable Colorado State law and State Fiscal Rules. Modifications permitted under this Agreement, other than Agreement amendments, shall conform to the policies issued by the Colorado State Controller.

i. By the Parties

If either the State or the Grantee desires to modify the Agreement Maximum Amount, make budget adjustments and/or change the term of the Agreement, this may be

Exhibit B

achieved unilaterally by DOLA through an Option Letter, in form substantially similar to **Exhibit G**, properly executed and approved in accordance with applicable State laws, regulations, and policies.

Modifications other than by Option Letter shall not take effect unless agreed to in writing by both parties in an amendment to this Agreement properly executed and approved in accordance with State laws, regulations, and policies.

ii. By Operation of Law

This Agreement is subject to such modifications as may be required by changes in Federal or Colorado State law, or their implementing regulations. Any such required modification automatically shall be incorporated into and be part of this Agreement on the effective date of such change, as if fully set forth herein.

iii. Items not Requiring Modification - Consents

Where the terms of this Agreement require the Grantee to obtain the consent of the Division of Housing, the Division Director or their delegate shall be authorized to provide such consent.

L. Statutes, Regulations, Fiscal Rules, and Other Authority

Any reference in this Agreement to a statute, regulation, State Fiscal Rule, fiscal policy or other authority shall be interpreted to refer to such authority then current, as may have been changed or amended since the Effective Date of this Agreement.

M. External Terms and Conditions

Notwithstanding anything to the contrary herein, the State shall not be subject to any provision included in any terms, conditions, or agreements appearing on Grantee's or a Subcontractor's website or any provision incorporated into any click-through or online agreements related to the Work unless that provision is specifically referenced in this Agreement.

N. Severability

The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect, provided that the Parties can continue to perform their obligations under this Agreement in accordance with the intent of this Agreement.

O. Survival of Certain Agreement Terms

Any provision of this Agreement that imposes an obligation on a Party after termination or expiration of this Agreement shall survive the termination or expiration of this Agreement and shall be enforceable by the other Party.

P. Taxes

The State is exempt from federal excise taxes under I.R.C. Chapter 32 (26 U.S.C., Subtitle D, Ch. 32) (Federal Excise Tax Exemption Certificate of Registry No. 84-730123K) and from State and local government sales and use taxes under §§39-26-704(1), *et seq.*, C.R.S. (Colorado Sales Tax Exemption Identification Number 98-02565). The State shall not be liable for the payment of any excise, sales, or use taxes, regardless of whether any political subdivision of the state imposes such taxes on Grantee. Grantee shall be solely responsible

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for any exemptions from the collection of excise, sales or use taxes that Grantee may wish to have in place in connection with this Agreement.

Q. Third Party Beneficiaries

Except for the Parties' respective successors and assigns described in **§18.B** of this Agreement does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Enforcement of this Agreement and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Agreement are incidental to this Agreement, and do not create any rights for such third parties.

R. Waiver

A Party's failure or delay in exercising any right, power, or privilege under this Agreement, whether explicit or by lack of enforcement, shall not operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege preclude any other or further exercise of such right, power, or privilege.

S. CORA Disclosure

To the extent not prohibited by federal law, this Agreement and the performance measures and standards required under §24-106-107, C.R.S., if any, are subject to public release through the CORA.

T. Standard and Manner of Performance

Grantee shall perform its obligations under this Agreement in accordance with the highest standards of care, skill and diligence in Grantee's industry, trade, or profession.

U. Licenses, Permits, and Other Authorizations

Grantee shall secure, prior to the Effective Date, and maintain at all times during the term of this Agreement, at its sole expense, all licenses, certifications, permits, and other authorizations required to perform its obligations under this Agreement, and shall ensure that all employees, agents and Subcontractors secure and maintain at all times during the term of their employment, agency or Subcontractor, all license, certifications, permits and other authorizations required to perform their obligations in relation to this Agreement.

V. Indemnification

i. General Indemnification

Grantee shall indemnify, save, and hold harmless the State, its employees, agents and assignees (the "Indemnified Parties"), against any and all costs, expenses, claims, damages, liabilities, court awards and other amounts (including attorneys' fees and related costs) incurred by any of the Indemnified Parties in relation to any act or omission by Grantee, or its employees, agents, Subcontractors, or assignees in connection with this Agreement.

ii. Confidential Information Indemnification

Disclosure or use of State Confidential Information by Grantee in violation of **§8** may be cause for legal action by third parties against Grantee, the State, or their respective agents. Grantee shall indemnify, save, and hold harmless the Indemnified Parties, against any and all claims, damages, liabilities, losses, costs, expenses (including

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attorneys' fees and costs) incurred by the State in relation to any act or omission by Grantee, or its employees, agents, assigns, or Subcontractors in violation of §8.

iii. Intellectual Property Indemnification

Grantee shall indemnify, save, and hold harmless the Indemnified Parties, against any and all costs, expenses, claims, damages, liabilities, and other amounts (including attorneys' fees and costs) incurred by the Indemnified Parties in relation to any claim that any Work infringes a patent, copyright, trademark, trade secret, or any other intellectual property right.

W. Federal Provisions

Grantee shall comply with all applicable requirements of Exhibit D at all times during the term of this Grant.

19. COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-3)

These Special Provisions apply to all agreements except where noted in italics.

A. Statutory Approval. §24-30-202(1), C.R.S.

This Agreement shall not be valid until it has been approved by the Colorado State Controller or designee. If this Agreement is for a Major Information Technology Project, as defined in §24-37.5-102(2.6), then this Agreement shall not be valid until it has been approved by the State's Chief Information Officer or designee.

B. Fund Availability. §24-30-202(5.5), C.R.S.

Financial obligations of the State payable after the current State Fiscal Year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

C. Governmental Immunity.

Liability for claims for injuries to persons or property arising from the negligence of the State, its departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the Colorado Governmental Immunity Act, §24-10-101, et seq., C.R.S.; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State's risk management statutes, §§24-30-1501, et seq., C.R.S. No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.

D. Independent Contractor.

Grantee shall perform its duties hereunder as an independent contractor and not as an employee. Neither Grantee nor any agent or employee of Grantee shall be deemed to be an agent or employee of the State. Grantee shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. Grantee and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Grantee or any of its agents or employees. Grantee shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Agreement. Grantee shall (i) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (ii) provide proof

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thereof when requested by the State, and (iii) be solely responsible for its acts and those of its employees and agents.

E. Compliance with Law.

Grantee shall comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

F. Choice of Law, Jurisdiction and Venue.

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Agreement. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. All suits or actions related to this Agreement shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

G. Prohibited Terms.

Any term included in this Agreement that requires the State to indemnify or hold Grantee harmless; requires the State to agree to binding arbitration; limits Grantee's liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any way shall be void ab initio. Nothing in this Agreement shall be construed as a waiver of any provision of §24-106-109 C.R.S.

H. Software Piracy Prohibition.

State or other public funds payable under this Agreement shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Grantee hereby certifies and warrants that, during the term of this Agreement and any extensions, Grantee has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Grantee is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Agreement, including, without limitation, immediate termination of this Agreement and any remedy consistent with federal copyright laws or applicable licensing restrictions.

I. Employee Financial Interest/Conflict of Interest. §§24-18-201 and 24-50-507, C.R.S.

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Agreement. Grantee has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Grantee's services and Grantee shall not employ any person having such known interests.

J. Vendor Offsets and Erroneous Payments. §§24-30-202(1) and 24-30-202.4, C.R.S.

[*Not applicable to intergovernmental agreements*] Subject to §24-30-202.4(3.5), C.R.S., the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (i) unpaid child support debts or child support arrearages; (ii) unpaid balances of tax, accrued interest, or other charges specified in §§39-21-101, *et seq.*, C.R.S.; (iii) unpaid loans due to the Student Loan Division of the Department of Higher Education; (iv) amounts required to be paid to the Unemployment Compensation Fund; and (v) other unpaid debts owing to the State as a result of final agency determination or judicial

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action. The State may also recover, at the State's discretion, payments made to Grantee in error for any reason, including, but not limited to, overpayments or improper payments, and unexpended or excess funds received by Grantee by deduction from subsequent payments under this Agreement, deduction from any payment due under any other contracts, grants or agreements between the State and Grantee, or by any other appropriate method for collecting debts owed to the State.

K. Public Service Contracts. §§8-17.5-101, et seq., C.R.S.

[Not applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services] Grantee certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Agreement, through participation in the E-Verify Program or the State verification program established pursuant to §8-17.5-102(5)(c), C.R.S., Grantee shall not knowingly employ or contract with an illegal alien to perform work under this Agreement or enter into a contract with a Subcontractor that fails to certify to Grantee that the Subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. Grantee **(i)** shall not use E-Verify Program or the program procedures of the Colorado Department of Labor and Employment (“Department Program”) to undertake pre-employment screening of job applicants while this Agreement is being performed, **(ii)** shall notify the Subcontractor and the contracting State agency or institution of higher education within 3 days if Grantee has actual knowledge that a Subcontractor is employing or contracting with an illegal alien for work under this Agreement, **(iii)** shall terminate the subcontract if a Subcontractor does not stop employing or contracting with the illegal alien within 3 days of receiving the notice, and **(iv)** shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to §8-17.5-102(5), C.R.S., by the Colorado Department of Labor and Employment. If Grantee participates in the Department program, Grantee shall deliver to the contracting State agency, Institution of Higher Education or political subdivision, a written, notarized affirmation, affirming that Grantee has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Grantee fails to comply with any requirement of this provision or §§8-17.5-101, et seq., C.R.S., the contracting State agency, institution of higher education or political subdivision may terminate this Agreement for breach and, if so terminated, Grantee shall be liable for damages.

L. Public Contracts with Natural Persons. §§24-76.5-101, et seq., C.R.S.

Grantee, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that Grantee **(i)** is a citizen or otherwise lawfully present in the United States pursuant to federal law, **(ii)** shall comply with the provisions of §§24-76.5-101, et seq., C.R.S., and **(iii)** has produced one form of identification required by §24-76.5-103, C.R.S. prior to the Effective Date of this Agreement.

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**EXHIBIT A -
APPLICABLE LAWS**

Federal laws and regulations incorporated into this Grant include, without limitation:

1. Homeless Emergency Assistance and Rapid Transition to Housing (HEARTH) Proposed Rule for HMIS Requirements.
2. Age Discrimination Act of 1975, 42 U.S.C. 6101, *et seq.*
3. Age Discrimination in Employment Act of 1967, 29 U.S.C. 621-634.
4. Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. 12101, *et seq.*
5. Equal Pay Act of 1963, 29 U.S.C. 206(d).
6. Immigration Reform and Control Act of 1986, 8 U.S.C. 1324b.
7. Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794.
8. Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d.
9. Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e.
10. Title IX of the Education Amendment of 1972, 20 U.S.C. 1681, *et seq.*
11. Section 24-34-302, *et seq.*, C.R.S., as amended.
12. The applicable of the following:
 - a. Cost Principals for State, Local and Indian Tribal Governments, 2 C.F.R. 225, (OMB Circular A-87);
 - b. Cost Principals for Education Institutions, 2 C.F.R. 220, (OMB Circular A-21);
 - c. Cost Principals for Non-Profit Organizations, 2 C.F.R. 230, (OMB Circular A-122); and
 - d. Audits of States, Local Governments, and Non-Profit Organizations (OMB Circular A-133), and/or the Colorado Local Government Audit Law, §29-1-601, *et seq.*, C.R.S., and State implementing rules and regulations.
 - e. Colorado Local Governments Audit Law. §29-1-601, *et seq.*, C.R.S.
 - f. Administrative requirements for grants and cooperative agreements to state, local and federally recognized Indian tribal governments.
 - g. Uniform administrative requirements for grants and agreements with institutions of higher education, hospitals, and other non-profit organizations.
13. Cranston-Gonzales National Affordable Housing Act of 1990, PL 101-625.
14. The McKinney-Vento Homeless Assistance Act as amended by S. 896 The Homeless Emergency Assistance and Rapid Transition to Housing (HEARTH) Act of 2009.
15. Colorado Housing Act of 1970, §24-32-701, *et seq.*, C.R.S.
16. Department of Housing and Urban Development – Independent Agencies Appropriations Act of 1989, P.L. 100-404 and Stewart B. McKinney Homeless Assistance Amendments Act of 1988, P.L. 100-628.
17. Emergency Solutions Grants Program, 24 C.F.R. Parts 84, 85, 91 and 576.
18. Lead-Based Paint Poisoning Prevention Act – Title IV, 42 U.S.C. 4821.
19. Section 3 of the Housing and Urban Development Act of 1968 as amended, 12 U.S.C. 1701(u).
20. Uniform Federal Accessibility Standards, 24 C.F.R. Part 40, Appendix A.
21. Indian Self-Determination and Education Assistance Act, 25 U.S.C. 450e, Section 7b.
22. Termination of Assistance Procedures, Section 1402(d), Housing and Community Development Act of 1992.
23. National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, as amended, and the implementing regulations of Housing and Urban Development, 24 C.F.R., Part 58.
24. Council on Environmental Quality, 40 C.F.R. Parts 1500 through 1508.
25. Coronavirus Aid, Relief, and Economic Security (“CARES”) Act (Public Law 116-136)

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**EXHIBIT B -
STATEMENT OF PROJECT****1. GENERAL DESCRIPTION OF THE PROJECT**

- 1.1. Project Description.** These Emergency Solutions Grants (ESG) funds (the “grant Funds”) are sourced from the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act (Public Law 116-136) (ESG-CV) and shall be used to prevent, prepare for, and respond to coronavirus (COVID-19) among individuals and families who are homeless or receiving homeless assistance. Grant Funds may only be used for Eligible Activities as defined in §8.1 and listed in §5.2 (Project Budget) of this **Exhibit B**. Grantee is responsible for completion of the Project and submission of all required reporting and other documentation in the manner and timeframes set forth herein.
- 1.2. Program Parameters.** Per the CARES Act, ESG-CV funds may not be used to require people experiencing homelessness to receive treatment or perform any other prerequisite activities as a condition for receiving shelter, housing, or other services.

2. Definitions

The following definitions are in addition to definitions appearing in the main Grant Agreement and other Exhibits.

- 2.1. “Advance Payment”** means a payment for work that has not yet been completed or for costs that have not yet been incurred. Grantees must request Advance Payments from DOH in writing and document the lack of cash flow to follow traditional reimbursement models.
- 2.2. Area Median Income (AMI).** Determined by HUD, with adjustments for smaller and larger families. HUD may establish income ceilings higher or lower than 30, 50, or 80 percent of the median income for an area if HUD finds that such variations are necessary because of unusually high or low family incomes
- 2.3. Beneficiaries.** “Beneficiaries” shall mean the persons and/or households who are the end users that benefit from the Project.
- 2.4. “Comparable Database”** means a relational database that meets all Homeless Management Information Systems (HMIS) data standards and the minimum standards of HMIS privacy and security requirements, including the Department of Housing and Urban Development’s (HUD) most recent reporting standards and comma separated value (“CSV”) format specifications. DOH has chosen CAFÉ as the HMIS Comparable Database for ESG and ESG-CV funded programs.
- 2.5. “Continuum of Care (CoC)”** means a HUD identified regional that promotes communitywide commitment to the goal of ending homelessness; provides funding for efforts by nonprofit providers, and State and local governments to quickly rehouse homeless individuals and families while minimizing the trauma and dislocation caused to homeless individuals, families, and communities by homelessness; promote access to and effect utilization of mainstream programs by homeless individuals and families; and optimizes self-sufficiency among individuals and families experiencing homelessness.
- 2.6. “Coordinated Entry System,”** or Coordinated Assessment System, or Centralized Entry or Assessment System, means a regional, client-centered process that enables communities to assess and identify the housing and support needs of individuals experiencing homelessness.

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Coordinated Entry Systems also match the right level of service and housing intervention as quickly and efficiently as possible, while being respectful of client choice and local providers.

- 2.7. “Fiscal Agent”** means any Grantee that intends to pass funding received from DOH in this Grant Agreement to another agency which will perform the activities outlined in §5.2 (Project Budget) of this **Exhibit B**.
- 2.8. “Homeless Management Information System” (HMIS)** means a local information technology system 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.
- 2.9. “Neighborhood Grants Management System”** means the DOH platform used to collect pay requests and quarterly reports.
- 2.10. “Pre-Agreement Costs”** means costs incurred prior to the Effective Date of this Agreement that are eligible for payment with Grant Funds. Pre-Agreement Costs are allowed only to the extent such costs authorized by the federal funding source and specifically identified in §5.3 of this **Exhibit B**.
- 2.11. Progressive Engagement.** “Progressive Engagement” is a services model that seeks to match services and resources to the participants presenting need. It is an approach to helping households end homelessness as rapidly as possible, despite barriers, with minimal financial and support resources. More supports are offered to households who struggle to stabilize and cannot maintain housing without assistance.
- 2.12. Rent Reasonableness.** A standard defined by HUD designed to ensure that rents being paid are reasonable in relation to rents being charged for comparable unassisted units in the same market.

3. DELIVERABLES

- 3.1. Outcome.** This Project will serve individuals and families currently experiencing homelessness to prevent, prepare for, and respond to COVID-19 pursuant to the Grantee’s approved application. Additionally, Grantee shall agree to comply with any ESG-CV program outcomes released by HUD.
- 3.2. Performance Milestones.** Grantee shall achieve each of the following Milestones by the Date shown.

Milestone	Date
Submit request for reimbursement or advance payment, as approved, to DOH at least quarterly	On-going
Submit Quarterly Financial Status Report	See §7.3.1 below
Submit Quarterly Performance Measures Report	See §7.3.2 below
Submit Quarterly Homeless Management Information (HMIS) Report	See §7.3.3 below
Provide DOH access to Grantee’s HMIS web portal to review real time client data	On-going
Submit Project Completion Report to CDOH	10/31/2021

- 3.3. Service Area.** The services described within this Grant may be provided in County of Denver, State of Colorado.

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4. PERSONNEL

- 4.1. Replacement.** Grantee shall immediately notify the State if the Responsible Administrator specified in §4.2 or any other Grantee key personnel cease to serve. Provided there is a good-faith reason for the change, if Grantee wishes to replace its key personnel, it shall notify the State and seek its approval, which shall be at the State's sole discretion, as the State executed this Grant in part reliance on Grantee's representations regarding key personnel. Such notice shall specify why the change is necessary, who the proposed replacement is, what their qualifications are, and when the change will take effect. Anytime key personnel cease to serve, the State, in its sole discretion, may direct Grantee to suspend Work until such time as replacements are approved. All notices sent under this subsection shall be sent in accordance with §14 of the Grant.
- 4.2. Responsible Administrator.** Grantee's performance hereunder shall be under the direct supervision of Britta Fisher, Executive Director (Britta.Fisher@denvergov.org), who is hereby designated as the responsible administrator of this Project.

5. FUNDING

The State provided funds shall be limited to the amount specified under the "State ESG-CV Funds" column of §5.2, Project Budget, below.

5.1. Matching Funds. [Reserved].

5.2. Project Budget

Eligible Activity	State ESG-CV Funds
Emergency Shelter	\$1,654,622.22
Total	\$1,654,622.22

* Per the CARES Act, ESG-CV funds do not require the Grantee to provide matching funds.

- 5.3. Pre-Agreement Costs.** Because of the COVID-19 emergency, Pre-Agreement Costs related to COVID-19 expenses that were incurred from October 1, 2020 through the execution of this Agreement may be used to pay up to the Project Budget Costs listed in §5.2.
- 5.4. Advance Payments.** Grantees may request Advance Payments to meet immediate fiscal needs of the Grantee to provide the activities described within this Exhibit B. Advance Payments may be requested to pay the cost of up to one month of eligible activities in advance at a time. If such request is approved by DOH, Grantee shall submit weekly spend reports, which shall be used by DOH to evaluate any subsequent advance requests.
- 5.5. Project Budget Line Item Adjustments.** Grantee shall have authority to adjust individual budget line amounts with approval of the State up to an aggregate of 10% of such line item from which the funds are moved. Such authority shall not allow Grantee to transfer to or between administration budget lines. Grantee shall send written notification and receive written approval of allowed adjustments from the State prior to any adjustment.
- 5.6. Grantee may *not*:**
- 5.6.1.** Adjust budget amounts between eligible activities without the prior written consent of the State. (The State may make such adjustments via an Option Letter. See **Exhibit G.**)
- 5.6.2.** Amend any of the terms of this Grant except in accordance with the **Modification** subsection of the **General Provisions** of the Grant.

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6. PAYMENT

Payments shall be made in accordance with the provisions set forth in §7 of this Grant.

6.1. Payment Schedule. Grantee shall disburse Grant Funds received from the State within fifteen (15) days of receipt. Excess funds shall be returned to the State.

Payment	Amount	
Interim Payment(s)	\$1,653,622.22	Paid upon receipt of actual expense documentation and written requests from the Grantee for reimbursement of eligible approved program activities.
Final Payment	\$1,000.00	Paid upon substantial completion of the Project, provided that the Grantee has submitted, and the Department has accepted, all required reports.
Total	\$1,654,622.22	

6.2. Remittance Address. If mailed, payments shall be remitted to the following address unless changed in accordance with §16 of the Grant:

City and County of Denver 201 West Colfax Denver, CO 80202
--

6.3. Interest. If advance payments are authorized, Grantee or Subgrantee may keep interest earned from all federal funds received by Grantee or Subgrantee up to \$500 per year (calculated on Grantee's fiscal year) for administrative expenses. All interest earned in excess of \$500 shall be remitted to DOLA.

7. ADMINISTRATIVE REQUIREMENTS

7.1. Fiscal Agents. Grantees who meet the definition of Fiscal Agent in §2.5 of this **Exhibit B** and plan to pass funds received in this agreement to another agency must have DOH approved ESG policies and procedures. Detailed requirements of this document can be found in DOH's ESG Policies and Procedures Manual, found at: <https://cdola.colorado.gov/emergency-solutions-grant-esg-program>.

7.2. Accounting. Grantee shall maintain properly segregated accounts of Grant Funds, and other funds associated with the Project and make those records available to the State upon request. All receipts and expenditures associated with the Project shall be documented in a detailed and specific manner, in accordance with the Project Budget.

7.3. Audit Report. If an audit is performed on Grantee's records for any fiscal year covering a portion of the term of this Grant or any other grants/contracts with DOLA, Grantee shall submit the final audit report, including a report in accordance with the Single Audit Act, to:

Department of Local Affairs Accounting & Financial Services 1313 Sherman Street, Room 321 Denver, CO 80203 or email to: dola.audit@state.co.us
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7.4. Reporting. Grantee shall submit the following reports on a quarterly basis to the Department using the Neighborly Grants Management System. The Department may withhold payment(s) if such reports are not submitted timely.

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- 7.4.1. Financial Status Report.** One copy of the Financial Status Report shall be submitted upon request of DOH or at a minimum within twenty (20) calendar days of the end of each calendar Quarter.
- 7.4.2. Performance Measures Report.** One copy of the Performance Measures report shall be submitted upon request of DOH or at a minimum within twenty (20) calendar days of the end of each calendar quarter.
- 7.4.3. Homeless Management Information System (HMIS) or Comparable Database Collection and Evaluation.** One copy of the HMIS or Comparable Database report shall be submitted upon request of DOH or at a minimum within twenty (20) calendar days of the end of each calendar quarter. The HMIS or Comparable Database report shall be submitted in Excel format and shall cover the timeframe from the Effective Date of this agreement to the end of the reporting period. The Grantee shall also comply with any additional reporting requirements as defined in the ESG-CV Program Notice.
- 7.4.3.1. HMIS Naming Convention.** Grantee agrees to work with the HMIS Lead agency within their CoC to set up the ESG-CV program. This shall include using “DOLA” in naming any HMIS programs funded with ESG-CV.
- 7.4.3.2. HMIS Compliance.** Grantee agrees to fully comply with the rules and regulations required by HUD which govern HMIS. HUD requires Grantees and Subgrantees of McKinney-Vento Act Funds to collect electronic data on their homeless clients through HMIS. HUD requires Grantees and Subgrantees serving victims of domestic violence use an HMIS comparable database that meets data requirements outlined per HUD regulations. Programs that receive funding through McKinney-Vento that produce a Consolidated Annual Performance and Evaluation Report (CAPER) must also collect program level data elements. These programs include ESG-CV. The Grantee shall conform to the HMIS policies established and adapted by the regional Continuum of Care (CoC). The Grantee’s aggregate HMIS performance data for projects shall be shared with the funder to improve system performance and assist with monitoring. Technical assistance and training resources for HMIS are available to the Grantee via the Colorado HMIS Helpdesk, which is available to all ESG-CV Grantees and can be accessed by submitting a request for assistance via the “Submit a Request” button at coHMIS.zendesk.com/hc/en-us. Technical assistance and training is provided based on requests by the Grantee and can also be recommended by DOLA based on periodic assessments of participation, compliance and accuracy of data collection.
- 7.4.3.3. HUD Continuum of Care (CoC) Data Standards.** HUD regularly releases updated HMIS Data Standards, and Grantee is required to collect data based on the newest standards. DOLA and its Grantees will collect Universal and Continuum of Care (CoC) Program Specific Elements. See <https://files.hudexchange.info/resources/documents/ESG-Program-HMIS-Manual.pdf> for a list of these required elements for ESG programs. The Grantee is required to attend any CoC provided HMIS training on the data collection requirements for these revised standards.

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7.4.3.4. Security. All workstations, desktops, laptops, and servers connected to the Grantee's network or computers accessing the HMIS through a Virtual Private Network (VPN) must comply with the baseline security requirements. The Grantee's HMIS computers and networks must meet the following standards:

- Secure location
- Workstation username and password
- Virus protection with auto update
- Locking password protected screen saver
- Individual or network firewall
- PKI-certificate installed or static IP address

7.4.3.5. Data Quality Standards

- The Grantee must enter HMIS data (program enrollments and services) into the system within five business days of the actual enrollment or service provided date.
- DOLA reserves the right to request Data Quality reports from Colorado HMIS for Grantee's ESG-CV funded programs on a monthly basis.
- DOLA reserves the right to participate in on-site HMIS audits.
- DOLA reserves the right to request Data Timeliness tests from Colorado HMIS at any time on Grantee's programs in HMIS.
- DOLA reserves the right to request detailed CAPERs displaying client-level data and/or displaying aggregate-level data from Colorado HMIS at any time during the Project's operating year. CAPERs are used to review and monitor the Grantee's program data quality and progress toward achieving annual Project goals and outcomes per HUD and CoC requirements. The Grantee's data will be consolidated with other ESG-CV Subgrantees and DOLA data to fulfill HUD annual reporting requirements.
- DOLA reserves the right to access Grantee's HMIS web portal to review real-time client data to ensure Grantee adheres to the data quality standards required by the designated Colorado Continuum of Care.

7.4.4. Project Completion Report. Within thirty (30) days after the completion of the Project or the final draw, whichever is later, the Grantee shall submit one copy of the Project Completion Report, and two copies of the final Financial Status Report.

7.5. Monitoring. The State shall monitor this Grant in accordance with its Risk-Based Monitoring Policy and §§7(B) and (C) of the Grant. Final evaluation of the Project will be accomplished when the Department approves the Project Completion Report.

8. ESG-CV ACTIVITIES

Grantee shall ensure that all Project activities are in accordance with 24 C.F.R. Parts 84, 85, 91 and 576, and all related regulations and requirements. Only costs incurred for ESG-CV funded activities, as detailed in §5.2 above, are reimbursable. Activities and related services/costs allowed under ESG-CV program, but not necessarily under this Grant, are detailed below. Additionally,

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Grantee shall agree to comply with any additional ESG-CV program guidelines, notices, waivers, regulations, or any other guidance released by HUD.

8.1. Eligible Activities.

8.1.1. Temporary Emergency Shelter. ESG-CV funds may be used for the costs of providing temporary emergency shelter, which means any structure or portion of a structure, which is used for a limited period of time because of a crisis, such as a natural disaster or public health emergency, to provide shelter for individuals and families displaced from their normal place of residence or sheltered or unsheltered locations. Eligible costs include:

- 8.1.1.1. Leasing.** The costs of leasing existing real property or temporary structures to be used as temporary emergency shelters.
- 8.1.1.2. Acquisition.** The cost of 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.
- 8.1.1.3. Renovation.** The costs of 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.
- 8.1.1.4. Operations.** The cost of 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.
- 8.1.1.5. Essential Services Services,** including essential services under §8.1.2.1 below, 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)
- 8.1.1.6. Volunteer Incentive.** The cost of providing reasonable incentives to volunteers (e.g., 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.
- 8.1.1.7. Hazard Pay.** The cost of hazard pay for staff working directly to prevent, prepare for, and respond to coronavirus among persons who are homeless or at risk of homelessness. Examples of 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

8.1.2. Emergency Shelter Component. Subject to the expenditure limit in §576.100(b), ESG-CV funds may be used for costs of providing essential services to homeless families and individuals in emergency shelters, renovating buildings to be used as emergency shelter for homeless families and individuals, and operating emergency shelters.

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8.1.2.1. Essential services. ESG-CV funds may be used to provide essential services to individuals and families who are in an emergency shelter, as follows:

8.1.2.1.1. Case management. The cost of assessing, arranging, coordinating, and monitoring the delivery of individualized services to meet the needs of the program participant is eligible. Component services and activities consist of:

- Using the centralized or coordinated assessment system as required under §576.400(d);
- Conducting the initial evaluation required under §576.401(a), including verifying and documenting eligibility;
- Counseling;
- Developing, securing, and coordinating services and obtaining Federal, State, and local benefits;
- Monitoring and evaluating program participant progress;
- Providing information and referrals to other providers;
- Providing ongoing risk assessment and safety planning with victims of domestic violence, dating violence, sexual assault, and stalking; and
- Developing an individualized housing and service plan, including planning a path to permanent housing stability.

8.1.2.1.2. Childcare. The costs of childcare for program participants, including providing meals and snacks, and comprehensive and coordinated sets of appropriate developmental activities, are eligible. The children must be under the age of 13, unless they are disabled. Disabled children must be under the age of 18. The child-care center must be licensed by the jurisdiction in which it operates in order for its costs to be eligible.

8.1.2.1.3. Education services. When necessary for the program participant to obtain and maintain housing, the costs of improving knowledge and basic educational skills are eligible. Services include instruction or training in consumer education, health education, substance abuse prevention, literacy, English as a Second Language, and General Educational Development (GED). Component services or activities are screening, assessment and testing; individual or group instruction; tutoring; provision of books, supplies and instructional material; counseling; and referral to community resources.

8.1.2.1.4. Employment assistance and job training. The costs of employment assistance and job training programs are eligible, including classroom, online, and/or computer instruction; on-the-job instruction; and services that assist individuals in securing employment, acquiring learning skills, and/or increasing earning potential. The cost of providing reasonable stipends to program participants in employment assistance and job training programs is

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an eligible cost. Learning skills include those skills that can be used to secure and retain a job, including the acquisition of vocational licenses and/or certificates. Services that assist individuals in securing employment consist of employment screening, assessment, or testing; structured job skills and job-seeking skills; special training and tutoring, including literacy training and prevocational training; books and instructional material; counseling or job coaching; and referral to community resources.

8.1.2.1.5. Outpatient health services. Eligible costs are for the direct outpatient treatment of medical conditions and are provided by licensed medical professionals. Emergency Solutions Grant (ESG-CV) funds may be used only for these services to the extent that other appropriate health services are unavailable within the community. Eligible treatment consists of assessing a program participant's health problems and developing a treatment plan; assisting program participants to understand their health needs; providing directly or assisting program participants to obtain appropriate medical treatment, preventive medical care, and health maintenance services, including emergency medical services; providing medication and follow-up services; and providing preventive and noncosmetic dental care.

8.1.2.1.6. Legal services. Eligible costs are the hourly fees for legal advice and representation by attorneys licensed and in good standing with the bar association of the State in which the services are provided, and by person(s) under the supervision of the licensed attorney, regarding matters that interfere with the program participant's ability to obtain and retain housing. Emergency Solutions Grant (ESG-CV) funds may be used only for these services to the extent that other appropriate legal services are unavailable or inaccessible within the community. Eligible subject matters are child support, guardianship, paternity, emancipation, and legal separation, orders of protection and other civil remedies for victims of domestic violence, dating violence, sexual assault, and stalking, appeal of veterans and public benefit claim denials, and the resolution of outstanding criminal warrants. Component services or activities may include client intake, preparation of cases for trial, provision of legal advice, representation at hearings, and counseling. Fees based on the actual service performed (*i.e.* fee for service) are also eligible, but only if the cost would be less than the cost of hourly fees. Filing fees and other necessary court costs are also eligible. If the Subgrantee is a legal services provider and performs the services itself, the eligible costs are the Subgrantee's employees' salaries and other costs necessary to perform the services. Legal services for immigration and citizenship matters and issues relating to mortgages are ineligible costs. Retainer fee

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arrangements and contingency fee arrangements are ineligible costs.

8.1.2.1.7. Life skills training. The costs of teaching critical life management skills that may never have been learned or have been lost during the course of physical or mental illness, domestic violence, substance use, and homelessness are eligible costs. These services must be necessary to assist the program participant to function independently in the community. Component life skills training are budgeting resources, managing money, managing a household, resolving conflict, shopping for food and needed items, improving nutrition, using public transportation, and parenting.

8.1.2.1.8. Mental health services. Eligible costs are the direct outpatient treatment by licensed professionals of mental health conditions. ESG-CV funds may only be used for these services to the extent that other appropriate mental health services are unavailable or inaccessible within the community. Mental health services are the application of therapeutic processes to personal, family, situational, or occupational problems in order to bring about positive resolution of the problem or improved individual or family functioning or circumstances. Problem areas may include family and marital relationships, parent-child problems, or symptom management. Eligible treatment consists of crisis interventions; individual, family, or group therapy sessions; the prescription of psychotropic medications or explanations about the use and management of medications; and combinations of therapeutic approaches to address multiple problems.

8.1.2.1.9. Substance abuse treatment services. Eligible substance abuse treatment services are designed to prevent, reduce, eliminate, or deter relapse of substance abuse or addictive behaviors and are provided by licensed or certified professionals. ESG-CV funds may only be used for these services to the extent that other appropriate substance abuse treatment services are unavailable or inaccessible within the community. Eligible treatment consists of client intake and assessment, and outpatient treatment for up to 30 days. Group and individual counseling and drug testing are eligible costs. Inpatient detoxification and other inpatient drug or alcohol treatment are not eligible costs.

8.1.2.1.10. Transportation. Eligible costs consist of the transportation costs of a program participant's travel to and from medical care, employment, child care, or other eligible essential services facilities. These costs include the following:

- The cost of a program participant's travel on public transportation;
- If service workers use their own vehicles, mileage allowance for service workers to visit program participants;

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- The cost of purchasing or leasing a vehicle for the Grantee or Subgrantee in which staff transports program participants and/or staff serving program participants, and the cost of gas, insurance, taxes, and maintenance for the vehicle; and
- The travel costs of Grantee or Subgrantee staff to accompany or assist program participants to use public transportation.

8.1.2.1.11. Services for special populations. ESG-CV funds may be used to provide services for homeless youth, victim services, and services for people living with HIV/AIDS, so long as the costs of providing these services are eligible under paragraphs (a)(1)(i) through (a)(1)(x) of this section. The term *victim services* means services that assist program participants who are victims of domestic violence, dating violence, sexual assault, or stalking, including services offered by rape crisis centers and domestic violence shelters, and other organizations with a documented history of effective work concerning domestic violence, dating violence, sexual assault, or stalking.

8.1.2.2. Renovation. Eligible costs include labor, materials, tools, and other costs for renovation (including major rehabilitation of an emergency shelter or conversion of a building into an emergency shelter). The emergency shelter must be owned by a government entity or private nonprofit organization.

8.1.2.3. Shelter Operations. Eligible costs are the costs of maintenance (including minor or routine repairs), rent, security, fuel, equipment, insurance, utilities, food, furnishings, and supplies necessary for the operation of the emergency shelter. Where no appropriate emergency shelter is available for a homeless family or individual, eligible costs may also include a hotel or motel voucher for that family or individual.

8.1.2.4. Volunteer Incentive. The cost of providing reasonable incentives to volunteers (e.g., 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.

8.1.2.5. Hazard Pay. The cost of hazard pay for staff working directly to prevent, prepare for, and respond to coronavirus among persons who are homeless or at risk of homelessness. Examples of 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

8.1.3. Street Outreach. Subject to the expenditure limit in §576.100(b), ESG-CV funds may be used for costs of providing essential services necessary to reach out to unsheltered homeless people; connect them with emergency shelter, housing, or critical services; and provide urgent, nonfacility-based care to unsheltered homeless people who are unwilling or unable to access emergency shelter, housing, or an appropriate health

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facility. For the purposes of this section, the term “unsheltered homeless people” means individuals and families who qualify as homeless under paragraph (1)(i) of the “homeless” definition under §576.2. The eligible costs and requirements for essential services consist of:

- 8.1.3.1. Engagement.** The costs of activities to locate, identify, and build relationships with unsheltered homeless people and engage them for the purpose of providing immediate support, intervention, and connections with homeless assistance programs and/or mainstream social services and housing programs. These activities consist of making an initial assessment of needs and eligibility; providing crisis counseling; addressing urgent physical needs, such as providing meals, blankets, clothes, or toiletries; and actively connecting and providing information and referrals to programs targeted to homeless people and mainstream social services and housing programs, including emergency shelter, transitional housing, community-based services, permanent supportive housing, and rapid re-housing programs. Eligible costs include the cell phone costs of outreach workers during the performance of these activities.
- 8.1.3.2. Case management.** The cost of assessing housing and service needs, arranging, coordinating, and monitoring the delivery of individualized services to meet the needs of the program participant. Eligible services and activities are as follows: using the centralized or coordinated assessment system as required under §576.400(d); conducting the initial evaluation required under §576.401(a), including verifying and documenting eligibility; counseling; developing, securing and coordinating services; obtaining Federal, State, and local benefits; monitoring and evaluating program participant progress; providing information and referrals to other providers; and developing an individualized housing and service plan, including planning a path to permanent housing stability.
- 8.1.3.3. Emergency health services.** Eligible costs are for the direct outpatient treatment of medical conditions and are provided by licensed medical professionals operating in community-based settings, including streets, parks, and other places where unsheltered homeless people are living. ESG-CV funds may be used only for these services to the extent that other appropriate health services are inaccessible or unavailable within the area. Eligible treatment consists of assessing a program participant's health problems and developing a treatment plan; assisting program participants to understand their health needs; providing directly or assisting program participants to obtain appropriate emergency medical treatment; and providing medication and follow-up services.
- 8.1.3.4. Emergency mental health services.** Eligible costs are the direct outpatient treatment by licensed professionals of mental health conditions operating in community-based settings, including streets, parks, and other places where unsheltered people are living. ESG-CV funds may be used only for these services to the extent that other appropriate mental health services are inaccessible or unavailable within the community. Mental health services are the application of therapeutic processes to personal, family, situational, or

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occupational problems in order to bring about positive resolution of the problem or improved individual or family functioning or circumstances. Eligible treatment consists of crisis interventions, the prescription of psychotropic medications, explanation about the use and management of medications, and combinations of therapeutic approaches to address multiple problems.

8.1.3.5. Transportation. The transportation costs of travel by outreach workers, social workers, medical professionals, or other service providers are eligible, provided that this travel takes place during the provision of services eligible under this section. The costs of transporting unsheltered people to emergency shelters or other service facilities are also eligible. These costs include the following:

- The cost of a program participant's travel on public transportation;
- If service workers use their own vehicles, mileage allowance for service workers to visit program participants;
- The cost of purchasing or leasing a vehicle for the Grantee or Subgrantee in which staff transports program participants and/or staff serving program participants, and the cost of gas, insurance, taxes and maintenance for the vehicle; and
- The travel costs of Grantee or Subgrantee staff to accompany or assist program participants to use public transportation.

8.1.3.6. Services for special populations. ESG-CV funds may be used to provide services for homeless youth, victim services, and services for people living with HIV/AIDS, so long as the costs of providing these services are eligible under paragraphs (a)(1) through (a)(5) of this section. The term *victim services* means services that assist program participants who are victims of domestic violence, dating violence, sexual assault, or stalking, including services offered by rape crisis centers and domestic violence shelters, and other organizations with a documented history of effective work concerning domestic violence, dating violence, sexual assault, or stalking.

8.1.3.7. Volunteer Incentive. The cost of providing reasonable incentives to volunteers (e.g., 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.

8.1.3.8. Hazard Pay. The cost of hazard pay for staff working directly to prevent, prepare for, and respond to coronavirus among persons who are homeless or at risk of homelessness. Examples of 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

8.1.4. HMIS or Comparable Database - Data collection and Evaluation.

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- 8.1.4.1. Data collection.** Reporting for ESG-CV will be conducted through the use of Homeless Management Information Systems (HMIS) or for Domestic Violence Shelters the CAFÉ system. Therefore, reasonable and appropriate costs associated with operating an HMIS for purposes of collecting and reporting data required under ESG-CV and analyzing patterns of use of ESG-CV funds are eligible.
- 8.1.4.2. Eligible costs.** Eligible costs include (a) the purchase or leasing computer hardware, purchase software or software licenses, (b) purchase or leasing equipment, including telephones, faxes and furniture, (c) staffing associated with operating HMIS including data collection, completing data entry, monitoring and reviewing data quality, completing data analysis, reporting to the HMIS lead, training staff on using the HMIS or comparable database, implementing and complying with HMIS requirements.
- 8.1.4.3. Ineligible costs.** Ineligible HMIS activities include, without limitation, development of new software systems.
- 8.1.4.4. Coordinated Assessment.** Grantee and Subgrantee shall participate in the coordinated assessment process and collect consistent baseline data to better ensure HMIS data collected is consistent across the State and Continuum of Care. Further, Grantee and Subgrantee shall ask all Program Participants whether their participant-specific HMIS information may be utilized for programmatic and regional evaluation. Such information shall only be used with the Program Participant's documented consent.
- 8.1.4.5. Evaluation.** Grantee and Subgrantee(s) must comply if asked to participate in HUD-sponsored research and evaluation of ESG-CV. Eligible costs include costs for Grantee participation in HUD research and evaluation of the program.
- 8.1.5. Rapid Re-housing:** Eligible Program Participants for Rapid Re-housing assistance are individuals and families who meet the definition of "homeless" at 24 CFR 576.2. Financial assistance is limited to the following activities: short-term rental assistance, medium-term rental assistance, rental application fees, security deposits, utility deposits, utility payments, moving cost assistance, and Housing Relocation and Stabilization Services. Grantee and Subgrantees must not make payments directly to Program Participants, only to third parties, such as property owners or utility companies. Grantee or Subgrantee must ensure that the units in which ESG-CV assistance is provided to these individuals and families meet the rent reasonableness standard. In addition, an assisted property may not be owned by the Grantee, Subgrantee or the parent, subsidiary or affiliated organization of the Subgrantee.
- 8.1.5.1. Centralized or Coordinated Assessment.** Per the HUD ESG interim rule, Grantee must use a Centralized or Coordinated System to initially assess the eligibility and needs of each individual or family who seeks homeless assistance. This Centralized or Coordinated Assessment System should be developed and implemented by the CoC in accordance with minimum requirements to be established by HUD. Should the CoC not have a CoC-wide system that it implements for homeless assistance, Grantee may use a local Centralized System approved by the local CoC and DOH. Should the CoC

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develop and implement a system during this contract period, Grantee must work with DOH and the CoC to coordinate adoption of the CoC system.

- 8.1.5.2. Rental Assistance.** Short and medium-term rental assistance is tenant-based rental assistance that may be used to allow individuals and families to obtain rental units. Short-term rental assistance may not exceed rental costs accrued over a period of 3 months. Medium-term rental assistance may not exceed actual rental costs accrued over a period of 4-12 months. Program Participants may receive up to 12 months of assistance contingent on the availability of ESG-CV funds.
- 8.1.5.3. Financial Assistance Costs.** ESG-CV funds may be used to pay housing owners, utility companies, and other third parties for the following costs:
- 8.1.5.3.1. Rental application fees.** ESG-CV funds may pay for the rental housing application fee that is charged by the owner to all applicants.
- 8.1.5.3.2. Security and Utility Deposits.** ESG-CV funds may be used to pay for security deposits, including utility deposits, for eligible Program Participants. In contrast to the requirements regarding rental assistance payments, security and utility deposits covering the same period of time in which assistance is being provided through another housing subsidy program are eligible, as long as the assistance from the other housing subsidy program does not include security and utility deposits.
- 8.1.5.3.3. Last month's rent.** If necessary to obtain housing for a program participant, the last month's rent may be paid from ESG funds to the owner of that housing at the time the owner is paid the security deposit and the first month's rent. This assistance must not exceed one month's rent and must be included in calculating the program participant's total rental assistance, which cannot exceed 12 months during any 3-year period.
- 8.1.5.3.4. Utility Payments.** ESG-CV funds may be used for up to 18 months of utility payments, including up to 6 months of utility payments in arrears, for each Program Participant, provided that the Program Participant or a member of his/her household has an account in his/her name with the utility company or proof of responsibility to make utility payments, such as cancelled checks or receipts in his/her name from the utility company.
- 8.1.5.3.5. Moving Cost Assistance.** ESG-CV funds may be used for reasonable moving costs, such as truck rental, hiring a moving company, or short-term storage fees for a maximum of 3 months or until the Program Participant is in housing, whichever is shorter.
- 8.1.5.4. Services costs.,** ESG-CV funds may be used to pay the costs of providing the following services:

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8.1.5.4.1. Housing search and placement. Services or activities necessary to assist program participants in locating, obtaining, and retaining suitable permanent housing, include the following:

- Assessment of housing barriers, needs, and preferences;
- Development of an action plan for locating housing;
- Housing search;
- Outreach to and negotiation with owners;
- Assistance with submitting rental applications and understanding leases;
- Assessment of housing for compliance with Emergency Solutions Grant (ESG) requirements for habitability, lead-based paint, and rent reasonableness;
- Assistance with obtaining utilities and making moving arrangements; and
- Tenant counseling

8.1.5.4.2. Housing stability case management. ESG-CV funds may be used to pay cost of assessing, arranging, coordinating, and monitoring the delivery of individualized services to facilitate housing stability for a program participant who resides in permanent housing or to assist a program participant in overcoming immediate barriers to obtaining housing. This assistance cannot exceed 30 days during the period the program participant is seeking permanent housing and cannot exceed 24 months during the period the program participant is living in permanent housing. Component services and activities consist of:

- Using the centralized or coordinated assessment system as required under § 576.400(d), to evaluate individuals and families applying for or receiving homelessness prevention or rapid re-housing assistance;
- Conducting the initial evaluation required under § 576.401(a), including verifying and documenting eligibility, for individuals and families applying for homelessness prevention or rapid re-housing assistance;
- Counseling;
- Developing, securing, and coordinating services and obtaining Federal, State, and local benefits;
- Monitoring and evaluating program participant progress;
- Providing information and referrals to other providers;
- Developing an individualized housing and service plan, including planning a path to permanent housing stability; and

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- Conducting re-evaluations required under § 576.401(b).

8.1.5.5. Mediation. The cost of mediation between the program participant and the owner or person(s) with whom the program participant is living, provided that the mediation is necessary to prevent the program participant from losing permanent housing in which the program participant currently resides.

8.1.5.6. Legal services. The cost of legal services, as set forth in § 576.102(a)(1)(vi), except that the eligible subject matters also include landlord/tenant matters, and the services must be necessary to resolve a legal problem that prohibits the program participant from obtaining permanent housing or will likely result in the program participant losing the permanent housing in which the program participant currently resides.

8.1.5.7. Credit repair. The cost of credit counseling and other services necessary to assist program participants with critical skills related to household budgeting, managing money, accessing a free personal credit report, and resolving personal credit problems. This assistance does not include the payment or modification of a debt.

8.1.5.8. Re-Evaluations. Grantee or Subgrantee must re-evaluate each Program Participant's eligibility and the types and amounts of assistance the program participant needs not less than once annually for Program Participants receiving rapid re-housing assistance. At a minimum, each re-evaluation of eligibility must establish that:

7.1.5.5.1. The program participant does not have an annual income that exceeds 30 percent of median family income for the area, as determined by HUD; and

7.1.5.5.2. The program participant lacks sufficient resources and support networks necessary to retain housing without ESG-CV assistance.

8.1.5.9. Landlord incentives. The 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:

- Signing bonuses equal to up to 2 months of rent;

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- Security deposits equal to up to 3 months of rent;
- 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,
- Paying the costs of extra cleaning or maintenance of a program participant's unit or appliances.

8.1.5.10. Hazard Pay. The cost of hazard pay for staff working directly to prevent, prepare for, and respond to coronavirus among persons who are homeless or at risk of homelessness. Examples of 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.

8.1.6. Administration. Cost of overall program management, coordination, monitoring and evaluation. These costs include, but are not limited to, necessary expenditures for the following:

8.1.6.1. Salaries, wages, and related costs of the Grantee's staff, the staff of Subgrantees, or other staff engaged in program administration. In charging costs to this category, the Grantee may either include the entire salary, wages, and related costs allocable to the program of each person whose *primary* responsibilities with regard to the program involve program administration assignments, or the pro rata share of the salary, wages, and related costs of each person whose job includes *any* program administration assignments. The Grantee may use only one of these methods for each fiscal year grant. Program administration assignments include the following:

- Preparing program budgets and schedules, and amendments to those budgets and schedules;
- Developing systems for assuring compliance with program requirements;
- Developing interagency agreements and agreements with Subgrantees and contractors to carry out program activities;
- Monitoring program activities for progress and compliance with program requirements;
- Preparing reports and other documents directly related to the program for submission to HUD;
- Coordinating the resolution of audit and monitoring findings;
- Evaluating program results against stated objectives; and
- Managing or supervising persons whose primary responsibilities with regard to the program include such assignments as those described in paragraph (a)(1)(i)(A) through (G) of this section.

8.1.6.2. Travel costs incurred for monitoring of Subgrantees;

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- 8.1.6.3. Administrative services performed under third-party contracts or agreements, including general legal services, accounting services, and audit services; and
- 8.1.6.4. Other costs for goods and services required for administration of the program, including rental or purchase of equipment, insurance, utilities, office supplies, and rental and maintenance (but not purchase) of office space.
- 8.1.6.5. Administrative costs *do not* include the costs of issuing financial assistance, providing housing relocation and stabilization services, or carrying out eligible data collection and evaluation activities, as specified above, such as Grantee or Subgrantee staff salaries, costs of conducting housing inspections, and other operating costs. These costs should be accounted for under one of the other eligible activity categories in this §8.1.

8.1.7. Ineligible and Prohibited Activities.

- 8.1.7.1. **Duplication of Other Resources.** The intent of ESG-CV is to provide funding for housing expenses to persons who are homeless or who would be homeless if not for this assistance. Therefore, financial assistance or services to pay for expenses that are available through other programs, are not eligible. Case managers should work to link Program Participants to these other resources.
- 8.1.7.2. **Mortgage Costs.** Financial assistance may not be used to pay for any mortgage costs or costs needed by homeowners to assist with any fees, taxes, or other costs of refinancing a mortgage to make it affordable. This includes the development and implementation of any mortgage assistance activity costs including, but not limited to, short-term subsidies to defray mortgage arrearages.
- 8.1.7.3. **Other Activities.** ESG-CV funds may not be used to pay for any of the following items: credit card bills or other consumer debt; clothing and grooming; home furnishings; pet care; entertainment activities; work or education related materials; and cash assistance to Program Participants. ESG-CV funds may not be used to develop discharge planning programs in mainstream institutions such as hospitals, jails, or prisons. Finally, while training for case managers and program administrators is an eligible administrative cost as long as it is directly related to ESG-CV program operations and has been awarded through this contract, ESG-CV funds may not be used to pay for certifications, licenses, and general training classes. Programs may not charge fees to ESG-CV Program Participants. Any ESG-CV funds used to support Program Participants must be issued directly to the appropriate third party, such as the landlord or utility company, and in no case are funds eligible to be issued directly to Program Participants. If funds are found to be used for ineligible activities as determined by the State or HUD, the Grantee is required to remit the ineligible costs to the State promptly.
- 8.1.7.4. **Acquisition Costs.** [Reserved].

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**EXHIBIT C -
FEDERAL PROVISIONS****1. APPLICABILITY OF PROVISIONS.**

1.1. The Grant to which these Federal Provisions are attached has been funded, in whole or in part, with an Award of Federal funds. In the event of a conflict between the provisions of these Federal Provisions, the Special Provisions, the body of the Grant, or any attachments or exhibits incorporated into and made a part of the Grant, the provisions of these Federal Provisions shall control.

2. DEFINITIONS.

2.1. For the purposes of these Federal Provisions, the following terms shall have the meanings ascribed to them below.

2.1.1. "Award" means an award of Federal financial assistance, and the Grant setting forth the terms and conditions of that financial assistance, that a non-Federal Entity receives or administers.

2.1.1.1. Awards may be in the form of:

2.1.1.1.1. Grants;

2.1.1.1.2. Contracts;

2.1.1.1.3. Cooperative Contracts, which do not include cooperative research and development Contracts (CRDA) pursuant to the Federal Technology Transfer Act of 1986, as amended (15 U.S.C. 3710);

2.1.1.1.4. Loans;

2.1.1.1.5. Loan Guarantees;

2.1.1.1.6. Subsidies;

2.1.1.1.7. Insurance;

2.1.1.1.8. Food commodities;

2.1.1.1.9. Direct appropriations;

2.1.1.1.10. Assessed and voluntary contributions; and

2.1.1.1.11. Other financial assistance transactions that authorize the expenditure of Federal funds by non-Federal Entities.

2.1.1.1.12. Any other items specified by OMB in policy memoranda available at the OMB website or other source posted by the OMB.

2.1.1.2. Award *does not* include:

2.1.1.2.1. Technical assistance, which provides services in lieu of money;

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- 2.1.1.2.2. A transfer of title to Federally-owned property provided in lieu of money; even if the award is called a grant;
 - 2.1.1.2.3. Any award classified for security purposes; or
 - 2.1.1.2.4. Any award funded in whole or in part with Recovery funds, as defined in section 1512 of the American Recovery and Reinvestment Act (ARRA) of 2009 (Public Law 111-5).
- 2.1.2. “Data Universal Numbering System (DUNS) Number” means the nine-digit number established and assigned by Dun and Bradstreet, Inc. to uniquely identify a business entity. Dun and Bradstreet’s website may be found at: <http://fedgov.dnb.com/webform>.
- 2.1.3. “Entity” means all of the following as defined at 2 CFR part 25, subpart C;
- 2.1.3.1. A governmental organization, which is a State, local government, or Indian Tribe;
 - 2.1.3.2. A foreign public entity;
 - 2.1.3.3. A domestic or foreign non-profit organization;
 - 2.1.3.4. A domestic or foreign for-profit organization; and
 - 2.1.3.5. A Federal agency, but only a Subrecipient under an Award or Subaward to a non-Federal entity.
- 2.1.4. “Executive” means an officer, managing partner or any other employee in a management position.
- 2.1.5. “Federal Award Identification Number (FAIN)” means an Award number assigned by a Federal agency to a Prime Recipient.
- 2.1.6. “Federal Awarding Agency” means a Federal agency providing a Federal Award to a Recipient as described in 2 CFR §200.37
- 2.1.7. “FFATA” means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252. FFATA, as amended, also is referred to as the “Transparency Act.”
- 2.1.8. “Federal Provisions” means these Federal Provisions subject to the Transparency Act and Uniform Guidance, as may be revised pursuant to ongoing guidance from the relevant Federal or State of Colorado agency or institutions of higher education.
- 2.1.9. “Grant” means the Grant to which these Federal Provisions are attached and includes all Award types in §2.1.1.1 of this Exhibit.
- 2.1.10. “Grantee” means the party or parties to a Grant funded, in whole or in part, with Federal financial assistance, other than the Prime Recipient, and includes grantees, subgrantees, Subrecipients, and borrowers. For purposes of Transparency Act reporting, Grantee does not include Vendors.
- 2.1.11. “OMB” means the Executive Office of the President, Office of Management and Budget.

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- 2.1.12. “Prime Recipient” means a Colorado State agency or institution of higher education that receives an Award.
- 2.1.13. “Subaward” means an award by a Recipient to a Subrecipient funded in whole or in part by a Federal Award. The terms and conditions of the Federal Award flow down to the Award unless the terms and conditions of the Federal Award specifically indicate otherwise in accordance with 2 CFR §200.38. The term does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program.
- 2.1.14. “Subrecipient” means a non-Federal Entity (or a Federal agency under an Award or Subaward to a non-Federal Entity) receiving Federal funds through a Prime Recipient to support the performance of the Federal project or program for which the Federal funds were awarded. A Subrecipient is subject to the terms and conditions of the Federal Award to the Prime Recipient, including program compliance requirements. The term “Subrecipient” includes and may be referred to as Subgrantee. The term does not include an individual who is a beneficiary of a federal program.
- 2.1.15. “Subrecipient Parent DUNS Number” means the subrecipient parent organization’s 9-digit Data Universal Numbering System (DUNS) number that appears in the subrecipient’s System for Award Management (SAM) profile, if applicable.
- 2.1.16. “System for Award Management (SAM)” means the Federal repository into which an Entity must enter the information required under the Transparency Act, which may be found at <http://www.sam.gov>.
- 2.1.17. “Total Compensation” means the cash and noncash dollar value earned by an Executive during the Prime Recipient’s or Subrecipient’s preceding fiscal year and includes the following:
- 2.1.17.1. Salary and bonus;
 - 2.1.17.2. Awards of stock, stock options, and stock appreciation rights, using the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2005) (FAS 123R), Shared Based Payments;
 - 2.1.17.3. Earnings for services under non-equity incentive plans, not including group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of Executives and are available generally to all salaried employees;
 - 2.1.17.4. Change in present value of defined benefit and actuarial pension plans;
 - 2.1.17.5. Above-market earnings on deferred compensation which is not tax-qualified;
 - 2.1.17.6. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life

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insurance paid on behalf of the employee, perquisites or property) for the Executive exceeds \$10,000.

2.1.18. "Transparency Act" means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252. The Transparency Act also is referred to as FFATA.

2.1.19. "Uniform Guidance" means the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, which supersedes requirements from OMB Circulars A-21, A-87, A-110, and A-122, OMB Circulars A-89, A-102, and A-133, and the guidance in Circular A-50 on Single Audit Act follow-up. The terms and conditions of the Uniform Guidance flow down to Awards to Subrecipients unless the Uniform Guidance or the terms and conditions of the Federal Award specifically indicate otherwise.

2.1.20. "Vendor" means a dealer, distributor, merchant or other seller providing property or services required for a project or program funded by an Award. A Vendor is not a Prime Recipient or a Subrecipient and is not subject to the terms and conditions of the Federal award. Program compliance requirements do not pass through to a Vendor.

3. COMPLIANCE.

3.1. Grantee shall comply with all applicable provisions of the Transparency Act, all applicable provisions of the Uniform Guidance, and the regulations issued pursuant thereto, including but not limited to these Federal Provisions. Any revisions to such provisions or regulations shall automatically become a part of these Federal Provisions, without the necessity of either party executing any further instrument. The State of Colorado may provide written notification to Grantee of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.

4. SYSTEM FOR AWARD MANAGEMENT (SAM) AND DATA UNIVERSAL NUMBERING SYSTEM (DUNS) REQUIREMENTS.

4.1. SAM. Grantee shall maintain the currency of its information in SAM until the Grantee submits the final financial report required under the Award or receives final payment, whichever is later. Grantee shall review and update SAM information at least annually after the initial registration, and more frequently if required by changes in its information.

4.2. DUNS. Grantee shall provide its DUNS number to its Prime Recipient, and shall update Grantee's information in Dun & Bradstreet, Inc. at least annually after the initial registration, and more frequently if required by changes in Grantee's information.

5. TOTAL COMPENSATION.

5.1. Grantee shall include Total Compensation in SAM for each of its five most highly compensated Executives for the preceding fiscal year if:

5.1.1. The total Federal funding authorized to date under the Award is \$25,000 or more; and

5.1.2. In the preceding fiscal year, Grantee received:

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- 5.1.2.1. 80% or more of its annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and
- 5.1.2.2. \$25,000,000 or more in annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and
- 5.1.3. The public does not have access to information about the compensation of such Executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d) or § 6104 of the Internal Revenue Code of 1986.

6. REPORTING.

- 6.1. Grantee shall report data elements to SAM and to the Prime Recipient as required in this Exhibit if Grantee is a Subrecipient for the Award pursuant to the Transparency Act. No direct payment shall be made to Grantee for providing any reports required under these Federal Provisions and the cost of producing such reports shall be included in the Grant price. The reporting requirements in this Exhibit are based on guidance from the US Office of Management and Budget (OMB), and as such are subject to change at any time by OMB. Any such changes shall be automatically incorporated into this Grant and shall become part of Grantee's obligations under this Grant.

7. EFFECTIVE DATE AND DOLLAR THRESHOLD FOR REPORTING.

- 7.1. Reporting requirements in §8 below apply to new Awards as of October 1, 2010, if the initial award is \$25,000 or more. If the initial Award is below \$25,000 but subsequent Award modifications result in a total Award of \$25,000 or more, the Award is subject to the reporting requirements as of the date the Award exceeds \$25,000. If the initial Award is \$25,000 or more, but funding is subsequently de-obligated such that the total award amount falls below \$25,000, the Award shall continue to be subject to the reporting requirements.
- 7.2. The procurement standards in §9 below are applicable to new Awards made by Prime Recipient as of December 26, 2015. The standards set forth in §11 below are applicable to audits of fiscal years beginning on or after December 26, 2014.

8. SUBRECIPIENT REPORTING REQUIREMENTS.

- 8.1. If Grantee is a Subrecipient, Grantee shall report as set forth below.
 - 8.1.1. **To SAM.** A Subrecipient shall register in SAM and report the following data elements in SAM *for each* Federal Award Identification Number no later than the end of the month following the month in which the Subaward was made:
 - 8.1.1.1. Subrecipient DUNS Number;
 - 8.1.1.2. Subrecipient DUNS Number + 4 if more than one electronic funds transfer (EFT) account;
 - 8.1.1.3. Subrecipient Parent DUNS Number;

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- 8.1.1.4. Subrecipient's address, including: Street Address, City, State, Country, Zip + 4, and Congressional District;
 - 8.1.1.5. Subrecipient's top 5 most highly compensated Executives if the criteria in §4 above are met; and
 - 8.1.1.6. Subrecipient's Total Compensation of top 5 most highly compensated Executives if criteria in §4 above met.
- 8.1.2. **To Prime Recipient.** A Subrecipient shall report to its Prime Recipient, upon the effective date of the Grant, the following data elements:
- 8.1.2.1. Subrecipient's DUNS Number as registered in SAM.
 - 8.1.2.2. Primary Place of Performance Information, including: Street Address, City, State, Country, Zip code + 4, and Congressional District.

9. PROCUREMENT STANDARDS.

- 9.1. Procurement Procedures. A Subrecipient shall use its own documented procurement procedures which reflect applicable State, local, and Tribal laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in the Uniform Guidance, including without limitation, §§200.318 through 200.326 thereof.
- 9.2. Procurement of Recovered Materials. If a Subrecipient is a State Agency or an agency of a political subdivision of the State, its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

10. ACCESS TO RECORDS

- 10.1. A Subrecipient shall permit Recipient and auditors to have access to Subrecipient's records and financial statements as necessary for Recipient to meet the requirements of §200.331 (Requirements for pass-through entities), §§200.300 (Statutory and national policy requirements) through 200.309 (Period of performance), and Subpart F-Audit Requirements of the Uniform Guidance. 2 CFR §200.331(a)(5).

11. SINGLE AUDIT REQUIREMENTS

- 11.1. If a Subrecipient expends \$750,000 or more in Federal Awards during the Subrecipient's fiscal year, the Subrecipient shall procure or arrange for a single or program-specific audit conducted for that year in accordance with the provisions of Subpart F-Audit Requirements of the Uniform Guidance, issued pursuant to the Single Audit Act Amendments of 1996, (31 U.S.C. 7501-7507). 2 CFR §200.501.

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- 11.1.1. **Election.** A Subrecipient shall have a single audit conducted in accordance with Uniform Guidance §200.514 (Scope of audit), except when it elects to have a program-specific audit conducted in accordance with §200.507 (Program-specific audits). The Subrecipient may elect to have a program-specific audit if Subrecipient expends Federal Awards under only one Federal program (excluding research and development) and the Federal program's statutes, regulations, or the terms and conditions of the Federal award do not require a financial statement audit of Prime Recipient. A program-specific audit may not be elected for research and development unless all of the Federal Awards expended were received from Recipient and Recipient approves in advance a program-specific audit.
- 11.1.2. **Exemption.** If a Subrecipient expends less than \$750,000 in Federal Awards during its fiscal year, the Subrecipient shall be exempt from Federal audit requirements for that year, except as noted in 2 CFR §200.503 (Relation to other audit requirements), but records shall be available for review or audit by appropriate officials of the Federal agency, the State, and the Government Accountability Office.
- 11.1.3. **Subrecipient Compliance Responsibility.** A Subrecipient shall procure or otherwise arrange for the audit required by Part F of the Uniform Guidance and ensure it is properly performed and submitted when due in accordance with the Uniform Guidance. Subrecipient shall prepare appropriate financial statements, including the schedule of expenditures of Federal awards in accordance with Uniform Guidance §200.510 (Financial statements) and provide the auditor with access to personnel, accounts, books, records, supporting documentation, and other information as needed for the auditor to perform the audit required by Uniform Guidance Part F-Audit Requirements.

12. GRANT PROVISIONS FOR SUBRECIPIENT CONTRACTS

- 12.1. If Grantee is a Subrecipient, then it shall comply with and shall include all of the following applicable provisions in all subcontracts entered into by it pursuant to this Grant.
- 12.1.1. **Equal Employment Opportunity.** Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 shall include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Grant Compliance Programs, Equal Employment Opportunity, Department of Labor.
- 12.1.1.1. During the performance of this contract, the contractor agrees as follows:
- 12.1.1.1.1. Grantee will not discriminate against any employee or applicant for employment because of race, color, religion,

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sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

- 12.1.1.1.2. Grantee will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- 12.1.1.1.3. Grantee will send to each labor union or representative of workers with which he has a collective bargaining Grant or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 12.1.1.1.4. Grantee will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- 12.1.1.1.5. Grantee will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- 12.1.1.1.6. In the event of Grantee's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965,

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and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

12.1.1.1.7. Grantee will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event Grantee becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.”

12.1.2. **Davis-Bacon Act.** Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or Subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

12.1.3. **Rights to Inventions Made Under a Grant or Grant.** If the Federal Award meets the definition of “funding Grant” under 37 CFR §401.2 (a) and

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Subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding Grant,” Subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Contracts,” and any implementing regulations issued by the awarding agency.

- 12.1.4. **Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended.** Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- 12.1.5. **Debarment and Suspension (Executive Orders 12549 and 12689).** A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- 12.1.6. **Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).** Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

13. CERTIFICATIONS.

- 13.1. Unless prohibited by Federal statutes or regulations, Recipient may require Subrecipient to submit certifications and representations required by Federal statutes or regulations on an annual basis. 2 CFR §200.208. Submission may be required more frequently if Subrecipient fails to meet a requirement of the Federal award. Subrecipient shall certify in writing to the State at the end of the Award that the project or activity was completed or the level of effort was expended. 2 CFR §200.201(3). If the required level of activity or effort was not carried out, the amount of the Award must be adjusted.

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14. EXEMPTIONS.

- 14.1. These Federal Provisions do not apply to an individual who receives an Award as a natural person, unrelated to any business or non-profit organization he or she may own or operate in his or her name.
- 14.2. A Grantee with gross income from all sources of less than \$300,000 in the previous tax year is exempt from the requirements to report Subawards and the Total Compensation of its most highly compensated Executives.
- 14.3. There are no Transparency Act reporting requirements for Vendors.

15. EVENT OF DEFAULT.

- 15.1. Failure to comply with these Federal Provisions shall constitute an event of default under the Grant and the State of Colorado may terminate the Grant upon 30 days prior written notice if the default remains uncured five calendar days following the termination of the 30 day notice period. This remedy will be in addition to any other remedy available to the State of Colorado under the Grant, at law or in equity.

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Federal Funding Accountability and Transparency Act (FFATA) Data Report Form
(For Grantee Completion)

Reporting is required for initial awards of \$25,000 or more or award modifications that result in a total award of \$25,000 or more.

Information Field (Definitions can be found in Exhibit C)	Response
1. Agency or Jurisdiction DUNS Number:	034108758
2. Subrecipient Name Receiving Award:	City and County of Denver
3. Subrecipient Parent DUNS Number: (Report if different from subrecipient number)	N/A
4. Location of Entity Receiving Award: (Full street address)	201 W. Colfax Ave., Denver Colorado 80202
5. Primary Location of Performance of the Award: (City, State and Congressional District)	Denver, Colorado, Congressional District 1
	Answer True or False
6. In the preceding fiscal year, Contractor received:	
a. \$25,000,000 or more in annual gross revenues from federal procurement contracts/subcontracts and/or federal financial assistance awards or subawards subject to the Transparency Act.	True
b. 80% or more of its annual gross revenues from federal procurement contracts/subcontracts and/or federal financial assistance awards or subawards subject to the Transparency Act.	False
c. The public does not have access to information about the compensation of its five most highly compensated Executives through periodic reports filed through the Securities Exchange Act of 1934 or the IRS.	False

Note: An answer to question 7 is required ONLY when all answers to question 6 are true.

7. Names and total compensation of the five (5) most highly compensated Executives for the preceding fiscal year:

Print Name	Compensation Amount
N/A	N/A
N/A	N/A
N/A	N/A

By signing below, I certify the information contained in this report is complete and accurate to the best of my knowledge.

Designed by:


2/8/2021 | 12:03 PM MST

C7B9CE609A444ED...
Signature of Responsible Administrator

Date

Exhibit B

**EXHIBIT D –
[RESERVED]**

Exhibit B

**EXHIBIT E -
[RESERVED]**

Exhibit B

**EXHIBIT F -
[RESERVED]**

Exhibit B

EXHIBIT G - SAMPLE OPTION LETTER

State Agency Department of Local Affairs, for the benefit of the Division of Housing	Grantee [Grantee's full legal name.]
Original Agreement Number H0ESG00000	Option Letter Number (1, 2, 3, etc.)
Current Agreement Maximum Amount \$000,000.00	New Agreement Maximum Amount \$000,000.00
Current Expiration Date Month, Day, Year	New Expiration Date [Month, Day, Year]
Existing CMS Number(s) 000000, 000000, 000000	New CMS Number (This Option Letter) 000000
Effective Date This Option Letter is effective as of the date signed by the State Controller or Month, Day, Year, whichever is later.	

1. **OPTIONS:** *(Select all that are applicable.)*

- A. Option to extend time for performance.
(Select this if extending the Agreement Expiration Date.)
- B. Change in the Agreement Maximum Amount.
(Select this if increasing or decreasing the amount of Grant Funds awarded.)
- C. Budget Line Item Adjustment(s) Only
(Select this if redistributing how Grant Funds are allocated within the Project Budget with no change in the Agreement Maximum Amount.)

2. **REQUIRED PROVISIONS:**

- A. **For use with Option 1(A):** In accordance with §2.C of the Original Agreement referenced above, as amended, the State hereby exercises its option for an additional term, beginning on the Effective Date of this Option Letter and ending on the New Expiration Date shown above.
- B. **For use with Options 1(B):** The Agreement Maximum Amount shown on the Cover Page of the Original Agreement referenced above, as amended, is hereby deleted and replaced with the New Agreement Maximum Amount shown in the table above. In addition, the **Sources** table in §5.2.1, the **Uses** table in §5.2.2, the **Eligible Uses of DOLA Grant Funds** table in §5.2.3, the **Pre-Agreement Costs** table in §5.2.4, and the **Payment Schedule** in §6.1, all of **Exhibit B**, are deleted and replaced as follows:

5.2.1 Sources

Sources	Amount
Total	\$ 0.00

5.2.2 Uses/Project Activities

Uses	Amount
Total	\$ 0.00

Exhibit B

5.2.3 Eligible Uses of DOLA Grant Funds

Eligible Activity	Amount
Total	\$ 0.00

5.2.4 Pre-Agreement Costs

Eligible Use	Amount
Total	\$ 0.00

6.1 Payment Schedule

Payment	Amount	
Interim Payment(s)	\$0.00	Paid upon receipt of actual expense documentation and written Pay Requests from the Grantee for reimbursement of eligible approved expenses.
Final Payment	\$0.00	Paid upon Substantial Completion of the Project (as determined by the State in its sole discretion), provided that the Grantee has submitted, and DOLA has accepted, all required reports.
Total	\$0.00	

- C. **For use with Option 1(C):** The **Grant Funds** table in **§5.2.3** of **Exhibit B** to the Original Agreement, as amended, is deleted and replaced with the following:

Use	Amount
Total	\$ 0.00

In accordance with §24-30-202, C.R.S., this Option is not valid until signed and dated below by the State Controller or an authorized delegate.

<p>STATE OF COLORADO Jared S. Polis, Governor</p> <p>Department of Local Affairs Rick M. Garcia, Executive Director</p> <p>By: _____ Rick M. Garcia, Executive Director</p> <p>Date: _____</p>	<p>STATE CONTROLLER Robert Jaros, CPA, MBA, JD</p> <p>By: _____ Yingtse Cha, Controller Delegate</p> <p>Option Effective Date: _____</p>
--	--

Exhibit B

**FORM 1 -
[RESERVED]**



Homeless Definition

CRITERIA FOR DEFINING HOMELESS	Category 1	Literally Homeless	(1) Individual or family who lacks a fixed, regular, and adequate nighttime residence, meaning: <ul style="list-style-type: none"> (i) Has a primary nighttime residence that is a public or private place not meant for human habitation; (ii) Is living in a publicly or privately operated shelter designated to provide temporary living arrangements (including congregate shelters, transitional housing, and hotels and motels paid for by charitable organizations or by federal, state and local government programs); <u>or</u> (iii) Is exiting an institution where (s)he has resided for 90 days or less <u>and</u> who resided in an emergency shelter or place not meant for human habitation immediately before entering that institution
	Category 2	Imminent Risk of Homelessness	(2) Individual or family who will imminently lose their primary nighttime residence, provided that: <ul style="list-style-type: none"> (i) Residence will be lost within 14 days of the date of application for homeless assistance; (ii) No subsequent residence has been identified; <u>and</u> (iii) The individual or family lacks the resources or support networks needed to obtain other permanent housing
	Category 3	Homeless under other Federal statutes	(3) Unaccompanied youth under 25 years of age, or families with children and youth, who do not otherwise qualify as homeless under this definition, but who: <ul style="list-style-type: none"> (i) Are defined as homeless under the other listed federal statutes; (ii) Have not had a lease, ownership interest, or occupancy agreement in permanent housing during the 60 days prior to the homeless assistance application; (iii) Have experienced persistent instability as measured by two moves or more during in the preceding 60 days; <u>and</u> (iv) Can be expected to continue in such status for an extended period of time due to special needs or barriers
	Category 4	Fleeing/ Attempting to Flee DV	(4) Any individual or family who: <ul style="list-style-type: none"> (i) Is fleeing, or is attempting to flee, domestic violence; (ii) Has no other residence; <u>and</u> (iii) Lacks the resources or support networks to obtain other permanent housing



Homeless Definition

RECORDKEEPING REQUIREMENTS



<p>RECORDKEEPING REQUIREMENTS</p> 	Category 1	Literally Homeless	<ul style="list-style-type: none"> • Written observation by the outreach worker; <u>or</u> • Written referral by another housing or service provider; <u>or</u> • Certification by the individual or head of household seeking assistance stating that (s)he was living on the streets or in shelter; • For individuals exiting an institution—one of the forms of evidence above <u>and</u>: <ul style="list-style-type: none"> ○ discharge paperwork <u>or</u> written/oral referral, <u>or</u> ○ written record of intake worker’s due diligence to obtain above evidence <u>and</u> certification by individual that they exited institution
	Category 2	Imminent Risk of Homelessness	<ul style="list-style-type: none"> • A court order resulting from an eviction action notifying the individual or family that they must leave; <u>or</u> • For individual and families leaving a <u>hotel</u> or <u>motel</u>—evidence that they lack the financial resources to <u>stay</u>; <u>or</u> • A documented and verified oral statement; <u>and</u> • Certification that no subsequent residence has been identified; <u>and</u> • Self-certification or other written documentation that the individual lack the financial resources and support necessary to obtain permanent housing
	Category 3	Homeless under other Federal statutes	<ul style="list-style-type: none"> • Certification by the nonprofit or state or local government that the individual or head of household seeking assistance met the criteria of homelessness under another federal statute; <u>and</u> • Certification of no PH in last 60 days; <u>and</u> • Certification by the individual or head of household, and any available supporting documentation, that (s)he has moved two or more times in the past 60 days; <u>and</u> • Documentation of special needs <u>or</u> 2 or more barriers
	Category 4	Fleeing/ Attempting to Flee DV	<ul style="list-style-type: none"> • <i>For victim service providers:</i> <ul style="list-style-type: none"> ○ An oral statement by the individual or head of household seeking assistance which states: they are fleeing; they have no subsequent residence; and they lack resources. Statement must be documented by a self-certification or a certification by the intake worker. • <i>For non-victim service providers:</i> <ul style="list-style-type: none"> ○ Oral statement by the individual or head of household seeking assistance that they are fleeing. This statement is documented by a self-certification or by the caseworker. Where the safety of the individual or family is not jeopardized, the oral statement must be verified; <u>and</u> ○ Certification by the individual or head of household that no subsequent residence has been identified; <u>and</u> ○ Self-certification, or other written documentation, that the individual or family lacks the financial resources and support networks to obtain other permanent housing.



Emergency Solutions Grants (ESG) Program

U.S. Department of Housing and Urban Development, Office of Community Planning and Development
Office of Special Needs Assistance Programs, 451 7th Street SW, Room 7262 Washington, DC 20410

CFDA Number: 14.231

OBJECTIVES

The ESG program provides funding to: (1) engage homeless individuals and families living on the street; (2) improve the number and quality of emergency shelters for homeless individuals and families; (3) help operate these shelters; (4) provide essential services to shelter residents, (5) rapidly re-house homeless individuals and families, and (6) prevent families/individuals from becoming homeless.

For more information and resources about ESG, go to the HUD Exchange website at HUDEXchange.info

GRANT AMOUNTS

FY 2019 Allocation: \$280 million

- States total: \$139,063,295
- Urban Counties total: \$36,269,433
- Metro Cities total: \$104,107,272
- Territories total: \$560,000

Eligible Recipients (366)

- States: 51 (including Puerto Rico)
- Metropolitan Cities: 196
- Urban Counties: 115
- U.S. Territories: 4

RECIPIENTS & SUBRECIPIENTS

Eligible recipients generally consist of states, metropolitan cities, urban counties, and territories, as defined in 24 CFR 576.2.

Each recipient must consult with the local Continuum(s) of Care operating within the jurisdiction in determining how to allocate ESG funds.

State recipients must subgrant all of their ESG funds (except the amount for its administrative costs and HMIS costs, if applicable) to units of general purpose local government and/or private nonprofit organizations.

Metropolitan cities, urban counties and territories may subgrant ESG funds to private nonprofit organizations.

Local governments (whether recipients or subrecipients) may also subgrant ESG funds to public housing agencies and local redevelopment authorities.

CITATIONS

Statute: Stewart B. McKinney Homeless Assistance Act of 1987, Title IV, Subtitle B, as amended (42 U.S.C. 11371 *et seq.*) **Regulations:** 24 CFR Part 576.

ELIGIBLE PROGRAM COMPONENTS

1. Street Outreach

Essential Services necessary to reach out to unsheltered homeless individuals and families, connect them with emergency shelter, housing, or critical services, and provide them with urgent, non-facility-based care. Component services generally consist of engagement, case management, emergency health and mental health services, and transportation. For specific requirements and eligible costs, see 24 CFR 576.101.

2. Emergency Shelter

Renovation of a building to serve as an emergency shelter. Site must serve homeless persons for at least 3 or 10 years, depending on the cost and type of renovation (major rehabilitation, conversion, or other renovation). Note: Property acquisition and new construction are ineligible.

Essential Services for individuals and families in emergency shelter. Component services generally consist of case management, child care, education services, employment assistance and job training, outpatient health services, legal services, life skills training, mental health services, substance abuse treatment services, and transportation.

Shelter Operations, including maintenance, rent, security, fuel, equipment, insurance, utilities, and furnishings.

Relocation assistance for persons displaced by a project assisted with ESG funds.

For specific requirements and eligible costs, see 24 CFR 576.102.

3. Homelessness Prevention

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 another place described in paragraph (1) of the "homeless" definition in § 576.2.

Component services and assistance generally consist of short-term and medium-term rental assistance, rental arrears, rental application fees, security deposits, advance payment of last month's rent, utility deposits and payments, moving costs, housing search and placement, housing stability case management, mediation, legal services, and credit repair. For specific requirements and eligible costs, see 24 CFR 576.103, 576.105, and 576.106.

4. Rapid Re-Housing

Housing relocation and stabilization services and short-and/or medium-term rental assistance as necessary to help

individuals or families living in an emergency shelter or other place described in paragraph (1) of the “homeless” definition move as quickly as possible into permanent housing and achieve stability in that housing.

Component services and assistance generally consist of short-term and medium-term rental assistance, rental arrears, rental application fees, security deposits, advance payment of last month's rent, utility deposits and payments, moving costs, housing search and placement, housing stability case management, mediation, legal services, and credit repair. For specific requirements and eligible costs, see 24 CFR 576.104, 576.105, and 576.106.

5. HMIS

Grant funds may be used for certain Homeless Management Information System (HMIS) and comparable database costs, as specified at 24 CFR 576.107.

Administration

Up to 7.5% of a recipient's fiscal year grant can be used for administrative activities, such as general management, oversight, coordination, and reporting on the program. State recipients must share administrative funds with their local government subrecipients and may share administrative funds with their nonprofit subrecipients. For specific requirements and eligible costs, see 24 CFR 576.108.

ALLOCATION FORMULA

HUD will set aside for allocation to the territories up to 0.2%, but not less than 0.1%, of the total fiscal year appropriation. The remainder will be allocated to States, metropolitan cities, and urban counties. The percentage allocated to each State, metropolitan city, and urban county will equal the percentage of the total amount available under section 106 of the Housing and Community Development Act of 1974 for the prior fiscal year that was allocated to the State, metropolitan city or urban county. If an allocation to a metropolitan city or urban county would be less than 0.05% of the total fiscal year appropriation for ESG, the amount is added to the allocation of the State in which the city or county is located. For more on the ESG formula, see 24 CFR 576.3.

MATCH

Metropolitan city and urban county recipients must match grant funds with an equal amount of contributions, which may include cash, donated buildings or materials, and volunteer services.

States must match all but \$100,000 of their awards, but must pass on the benefits of that \$100,000 exception to their subrecipients that are least capable of providing matching amounts.

Territories are exempt from the match requirement.

For the specific match requirements, see 24 CFR 576.201.

OBLIGATION & EXPENDITURE DEADLINES

Metropolitan cities, urban counties and territories must obligate all funds, except funds for administrative costs, within 180 days after HUD signs the grant agreement.

States must obligate all funds, except funds for administrative costs, within 60 days after HUD signs the grant agreement. Within 120 days after the State obligates funds to a local government, the local government must obligate all its funds.

All grant funds must be expended within 24 months after HUD signs the grant agreement with the recipient.

Further obligation and expenditure requirements are specified at 24 CFR 576.203.

CONSOLIDATED PLAN

Eligible recipients apply through the Consolidated Planning process, which requires jurisdictions to assess homeless assistance and housing needs, examine available resources, set 3-5 year strategies, and develop annual action plans. Plan preparation must include citizen participation and consultation with the local Continuum(s) of Care and other organizations. Each jurisdiction should submit its Consolidated Plan to HUD at least 45 days before the jurisdiction's program year begins as provided under 24 CFR Part 91. For specific planning and submission requirements, see 24 CFR part 91 and 576.200.

REPORTS

Annual performance reports must be submitted in accordance with 24 CFR 91.520 and are due 90 days after the jurisdiction's program year ends. Recipients also have other reporting requirements under 24 CFR 576.500(aa).



OFFICE OF COMMUNITY PLANNING
AND DEVELOPMENT

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-7000

Special Attention of:

All CPD Directors
HUD Field Offices
HUD Regional Offices
All Continuums of Care
All ESG Program Recipients and Subrecipients

Notice: CPD-20-08**Issued: September 1, 2020****Expires:** This notice is effective until amended, superseded, or rescinded.

TITLE: Waivers and Alternative Requirements for the Emergency Solutions Grants (ESG) Program Under the CARES Act**EFFECTIVE DATE: September 1, 2020**

SUMMARY: This Notice announces the allocation formula, amounts, and requirements for the additional \$3.96 billion in funding provided for the Emergency Solutions Grants Program (ESG) under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). These ESG-CV funds must be used to prevent, prepare for, and respond to coronavirus, among individuals and families who are homeless or receiving homeless assistance and to support additional homeless assistance and homelessness prevention activities to mitigate the impacts created by coronavirus. Requirements at 24 CFR Part 576 will apply to the use of these funds, unless otherwise provided by the alternative requirements and flexibilities established under the CARES Act, this Notice, or subsequent waivers, amendments or replacements to this Notice. The 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. Accordingly, any ESG or ESG-CV activities included in an action plan or substantial amendment for which HUD completed its review must comply with the requirements in effect at the time of the recipient's consolidated plan submission, except where this Notice provides new flexibility as authorized by the CARES Act.

OVERVIEW INFORMATION

A. Federal Agency Name: Department of Housing and Urban Development, Office of Community Planning and Development.

B. Authority: *Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Public Law 116-136 (2020).*

C. Publication: This Notice is initially being published on HUD's website.

D. Catalog of Federal Domestic Assistance (CFDA) Number: 14.231 Emergency Solutions Grant Program (ESG).

E. Obligations: HUD executed initial grant agreements for the first allocation of \$1,000,000,000 of the available CARES Act ESG-CV funding. HUD will amend these grant agreements for some

recipients to add further amounts based on the formula described in Section F.1 of this Notice to distribute up to \$2,960,000,000 of the remaining funds. Recipients must follow the obligation deadlines established in Section III.B of this Notice.

F. Additional Overview Content Information:

1. Funding Allocations. HUD allocated \$1,000,000,000 of the funds to recipients of FY 2020 ESG funds based on the same formula HUD used under 24 CFR 576.3 to allocate the FY2020 funds. The remaining \$2,960,000,000 in funds were allocated directly to States and units of general local government according to a formula developed by the Secretary, as required by the CARES Act: https://www.hud.gov/sites/dfiles/CPD/documents/ESG_CARES_Act_Round_2_Allocation_Methodology_rev.pdf. list of recipients is provided at: https://www.hud.gov/program_offices/comm_planning/budget/fy20/.

2. Modified Requirements for the Consolidated Plan (Con Plan). The requirements at 24 CFR 576.200, as modified by this Notice and waivers for ESG-CV funds HUD established previously or under this Notice, shall apply to the application and review process for ESG-CV funds.

a. In order to receive the ESG-CV funds described in this Notice, each eligible recipient must

- (i) Prepare and submit a substantial amendment to its Action Plan that was most recently approved as provided under 24 CFR part 91 to include ESG-CV amounts or include the ESG-CV amounts in their FY 2020 Annual Action Plan submission; and
- (ii) Submit the signed certifications required by 24 CFR 91.225(a) and 91.325(a) and the relevant program-specific certifications as discussed in Section VI of this Notice.

b. The ESG-CV funds described in this Notice are not subject to the consultation and citizen participation requirements that otherwise apply to the Emergency Solutions Grants program, including the requirements under 24 CFR 91.100, 91.105, 91.110, and 91.115. However, as required by the CARES Act, each recipient must publish how it has used and will use its allocation, at a minimum, on the Internet at the appropriate government website or through other electronic media. In this publication, each recipient must describe the activities they will fund with ESG-CV funds and indicate whether, as of the date the notice is published, the activity has already occurred and the recipient is reimbursing itself or the activity has yet to occur. In its notification and communication methods, recipients and subrecipients must also ensure effective communication with individuals with disabilities and take reasonable steps to ensure meaningful access to persons with limited English proficiency (LEP). See also 24 CFR 576.407(a) and (b).

c. Each substantial amendment submitted to HUD will be subject to the review process set forth in 24 CFR 91.500, except that HUD will expedite its review with respect to CARES Act funding.

G. For Further Information: Written questions may be sent to: Norm Suchar, Director, Office of Special Needs Assistance Programs, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 7266, Washington, DC, 20410 or ESG-CV@hud.gov. Persons with hearing or speech impairments may access the above telephone number via TTY by calling the Federal Information Relay Service at 800-877-8339 (this is a toll-free number).

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I. FUNDING OPPORTUNITY DESCRIPTION

A. Program Description

The CARES Act made \$4,000,000,000 available for the Emergency Solutions Grants Program to prevent, prepare for, and respond to coronavirus, among individuals and families who are homeless or receiving homeless assistance and to support additional homeless assistance and homelessness prevention activities to mitigate the impacts created by coronavirus.

To accomplish the above, this additional funding for ESG recipients can be used to provide emergency shelter, temporary emergency shelter, or rapid re-housing, as well as other crisis response activities. Additionally, funds may be used for homelessness prevention assistance.

B. Definitions.

1. *Definitions from 24 CFR 576.2.* For purposes of ESG-CV funds, the definitions at 24 CFR 576.2 apply, except that:

a. *At Risk of Homelessness.* The CARES Act raised the income limit in paragraph (1)(i) of the “at risk of homelessness” definition at 24 CFR 576.2 from 30 percent of area median income to the Very Low-Income limit of the area, as determined by the Secretary. The entire definition of “at risk of homelessness,” incorporating the higher income limit for ESG-CV activities, is included below for reference.

At Risk of Homelessness means

(i) an individual or family who:

(a) Has an annual income that does not exceed the Very Low-Income Limit of the area, as established for HUD’s Section 8 and Public Housing programs at

www.huduser.gov/portal/datasets/il.html;

(b) Does not have sufficient resources or support networks, *e.g.*, family, friends, faith-based or other social networks, immediately available to prevent them from moving to an emergency shelter or another place described in paragraph (1) of the “homeless” definition in 24 CFR 576.2; and

(c) Meets one of the following conditions:

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

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

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

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

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

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

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

(ii) A child or youth who does not qualify as “homeless” under 24 CFR 576.2, but qualifies as “homeless” under section 387(3) of the Runaway and Homeless Youth Act (42 U.S.C. 5732a(3)), section 637(11) of the Head Start Act (42 U.S.C. 9832(11)), section 41403(6) of the Violence Against Women Act of 1994 (42 U.S.C. 14043e-2(6)), section 330(h)(5)(A) of the Public Health Service Act (42 U.S.C. 254b(h)(5)(A)), section 3(m) of the Food and Nutrition Act of 2008 (7 U.S.C. 2012(m)), or section 17(b)(15) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)(15)); or

(iii) A child or youth who does not qualify as “homeless” under 24 CFR 576.2, but qualifies as “homeless” under section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), and the parent(s) or guardian(s) of that child or youth if living with her or him.

b. *Local government* and *unit of general purpose local government* mean a “unit of general purpose local government,” as defined in 24 CFR 576.2 (i.e., any city, county, town, township, parish, village, or other general purpose political subdivision of a State) and, as established by section 100261(1) of the Moving Ahead for Progress in the 21st Century Act (MAP-21 Act), Public Law 112–141, includes:

(i) an instrumentality of a unit of general purpose local government, provided that the instrumentality is not a public housing agency, is established pursuant to legislation, and is designated by the chief executive of the general purpose local government to act on that government’s behalf with regard to activities funded under title IV of the McKinney-Vento Homeless Assistance Act; and

(ii) a combination of general purpose local governments, such as an association of governments that is recognized by HUD.

c. *State* means a “State” as defined in 24 CFR 576.2 (i.e., each of the several States and the Commonwealth of Puerto Rico); and, as provided by section 100261(2) of the MAP-21 Act, includes any instrumentality of any of the several States designated by the Governor to act on behalf of the State and does not include the District of Columbia;

2. *Definitions not in 24 CFR 576.2.*

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

b. *Coronavirus* means SARS-CoV-2 or another coronavirus with pandemic potential, as defined by section 23005 of the CARES Act.

c. *ESG* means, unless otherwise specified, the Emergency Solutions Grants Program whether funded through annual fiscal year (FY) appropriations or CARES Act funding. For example, a program participant assisted using only FY2020 ESG funding and a program participant assisted using only ESG-CV funding are both ESG program participants.

d. *ESG-CV* means the Emergency Solutions Grants Program as funded by the CARES Act and governed by requirements HUD establishes in accordance with that Act. ESG-CV funds do not include annual ESG funds (e.g., FY 2020 ESG grant funds), although annual ESG funds may be used in accordance with the requirements established for purposes of ESG-CV funds as further described in Section IV of this Notice.

e. *Temporary Emergency Shelter* means any structure or portion of a structure, which is used for a limited period of time because of a crisis, such as a natural disaster or public health emergency, to provide shelter for individuals and families displaced from their normal place of residence or sheltered or unsheltered locations. Examples of temporary emergency shelters include:

- (i) an overnight, daytime, or 24-hour shelter in which program participants are only provided a safe place to sleep, rest, bathe, and eat;
- (ii) a shelter where one or more services are made available on-site, whether by shelter staff or contractors or through a memorandum of understanding with another subrecipient or service provider; and
- (iii) a shelter designed to facilitate the movement of homeless individuals and families into permanent housing within a fixed period of time (e.g., within 12 months) and employs or contracts with one or more case managers or service providers to provide services as specified under sections III.E.3.a.(i)(e) and III.E.3.a.(ii)(e) through (h).

f. *Prevent, Prepare for, and Respond to Coronavirus.* To assist recipients in ensuring that an activity being paid for with ESG-CV funds is eligible, or determining whether annual ESG funding may follow the waivers and alternative requirements established in this Notice, recipients and subrecipients should consider the following:

(i) *Prevent...coronavirus* means an activity designed to prevent the initial or further spread of the virus to people experiencing homelessness, people at risk of homelessness, recipient or subrecipient staff, or other shelter or housing residents. This includes providing Personal Protective Equipment to staff and program participants, paying for non-congregate shelter options such as hotels and motels, paying for handwashing stations and portable toilets for use by people living in unsheltered situations, and providing rapid re-housing or homelessness prevention assistance to individuals and families who are homeless or at risk of homelessness (as applicable) to reduce their risk of

contracting or further spreading the virus.

(ii) *Prepare for...coronavirus* means an activity carried out by a recipient or subrecipient prior to or during a coronavirus outbreak in their jurisdiction to plan to keep people healthy and reduce the risk of exposure to coronavirus and avoid or slow the spread of disease. This includes updating written standards to prioritize people at severe risk of contracting coronavirus for shelter and housing consistent with fair housing and nondiscrimination requirements, adapting coordinated entry policies and procedures to account for social distancing measures or increased demand, developing a strategy and recruiting landlords to provide housing to people experiencing homelessness or at risk of homelessness, training homeless providers on infectious disease prevention and mitigation, and implementing a non-congregate shelter strategy to reduce the spread of coronavirus.

(iii) *Respond to coronavirus* means an activity carried out once coronavirus has spread to people experiencing homelessness, provider staff, or once individuals and families lose or are at risk of losing their housing as a result of the economic downturn caused by coronavirus. This includes transporting individuals and families experiencing homelessness to medical appointments, paying for shelter to isolate individuals who have contracted coronavirus from other program participants and people experiencing homelessness, providing rental assistance to those who are at risk of losing their housing, have already become homeless, or continue to experience homelessness due to the economic downturn caused by coronavirus, and providing hazard pay to recipient or subrecipient staff who put their own health at risk to continue to provide necessary services to individuals and families experiencing and risk of homelessness.

II. ALLOCATIONS

A. Initial Allocations. The ESG-CV grant funds are available through two allocations as follows:

1. First Allocation. \$1 billion has been allocated to recipients allocated FY 2020 ESG funding based on the same formula used under 24 CFR 576.3 for the FY 2020 ESG funding; and
2. Second Allocation. \$2.96 billion has been allocated to States and units of general local government based on a formula developed by the Secretary, as provided by the CARES Act.

B. Reallocation.

1. Funds Not Awarded by HUD due to Failure of the Recipient to Submit and Obtain HUD Approval of a Substantial Amendment to its Action Plan or FY 2020 Annual Action Plan. ESG-CV funds are provided to prevent, prepare for, and respond to coronavirus, among individuals and families who are homeless or receiving homeless assistance and homelessness prevention activities to mitigate the impacts created by coronavirus. In order to quickly deploy these resources it is important that they are awarded to recipients with experience administering annual ESG funding. Therefore, HUD reserves discretion to issue a separate notice providing waivers and alternative requirements to replace the process for reallocating ESG-CV funds from states and territories under at 24 CFR 576.300, 567.302, and 576.303, which address how HUD will reallocate funds not awarded due to the states' and territories' failure to submit a Substantial Amendment to their Action Plan including the ESG-CV funds or the states' and territories' failure to submit their FY 2020

Annual Action Plan including ESG-CV funds in accordance with the requirements of 24 CFR part 91.

Funds recaptured from metropolitan cities and urban counties due to failure to submit a Substantial Amendment to its Action Plan including the ESG-CV funds or the recipient's failure to submit its FY 2020 Annual Action Plan including ESG-CV funds in accordance with the requirements of 24 CFR part 91 will continue to be reallocated in accordance with 24 CFR 576.301.

2. Funds Recaptured by HUD after Award. ESG-CV funds are provided to prevent, prepare for, and respond to coronavirus, among individuals and families who are homeless or receiving homeless assistance and to support additional homeless assistance and homelessness prevention activities to mitigate the impacts created by coronavirus. It is important that resources be targeted to communities that need and can use additional funding to support these efforts. Therefore, HUD is establishing expenditure deadlines and recapture provisions (as discussed in section III.B.3 below), and HUD reserves discretion to issue a separate notice providing waivers and alternative requirements to replace the process for reallocating recaptured ESG-CV funds under section 24 CFR 576.300(2).

III. 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 McKinney-Vento 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 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

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 24 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 ESG-CV 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 ESG-CV 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.

IV. PRIOR ESG APPROPRIATIONS

A. Applicability of this Notice to Annual ESG Funds. In accordance with the authority provided by the CARES Act, the same waivers and additional eligible activities established for ESG-CV funds in this Notice apply to annual ESG funds (including FY2020 and prior fiscal year grant funds) a recipient uses to prevent, prepare for, and respond to coronavirus, subject to the following conditions:

1. The recipient identifies the specific activities and funding allocated to prevent, prepare for, or respond to coronavirus in the Integrated Disbursement and Information System (IDIS) activity description before drawing down funds in accordance with the flexibilities provided in this Notice;
2. The recipient reports the amount of annual ESG funding expended to prevent, prepare for, and respond to coronavirus in the CAPER by component type for each annual grant;
3. The recipient amends its consolidated plan in accordance with 24 CFR 576.200(b), 24 CFR 91.550, and the recipient's citizen participation plan, subject to any applicable HUD waivers (the consultation and citizen participation exemptions for ESG-CV funds do not apply to annual ESG funds);
4. Any alternative requirements established in this Notice which limit activities in comparison with the requirements at 24 CFR Part 576 (e.g., the further limitations on rental assistance and costs related to emergency shelter) shall not apply to the use of annual ESG funds that are used to prevent, prepare for, and respond to coronavirus; and
5. The recipient must develop and implement policies and procedures to assure and document that these flexibilities are used only for activities and costs that are to prevent, prepare for, and respond to coronavirus and the annual ESG funds specifically identified in paragraph 1 meet HUD's requirements for ESG-CV funds (except as provided in the preceding paragraph).
6. Before using any annual ESG funds to carry out eligible activities directly as permitted by section III.A.1 of this Notice, a recipient that is a State must amend their annual action plan as discussed in that section and submit the new certifications that HUD is providing in the Appendices to this Notice, as further explained in Section VI.

V. PROCESS FOR REQUESTING ADDITIONAL FLEXIBILITY

The CARES Act provides the Secretary the authority to waive, or specify alternative requirements, for any provision of any statute or regulation that the Secretary administers in connection with ESG-CV funds (except for requirements related to fair housing, nondiscrimination, labor standards, and the environment), if the Secretary finds that good cause exists for the waiver or alternative requirement and such waiver or alternative requirement is necessary to prevent, prepare for, and respond to coronavirus. The CARES Act also permits the Secretary to apply these waivers and alternative requirements to annual ESG funds (including FY2020 and prior fiscal year ESG grant funds) to the extent recipients use those funds to prevent, prepare for, and respond to coronavirus.

If a recipient or subrecipient needs more flexibility than is provided in this Notice, the recipient may request a waiver by submitting a request addressed to the Secretary of HUD. The request must include the following: a description of the project; the citation to the statutory and regulatory requirements that the recipient is requesting to waive; an explanation of the reasons why the Secretary should determine that good cause exists for the waiver and how the waiver is necessary to prevent, prepare for, and respond to coronavirus.

HUD may find that additional information is needed to make a determination regarding a submitted waiver request. In these cases, HUD may contact the recipient at any time to request additional information to support a previous request.

VI. CERTIFICATIONS

For purposes of all ESG funds, recipients must submit certifications as required by the McKinney-Vento Act. However, the program flexibilities provided under the Cares Act and this Notice make the following exceptions and clarifications necessary.

1. As provided by the CARES Act HUD cannot require ESG-CV funds to be matched and under this Notice, HUD is extending this match exemption to annual ESG grant funds used to prevent, prepare for, and respond to coronavirus. Accordingly, any match certification submitted is not valid with respect to those funds.
2. As provided by the CARES Act, period of use certifications required by Section 416(c)(1) of the McKinney Vento Act do not apply to temporary emergency shelters funded in accordance with that Act. Accordingly, any period of use certification is not valid with respect to the use of those funds for temporary emergency shelters.
3. HUD provided Interim ESG-CV Certifications posted on <https://www.hudexchange.info/resource/2396/consolidated-plan-certifications-state-and-non-state/> that reflect program flexibilities under the CARES Act. If a recipient submitted interim certifications for the first or second allocation of ESG-CV funding, then it does not need to resubmit certifications in Appendix I for that allocation unless the recipient is a State that is exercising the flexibility to carry out activities directly as provided in Section III.A.I. States electing to exercise the flexibility to carry out activities directly must submit the new ESG-CV certifications in Appendix I.

4. Except as otherwise provided in paragraph 3 above, the ESG-CV certifications in Appendix I must be submitted by all States and non-States applying to receive Emergency Solutions Grants Program funding under the CARES Act for each allocation of ESG-CV funding. These certifications are the same standard ESG certifications HUD requires from non-States, except that the match certification is removed and the CARES Act's exemption of temporary emergency shelters is expressly stated in the "Major rehabilitation/conversion/renovation" and "Essential Services and Operating Costs."

5. Annual ESG funds

a. The ESG certifications in Appendix II are required to be submitted for each annual ESG grant under which the State will exercise HUD's waiver allowing the State to carry out ESG activities directly in order to prevent, prepare for, or respond to coronavirus and are allowed but required to be submitted for each annual ESG grant under which the State will otherwise use its available funds to prevent, prepare for, or respond to coronavirus in accordance with the flexibilities and requirements established for ESG-CV funds. These certifications reflect the same standard ESG certifications HUD requires from non-States, except that the match certification is removed and the CARES Act's exemption of temporary emergency shelters is expressly stated in the "Major rehabilitation/conversion/renovation" and "Essential Services and Operating Costs." For purposes of annual ESG funds that are not used to prevent, prepare for, or respond to coronavirus in accordance with flexibilities and requirements established for ESG-CV funds, however, these certifications cannot be used in place of the standard ESG certifications the recipient must submit for its annual ESG grants.

b. The ESG certifications in Appendix III are allowed, but not required to be submitted for each annual ESG grant under which an ESG recipient, other than a State, intends to use its available funds to prevent, prepare for, and respond to coronavirus in accordance with flexibilities and requirements established for ESG-CV funds. These certifications are the same standard ESG certifications HUD requires from non-States, except that the match certification is removed and the CARES Act's exemption of temporary emergency shelters is expressly stated in the "Major rehabilitation/conversion/renovation" and "Essential Services and Operating Costs." For purposes of annual ESG funds that are not used to prevent, prepare for, and respond to coronavirus in accordance with flexibilities and requirements established for ESG-CV funds, these certifications cannot be used in place of the standard ESG certifications the recipient must submit for its annual ESG grants. Standard certifications for non-states can be found here: <https://files.hudexchange.info/resources/documents/Emergency-Solutions-Grants-Esg-Program-Certifications-Non-State.pdf>.

VII. POLICY PRIORITIES

This section, which includes policy priorities and reminders of existing program requirements, provides additional context regarding the waivers and alternative requirements granted above:

A. Policy Priorities.

1. *Selecting Subrecipients.* ESG-CV funding will substantially increase many jurisdictions' ESG allocation. While necessary to shelter and house individuals and families experiencing and at risk of homelessness, this influx of funding may stress the capacity of existing ESG subrecipients. Therefore, recipients should consider funding organizations that have not traditionally received ESG funding. This may involve using already established criteria for selecting subrecipients. However, if a recipient changes its criteria for selecting subrecipients, it should consider criteria related to:

- (i) The organization's demonstrable history and familiarity with operating the type of activity for which it will receive funding (e.g., street outreach, emergency shelter);
- (ii) The organization's experience serving the population experiencing homelessness and at severest risk of complications from coronavirus (e.g., individuals experiencing homelessness over age 50, having particular health issues, minority and indigenous populations).
- (iii) Previous performance of the organization in providing housing, shelter, or services to individuals and families experiencing or at risk of homelessness (e.g., the length of time individuals and families remain homeless before they are housed, overall reduction in the number of homeless individuals and families, success at reducing the number of individuals and families who become homeless, etc.).

Recipients are encouraged to subgrant funds to community-based non-profit organizations, including faith-based organizations. HUD will publish technical assistance materials to assist recipients in expanding their subrecipients.

2. *Providing Essential Services to Promote Independent Living, Sobriety, Employment, Self-Sufficiency, and Residential Stability.* Recipients are encouraged to use ESG-CV funds to provide essential services and housing relocation and stabilization services to program participants to promote independent living, sobriety, employment, self-sufficiency, and housing stability. The CARES Act, however, prohibits requiring treatment or other activities as a condition of receiving assistance.

Recipients are especially encouraged to provide services that promote these outcomes when providing emergency shelter or temporary emergency shelter. Recipients are also encouraged to consider their ability to provide these services, and the success of subrecipients on helping individuals on their pathway to achieving outcomes related to independent living, sobriety, employment, self-sufficiency, and housing stability when making funding decisions and seeking waivers for ESG-CV funds.

Finally, recipients are reminded that being able to provide services to support program participants on their pathway to independent living, sobriety, employment, self-sufficiency, and housing stability can be a powerful marketing tool to encourage landlords to rent their unit to an individual or family experiencing or at risk of homelessness.

3. *Prioritize Households Based on Need.* HUD encourages recipients to prioritize households that are most in need of this assistance, and encourages recipients to use this opportunity to develop strategies within the community's public health response that respond to the immediate crisis needs of individuals and families experiencing homelessness and at risk of homelessness as well as to develop a plan to respond to the economic effects of coronavirus for individuals and families experiencing homelessness and at risk of homelessness.

4. *Use ESG-CV Funds to Prevent the Spread of Coronavirus.* To ensure ESG-CV funds are used effectively and efficiently to prevent, prepare for, and respond to coronavirus, recipients should carefully evaluate the appropriateness and cost effectiveness of interventions needed to immediately respond to the public health emergency (e.g., establishing temporary emergency shelters or using funds for hotel and motel vouchers).

5. *Use ESG-CV Funds to Quickly Provide Needed Connections to Housing.* People experiencing homelessness are at risk for infection during community spread of coronavirus and lack of housing contributes to poor physical and mental health outcomes. HUD encourages recipients to quickly obligate and expend their ESG-CV funds to ensure housing and services are available to people experiencing homelessness and at risk of homelessness.

B. Program Requirements. As a reminder, the following requirements, which apply to annual ESG funding, also apply to ESG-CV funds:

1. *Participation of Faith-Based organizations.* All requirements of 24 CFR 5.109 apply, and the lawful participation of faith-based entities must not be hindered when administering ESG-CV funds.

2. *Prohibition on the provision of illegal or addictive substances.* As established in 2 CFR 200.303, 200.404, and 200.423 and Subpart B of 24 CFR Part 576, HUD reminds recipients that using ESG funds to provide alcohol, marijuana, or illegal substances, or any paraphernalia used to partake of any such substance, to program participants is a strictly prohibited.

3. *Legal Services Must be Necessary to Obtain or Retain Housing.* To be eligible under the ESG program, legal services established in 24 CFR 576.102(a)(1)(vi) and 24 CFR 576.105(b)(4) must be necessary to help program participants obtain housing or keep a program participant from losing housing where they currently reside.

4. *Use of hotels and motels.* While ESG-CV funds may be used to provide hotel or motel stays for program participants consistent with 24 CFR 576.102 and this Notice, providing permanent housing in hotels and motels is an ineligible use of ESG funds (including ESG-CV funds) under section 415(a) of the McKinney-Vento Act and 24 CFR part 576, subpart B.

VIII. Finding of No Significant Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is available for inspection at HUD's Funding Opportunities web page at: <https://www.hud.gov/coronavirus/grantees>.

John Gibbs



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JOHN GIBBS
Date: 2020.09.01
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Acting Assistant Secretary
for Community Planning and Development

EXHIBIT G, FEDERAL PROVISIONS

1. APPLICABILITY OF PROVISIONS.

- 1.1. The Agreement to which these Federal Provisions are attached has been funded, in whole or in part, with an Award of Federal funds. In the event of a conflict between the provisions of these Federal Provisions, the body of the Agreement, or any attachments or exhibits incorporated into and made a part of the Agreement, the provisions of these Federal Provisions shall control.

2. DEFINITIONS.

- 2.1. For the purposes of these Federal Provisions, the following terms shall have the meanings ascribed to them below.

- 2.1.1. "Award" means an award of Federal financial assistance, and the Agreement setting forth the terms and conditions of that financial assistance, that a non-Federal Entity receives or administers.

- 2.1.1.1. Awards may be in the form of:

- 2.1.1.1.1. Funding provided to the City and County of Denver, Colorado in accordance with Sections 601(b) and (d) of the Social Security Act, as added by Section 5001 of the Coronavirus Aid, Relief, and Economic Security Act of 2020, Public Law No. 116-136, Division A, Title V (March 27, 2020) ("CARES Act");

- 2.1.1.1.2. Grants;

- 2.1.1.1.3. Contracts;

- 2.1.1.1.4. Cooperative Contracts, which do not include cooperative research and development Contracts (CRDA) pursuant to the Federal Technology Transfer Act of 1986, as amended (15 U.S.C. 3710);

- 2.1.1.1.5. Loans;

- 2.1.1.1.6. Loan Guarantees;

- 2.1.1.1.7. Subsidies;

- 2.1.1.1.8. Insurance;

- 2.1.1.1.9. Food commodities;

- 2.1.1.1.10. Direct appropriations;

- 2.1.1.1.11. Assessed and voluntary contributions; and

- 2.1.1.1.12. Other financial assistance transactions that authorize the expenditure of Federal funds by non-Federal Entities.

- 2.1.1.1.13. Any other items specified by OMB in policy memoranda available at the OMB website or other source posted by the OMB.

- 2.1.1.2. Award *does not* include:

- 2.1.1.2.1. Technical assistance, which provides services in lieu of money;

- 2.1.1.2.2. A transfer of title to Federally-owned property provided in lieu of money; even if the award is called a grant;

- 2.1.1.2.3. Any award classified for security purposes; or
- 2.1.1.2.4. Any award funded in whole or in part with Recovery funds, as defined in section 1512 of the American Recovery and Reinvestment Act (ARRA) of 2009 (Public Law 111-5).
- 2.1.2. “Agreement” means the Agreement to which these Federal Provisions are attached and includes all Award types in §2.1.1.1 of this Exhibit.
- 2.1.3. “Contractor” means the party or parties to a Agreement funded, in whole or in part, with Federal financial assistance, other than the Prime Recipient, and includes grantees, subgrantees, Subrecipients, and borrowers. For purposes of Transparency Act reporting, Contractor does not include Vendors.
- 2.1.4. “Data Universal Numbering System (DUNS) Number” means the nine-digit number established and assigned by Dun and Bradstreet, Inc. to uniquely identify a business entity. Dun and Bradstreet’s website may be found at: <http://fedgov.dnb.com/webform>.
- 2.1.5. “Entity” means all of the following as defined at 2 CFR part 25, subpart C;
 - 2.1.5.1. A governmental organization, which is a State, local government, or Indian Tribe;
 - 2.1.5.2. A foreign public entity;
 - 2.1.5.3. A domestic or foreign non-profit organization;
 - 2.1.5.4. A domestic or foreign for-profit organization; and
 - 2.1.5.5. A Federal agency, but only a Subrecipient under an Award or Subaward to a non-Federal entity.
- 2.1.6. “Executive” means an officer, managing partner or any other employee in a management position.
- 2.1.7. “Federal Award Identification Number (FAIN)” means an Award number assigned by a Federal agency to a Prime Recipient.
- 2.1.8. “Federal Awarding Agency” means a Federal agency providing a Federal Award to a Recipient as described in 2 CFR §200.37
- 2.1.9. “FFATA” means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252. FFATA, as amended, also is referred to as the “Transparency Act.”
- 2.1.10. “Federal Provisions” means these Federal Provisions subject to the Transparency Act and Uniform Guidance, as may be revised pursuant to ongoing guidance from the relevant Federal or City and County of Denver, Colorado agency.
- 2.1.11. “OMB” means the Executive Office of the President, Office of Management and Budget.
- 2.1.12. “Prime Recipient” means the City and County of Denver, Colorado, or an agency thereof, that receives an Award.
- 2.1.13. “Subaward” means an award by a Recipient to a Subrecipient funded in whole or in part by a Federal Award. The terms and conditions of the Federal Award flow down to the Award unless the terms and conditions of the Federal Award specifically indicate otherwise in accordance with 2 CFR §200.38. The term does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program.

- 2.1.14. “Subrecipient” means a non-Federal Entity (or a Federal agency under an Award or Subaward to a non-Federal Entity) receiving Federal funds through a Prime Recipient to support the performance of the Federal project or program for which the Federal funds were awarded. A Subrecipient is subject to the terms and conditions of the Federal Award to the Prime Recipient, including program compliance requirements. The term “Subrecipient” includes and may be referred to as Subgrantee. The term does not include an individual who is a beneficiary of a federal program.
- 2.1.15. “Subrecipient Parent DUNS Number” means the subrecipient parent organization’s 9-digit Data Universal Numbering System (DUNS) number that appears in the subrecipient’s System for Award Management (SAM) profile, if applicable.
- 2.1.16. “System for Award Management (SAM)” means the Federal repository into which an Entity must enter the information required under the Transparency Act, which may be found at <http://www.sam.gov>.
- 2.1.17. “Total Compensation” means the cash and noncash dollar value earned by an Executive during the Prime Recipient’s or Subrecipient’s preceding fiscal year and includes the following:
- 2.1.17.1. Salary and bonus;
 - 2.1.17.2. Awards of stock, stock options, and stock appreciation rights, using the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2005) (FAS 123R), Shared Based Payments;
 - 2.1.17.3. Earnings for services under non-equity incentive plans, not including group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of Executives and are available generally to all salaried employees;
 - 2.1.17.4. Change in present value of defined benefit and actuarial pension plans;
 - 2.1.17.5. Above-market earnings on deferred compensation which is not tax-qualified;
 - 2.1.17.6. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the Executive exceeds \$10,000.
- 2.1.18. “Transparency Act” means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252. The Transparency Act also is referred to as FFATA.
- 2.1.19. “Uniform Guidance” means the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, which supersedes requirements from OMB Circulars A-21, A-87, A-110, and A-122, OMB Circulars A-89, A-102, and A-133, and the guidance in Circular A-50 on Single Audit Act follow-up. The terms and conditions of the Uniform Guidance flow down to Awards to Subrecipients unless the Uniform Guidance or the terms and conditions of the Federal Award specifically indicate otherwise.
- 2.1.20. “Vendor” means a dealer, distributor, merchant or other seller providing property or services required for a project or program funded by an Award. A Vendor is not a Prime Recipient or a Subrecipient and is not subject to the terms and conditions of the Federal award. Program compliance requirements do not pass through to a Vendor.

3. COMPLIANCE.

- 3.1. Contractor shall comply with all applicable provisions of the Transparency Act, all applicable provisions of the Uniform Guidance, and the regulations issued pursuant thereto, including but not limited to these Federal Provisions. Any revisions to such provisions or regulations shall automatically become a part of these Federal Provisions, without the necessity of either party executing any further instrument. The City and County of Denver, Colorado may provide written notification to Contractor of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.

4. SYSTEM FOR AWARD MANAGEMENT (SAM) AND DATA UNIVERSAL NUMBERING SYSTEM (DUNS) REQUIREMENTS.

- 4.1. SAM. Contractor shall maintain the currency of its information in SAM until the Contractor submits the final financial report required under the Award or receives final payment, whichever is later. Contractor shall review and update SAM information at least annually after the initial registration, and more frequently if required by changes in its information.
- 4.2. DUNS. Contractor shall provide its DUNS number to its Prime Recipient, and shall update Contractor's information in Dun & Bradstreet, Inc. at least annually after the initial registration, and more frequently if required by changes in Contractor's information.

5. TOTAL COMPENSATION.

- 5.1. Contractor shall include Total Compensation in SAM for each of its five most highly compensated Executives for the preceding fiscal year if:
 - 5.1.1. The total Federal funding authorized to date under the Award is \$25,000 or more; and
 - 5.1.2. In the preceding fiscal year, Contractor received:
 - 5.1.2.1. 80% or more of its annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and
 - 5.1.2.2. \$25,000,000 or more in annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and
 - 5.1.3. The public does not have access to information about the compensation of such Executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d) or § 6104 of the Internal Revenue Code of 1986.

6. REPORTING.

- 6.1. Contractor shall report data elements to SAM and to the Prime Recipient as required in this Exhibit if Contractor is a Subrecipient for the Award pursuant to the Transparency Act. No direct payment shall be made to Contractor for providing any reports required under these Federal Provisions and the cost of producing such reports shall be included in the Contract price. The reporting requirements in this Exhibit are based on guidance from the US Office of Management and Budget (OMB), and as such are subject to change at any time by OMB. Any such changes shall be automatically incorporated into this Agreement and shall become part of Contractor's obligations under this Agreement.

7. EFFECTIVE DATE AND DOLLAR THRESHOLD FOR REPORTING.

- 7.1. Reporting requirements in §8 below apply to new Awards as of October 1, 2010, if the initial award is \$25,000 or more. If the initial Award is below \$25,000 but subsequent Award modifications result in a total Award of \$25,000 or more, the Award is subject to the reporting requirements as of the date the Award exceeds \$25,000. If the initial Award is \$25,000 or more, but funding is subsequently de-obligated such that the total award amount falls below \$25,000, the Award shall continue to be subject to the reporting requirements.
- 7.2. The procurement standards in §9 below are applicable to new Awards made by Prime Recipient as of December 26, 2015. The standards set forth in §11 below are applicable to audits of fiscal years beginning on or after December 26, 2014.

8. SUBRECIPIENT REPORTING REQUIREMENTS.

- 8.1. If Contractor is a Subrecipient, Contractor shall report as set forth below.
 - 8.1.1. **To SAM.** A Subrecipient shall register in SAM and report the following data elements in SAM *for each* Federal Award Identification Number no later than the end of the month following the month in which the Subaward was made:
 - 8.1.1.1. Subrecipient DUNS Number;
 - 8.1.1.2. Subrecipient DUNS Number + 4 if more than one electronic funds transfer (EFT) account;
 - 8.1.1.3. Subrecipient Parent DUNS Number;
 - 8.1.1.4. Subrecipient's address, including: Street Address, City, State, Country, Zip + 4, and Congressional District;
 - 8.1.1.5. Subrecipient's top 5 most highly compensated Executives if the criteria in §4 above are met; and
 - 8.1.1.6. Subrecipient's Total Compensation of top 5 most highly compensated Executives if criteria in §4 above met.
 - 8.1.2. **To Prime Recipient.** A Subrecipient shall report to its Prime Recipient, upon the effective date of the Contract, the following data elements:
 - 8.1.2.1. Subrecipient's DUNS Number as registered in SAM.
 - 8.1.2.2. Primary Place of Performance Information, including: Street Address, City, State, Country, Zip code + 4, and Congressional District.

9. PROCUREMENT STANDARDS.

- 9.1. Procurement Procedures. A Subrecipient shall use its own documented procurement procedures which reflect applicable State, local, and Tribal laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in the Uniform Guidance, including without limitation, §§200.318 through 200.326 thereof.

- 9.2. Procurement of Recovered Materials. If a Subrecipient is a State Agency or an agency of a political subdivision of the State, its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

10. ACCESS TO RECORDS

- 10.1. A Subrecipient shall permit Recipient and auditors to have access to Subrecipient's records and financial statements as necessary for Recipient to meet the requirements of §200.331 (Requirements for pass-through entities), §§200.300 (Statutory and national policy requirements) through 200.309 (Period of performance), and Subpart F-Audit Requirements of the Uniform Guidance. 2 CFR §200.331(a)(5).

11. SINGLE AUDIT REQUIREMENTS

- 11.1. If a Subrecipient expends \$750,000 or more in Federal Awards during the Subrecipient's fiscal year, the Subrecipient shall procure or arrange for a single or program-specific audit conducted for that year in accordance with the provisions of Subpart F-Audit Requirements of the Uniform Guidance, issued pursuant to the Single Audit Act Amendments of 1996, (31 U.S.C. 7501-7507). 2 CFR §200.501.
- 11.1.1. **Election.** A Subrecipient shall have a single audit conducted in accordance with Uniform Guidance §200.514 (Scope of audit), except when it elects to have a program-specific audit conducted in accordance with §200.507 (Program-specific audits). The Subrecipient may elect to have a program-specific audit if Subrecipient expends Federal Awards under only one Federal program (excluding research and development) and the Federal program's statutes, regulations, or the terms and conditions of the Federal award do not require a financial statement audit of Prime Recipient. A program-specific audit may not be elected for research and development unless all of the Federal Awards expended were received from Recipient and Recipient approves in advance a program-specific audit.
- 11.1.2. **Exemption.** If a Subrecipient expends less than \$750,000 in Federal Awards during its fiscal year, the Subrecipient shall be exempt from Federal audit requirements for that year, except as noted in 2 CFR §200.503 (Relation to other audit requirements), but records shall be available for review or audit by appropriate officials of the Federal agency, the City and County of Denver, Colorado, and the Government Accountability Office.
- 11.1.3. **Subrecipient Compliance Responsibility.** A Subrecipient shall procure or otherwise arrange for the audit required by Part F of the Uniform Guidance and ensure it is properly performed and submitted when due in accordance with the Uniform Guidance. Subrecipient shall prepare appropriate financial statements, including the schedule of expenditures of Federal awards in accordance with Uniform Guidance §200.510 (Financial statements) and provide the auditor with access to personnel, accounts, books, records, supporting documentation, and other information as needed for the auditor to perform the audit required by Uniform Guidance Part F-Audit Requirements.

12. CONTRACT PROVISIONS FOR SUBRECEPIENT CONTRACTS

12.1. If Contractor is a Subrecipient, then it shall comply with and shall include all of the following applicable provisions in all subcontracts entered into by it pursuant to this Agreement.

12.1.1. **Equal Employment Opportunity.** Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 shall include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.

12.1.1.1. During the performance of this Agreement, the Contractor agrees as follows:

12.1.1.1.1. Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

12.1.1.1.2. Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

12.1.1.1.3. Contractor will send to each labor union or representative of workers with which Contractor has a collective bargaining contract or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the Contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

12.1.1.1.4. Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

12.1.1.1.5. Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to Contractor's books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

- 12.1.1.1.6. In the event of Contractor's non-compliance with the nondiscrimination clauses of this Agreement or with any of such rules, regulations, or orders, this Agreement may be canceled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- 12.1.1.1.7. Contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.”
- 12.1.2. **Davis-Bacon Act.** Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or Subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
- 12.1.3. **Rights to Inventions Made Under a Contract or Contract.** If the Federal Award meets the definition of “funding Contract” under 37 CFR §401.2 (a) and Subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding Contract,” Subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Contracts,” and any implementing regulations issued by the awarding agency.

- 12.1.4. **Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended.** Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- 12.1.5. **Debarment and Suspension (Executive Orders 12549 and 12689).** A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- 12.1.6. **Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).** Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

13. CERTIFICATIONS.

- 13.1. Unless prohibited by Federal statutes or regulations, the City and County of Denver as Prime Recipient may require Subrecipient to submit certifications and representations required by Federal statutes or regulations on an annual basis. 2 CFR §200.208. Submission may be required more frequently if Subrecipient fails to meet a requirement of the Federal award. Subrecipient shall certify in writing to the City and County of Denver at the end of the Award that the project or activity was completed or the level of effort was expended. 2 CFR §200.201(3). If the required level of activity or effort was not carried out, the amount of the Award must be adjusted.

14. EXEMPTIONS.

- 14.1. These Federal Provisions do not apply to an individual who receives an Award as a natural person, unrelated to any business or non-profit organization he or she may own or operate in his or her name.
- 14.2. A Contractor with gross income from all sources of less than \$300,000 in the previous tax year is exempt from the requirements to report Subawards and the Total Compensation of its most highly compensated Executives.
- 14.3. There are no Transparency Act reporting requirements for Vendors.

15. EVENT OF DEFAULT.

- 15.1. Failure to comply with these Federal Provisions shall constitute an event of default under the Agreement and the City and County of Denver, Colorado may terminate the Agreement upon thirty (30) days prior written notice if the default remains uncured five (5) calendar days following the termination of the thirty (30) day notice period. This remedy will be in addition to any other remedy available to the City and County of Denver, Colorado under the Agreement, at law or in equity.

END OF DOCUMENT.



Emergency Solutions Grants (ESG) Program Components Quick Reference

Emergency Solutions Grants (ESG) funds can be used to provide a wide range of services and supports under the five program **components**: Street Outreach, Emergency Shelter, Rapid Re-housing, Homelessness Prevention, and HMIS. Each component is described in the tables below, accompanied by a list of corresponding ESG activities and eligible costs. Note: Administration is not a component, it is considered an activity.* **Always refer to the program regulations at 24 CFR Part 576 for complete information about all eligible costs and program requirements.**

Component: Street Outreach. These activities are designed to meet the immediate needs of unsheltered homeless people by connecting them with emergency shelter, housing, and/or critical health services. § 576.101	
Activity type: Essential Services	
<u>Eligible costs:</u>	
<ul style="list-style-type: none"> • Engagement • Case Management • Emergency Health Services 	<ul style="list-style-type: none"> • Emergency Mental Health Services • Transportation • Services for Special Populations

Component: Emergency Shelter. These activities are designed to increase the quantity and quality of temporary shelters provided to homeless people, through the renovation of existing shelters or conversion of buildings to shelters, paying for the operating costs of shelters, and providing essential services. § 576.102			
Activity types:			
Essential Services	Renovation (also includes Major Rehab and Conversion)	Shelter Operations	Assistance Required Under the Uniform Relocation and Real Property Acquisition Act of 1970 (URA)
<u>Eligible costs:</u> <ul style="list-style-type: none"> • Case management • Child Care • Education Services • Employment Assistance and Job Training • Outpatient Health Services • Legal Services • Life Skills Training • Mental Health Services • Substance Abuse Treatment Services • Transportation • Services for Special Populations 	<u>Eligible costs:</u> <ul style="list-style-type: none"> • Labor • Materials • Tools • Other costs for renovation (including rehab or conversion) 	<u>Eligible costs:</u> <ul style="list-style-type: none"> • Maintenance • Rent • Security • Fuel • Equipment • Insurance • Utilities • Food • Furnishings • Supplies necessary for shelter operation • Hotel/Motel Vouchers 	<u>Eligible costs:</u> <ul style="list-style-type: none"> • Relocation payments • Other assistance to displaced persons

Component: Rapid Re-Housing. These activities are designed to move homeless people quickly to permanent housing through housing relocation and stabilization services and short- and/or medium-term rental assistance. § 576.104

Activity types:

Rental Assistance**	Housing Relocation and Stabilization Services	
	Financial Assistance	Services Costs
<p><u>Eligible costs:</u></p> <ul style="list-style-type: none"> • Short-term rental assistance • Medium-term rental assistance • Rental arrears <p>**Rental assistance can be project-based or tenant-based.</p>	<p><u>Eligible costs:</u></p> <ul style="list-style-type: none"> • Rental Application Fees • Security Deposits • Last Month's Rent • Utility Deposits • Utility Payments • Moving Costs 	<p><u>Eligible costs:</u></p> <ul style="list-style-type: none"> • Housing Search and Placement • Housing Stability Case Management • Mediation • Legal Services • Credit Repair

Component: Homelessness Prevention. These activities are designed to prevent an individual or family from moving into an emergency shelter or living in a public or private place not meant for human through housing relocation and stabilization services and short- and/or medium-term rental assistance. § 576.103

Activity types:

Rental Assistance**	Housing Relocation and Stabilization Services	
	Financial Assistance	Services Costs
<p><u>Eligible costs:</u></p> <ul style="list-style-type: none"> • Short-term rental assistance • Medium-term rental assistance • Rental arrears <p>**Rental assistance can be project-based or tenant-based.</p>	<p><u>Eligible costs:</u></p> <ul style="list-style-type: none"> • Rental Application Fees • Security Deposits • Last Month's Rent • Utility Deposits • Utility Payments • Moving Costs 	<p><u>Eligible costs:</u></p> <ul style="list-style-type: none"> • Housing Search and Placement • Housing Stability Case Management • Mediation • Legal Services • Credit Repair

HMIS Component. These activities are designed to fund ESG recipients' and subrecipients' participation in the HMIS collection and analyses of data on individuals and families who are homeless and at-risk of homelessness. § 576.107

Activity type: HMIS

Eligible costs:

- Contributing data to the HMIS designated by the CoC for the area;
- HMIS Lead (as designated by the CoC) costs for managing the HMIS system;
- Victim services or legal services provider costs to establish and operate a comparable database.

***Administrative Activities. § 576.108**

Eligible costs are broadly categorized as follows:

- General management, oversight, and coordination
- Training on ESG requirements
- Consolidated Plan
- Environmental review

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**24 CFR Parts 91 and 576**

[Docket No. FR-5474-I-01]

RIN 2506-AC29

Homeless Emergency Assistance and Rapid Transition to Housing: Emergency Solutions Grants Program and Consolidated Plan Conforming Amendments

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Interim rule.

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

This interim rule revises the regulations for the Emergency Shelter Grants program by establishing the regulations for the Emergency Solutions Grants program, which replaces the Emergency Shelter Grants program. The change in the program's name, from Emergency Shelter Grants to Emergency Solutions Grants, reflects the change in the program's focus from addressing the needs of homeless people in emergency or transitional shelters to assisting people to quickly regain stability in permanent housing after experiencing a housing crisis and/or homelessness.

DATES: *Effective date:* January 4, 2012.
Comment Due Date: February 3, 2012.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, 451 7th Street SW., Room 10276, Department of Housing and Urban Development, Washington, DC 20410-0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. Submission of Comments by Mail. Comments may be submitted by mail to

the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410-0500.

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

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

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

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

FOR FURTHER INFORMATION CONTACT: Ann Marie Oliva, Director, Office of Special Needs Assistance Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410-7000; telephone number (202) 708-4300 (this is not a toll-free number). Hearing- and speech-impaired persons may access this number through TTY by calling the Federal Relay Service at (800) 877-8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background—HEARTH Act

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

HUD commenced the process to implement the HEARTH Act with a proposed rule, which was published on April 20, 2010, (75 FR 20541) and titled "Defining Homeless." That proposed rule sought to clarify and elaborate upon the new McKinney-Vento Act definitions for "homeless" and "homeless individual with a disability." In addition, the proposed rule included recordkeeping requirements related to the revised definition of "homeless." The final rule for the "homeless" definition and the related recordkeeping requirements appears elsewhere in today's **Federal Register**. Today's publication of the final rule for the homeless definition and this interim rule for the Emergency Solutions Grants program, which includes corresponding amendments to the Consolidated Plan, will be followed by separate proposed rules for the Continuum of Care program and the Rural Housing Stability program to implement other HEARTH Act

amendments to the McKinney-Vento Act. HUD will also soon publish a proposed rule establishing regulations for Homeless Management Information Systems (HMIS). The definition of “homeless” in this interim rule for the Emergency Solutions Grants program and the corresponding recordkeeping requirements are not the subject of further public comment. Public comment for this definition and the corresponding recordkeeping requirements were addressed in the Defining Homeless final rule published elsewhere in today’s **Federal Register**.

II. This Interim Rule

This interim rule revises the regulations for the Emergency Shelter Grants program at 24 CFR part 576 by establishing the new requirements for the Emergency Solutions Grants program and making corresponding amendments to HUD’s Consolidated Plan regulations found at 24 CFR part 91. The Emergency Solutions Grants (ESG) program builds upon the existing Emergency Shelter Grants program, but places greater emphasis on helping people quickly regain stability in permanent housing after experiencing a housing crisis and/or homelessness. The key changes that reflect this new emphasis are the expansion of the homelessness prevention component of the program and the addition of a new rapid re-housing assistance component. The homelessness prevention component includes various housing relocation and stabilization services and short- and medium-term rental assistance to help people avoid becoming homeless. The rapid re-housing assistance component includes similar services and assistance to help people who are homeless move quickly into permanent housing and achieve stability in that housing.

In developing regulations for the ESG program, HUD is relying substantially on its experience with its administration, and that of HUD’s grantees, of the Homelessness Prevention and Rapid Re-Housing Program (HPRP), authorized and funded by the American Recovery and Reinvestment Act of 2009 (Recovery Act) (Pub. L. 111–5, approved February 17, 2009). The Recovery Act language that created HPRP was directly drawn from the proposed HEARTH Act, which was under consideration by Congress at the time the Recovery Act was enacted. HPRP is the first HUD program to fund, on a large scale (\$1.5 billion), homelessness prevention and rapid re-housing assistance. HUD is therefore drawing from its recent program experience with HPRP, a temporary

program, to establish the regulations for the ESG program, a permanent program. Because HPRP activities will continue, the interim rule is also directed at ensuring continuity between HPRP and ESG. This interim rule provides HPRP program recipients with an opportunity to comment on the policies implemented under HPRP and continued under the ESG program.

This interim rule also implements HUD’s longstanding interest in making its McKinney-Vento Act programs consistent, where appropriate, with other HUD programs such as the Community Development Block Grant (CDBG) program, the HOME Investment Partnerships (HOME) program, and the Housing Choice Voucher (HCV) program. To the extent that similar requirements in these programs can be made consistent, communities may be better able to implement coordinated plans and projects to prevent and end homelessness, while decreasing the administrative burden for recipients and subrecipients.

This interim rule will become effective 30 days after today’s date. Grantees are receiving two allocations of Fiscal Year (FY) 2011 funds. The first allocation was made and is subject to the Emergency Shelter Grants program regulations. The second allocation will be made after publication of this Emergency Solutions Grants program rule and must exclusively be used for homelessness prevention assistance, rapid re-housing assistance, Homeless Management Information Systems (HMIS), and administration, in accordance with this interim rule. Each recipient may use up to 7.5 percent of its total FY 2011 amount for administrative costs as provided under this interim rule. In addition, if a recipient wishes to reprogram some or all of its first allocation funds to carry out homelessness prevention assistance, rapid re-housing assistance, or HMIS, the recipient must amend its consolidated plan in accordance with the requirements of the consolidated plan regulations as amended by this interim rule.

The following sections of this overview highlight significant differences between the interim rule and the existing regulations for the Emergency Shelter Grants program. This overview does not address every regulatory provision of the interim rule. However, the reader is requested to review the entire interim rule, and HUD welcomes comment on all aspects of the rule. As previously mentioned, the definition of “homeless” and the recordkeeping requirements related to that definition are included in a final

rule published elsewhere in today’s **Federal Register**. Note that the new definition of “homeless” and the related recordkeeping requirements are not subject to further public comment. Therefore, the new definition and related reporting requirements are not included in this interim rule, so as to avoid any confusion that HUD is reopening these provisions for additional public comment through this rule.

A. Emergency Solutions Grants Program Regulations (24 CFR Part 576)

This interim rule amends the regulations at 24 CFR part 576, which have governed the Emergency Shelter Grants program and will govern, as revised, the Emergency Solutions Grant (ESG) program.

This interim rule reflects HUD’s comprehensive review and revision of part 576. In addition to making changes to implement the HEARTH Act amendments to the McKinney-Vento Act, this interim rule includes changes to reorganize the regulations in part 576 to make the regulations more intuitive and user-friendly; removes the cross-references to the McKinney-Vento Act; provides greater elaboration of existing requirements where necessary or useful; updates requirements to reflect changes to the underlying law, such as the removal of Indian tribes as eligible grantees/recipients; builds from HUD’s experience in developing and administering both the existing Emergency Shelter Grants program and HPRP; aligns the ESG program with the new Continuum of Care and Rural Housing Stability programs, to the extent feasible, in order to facilitate coordination and foster efficient use of resources; and align the requirements of the ESG program with HUD’s other formula programs and rental assistance programs, to the extent feasible and beneficial, in order to increase efficiency and coordination among the different programs.

In developing the regulations for the ESG program and other programs authorized under title IV of the revised McKinney-Vento Act, HUD has sought to provide grantees with the programmatic framework to: maximize communitywide planning and strategic use of resources to prevent and end homelessness; improve coordination and integration with mainstream services to marshal all available resources, capitalize on existing strengths, and increase efficiency; improve coordination within each community’s homeless services, including services funded by other programs targeted to homeless people;

build on lessons learned from years of practice and research, so that more resources are invested in demonstrated solutions to end homelessness, such as rapid re-housing; expand resources and services available to prevent homelessness; realign existing programs and systems to focus on shortening homelessness; direct funding to the most critical services to help people achieve long-term housing stability and avoid becoming homeless again; standardize eligibility determinations and improve the targeting of resources to help those most in need; improve data collection and performance measurement; and allow each community to tailor its program to the particular strengths and challenges within that community.

General Provisions (Subpart A)

The major changes to this subpart include new definitions required by the HEARTH Act amendments and revisions to existing definitions where needed to conform to the new program requirements or to improve administration of the program.

Definitions (Section 576.2)

At Risk of Homelessness. The interim rule clarifies the definition of “at risk of homelessness” under section 401(1) of the McKinney-Vento Act. The definition includes three categories under which an individual or family may qualify as “at risk of homelessness.” For an individual or family to qualify as “at risk of homelessness” under the first category of the definition, the individual or family must meet two threshold criteria and must exhibit one or more specified risk factors. The two threshold criteria, as provided in the statute, are: (1) The individual or family has income below 30 percent of median income for the geographic area; and (2) the individual or family has insufficient resources immediately available to attain housing stability. Under the interim rule, the first criterion refers specifically to annual income and to median family income for the area, as determined by HUD. The second criterion is interpreted as, “the individual or family does not have sufficient resources or support networks, e.g., family, friends, faith-based or other social networks, immediately available to prevent them from moving to an emergency shelter or another place described in paragraph (1) of the homeless definition [in § 576.2].” These clarifications are consistent with HUD’s practice in administering its homeless assistance programs and will help ensure consistent application of these criteria.

To further ensure consistency of interpretation, the interim rule also clarifies several of the risk factors that pertain to the first category of individuals and families who qualify as “at risk of homelessness.” As provided under the statute, the pertinent risk factors are as follows: (1) Has moved frequently because of economic reasons; (2) is living in the home of another because of economic hardship; (3) has been notified that their right to occupy their current housing or living situation will be terminated; (4) lives in a hotel or motel; (5) lives in severely overcrowded housing; (6) is exiting an institution; or (7) otherwise lives in housing that has characteristics associated with instability and an increased risk of homelessness.

Under the interim rule, the words “has moved frequently” in the first risk factor are interpreted as “2 or more times during the 60 days immediately preceding the application for homelessness prevention assistance.” This interpretation is consistent with HUD’s interpretation of similar language in the “homeless” definition. However, HUD is still considering whether and how to clarify “economic reasons” in the first risk factor and “economic hardship” in the second risk factor. HUD believes at times, “economic reasons” and “economic hardship” can have the same meaning, HUD specifically requests comments regarding these terms.

The third risk factor, “has been notified that their right to occupy their current housing or living situation will be terminated,” is clarified by adding that the notice has to be in writing and that the termination has to be within 21 days after the date of application for assistance.

The fourth risk factor, “lives in a hotel or motel,” is clarified by adding “and the cost of the hotel or motel is not paid for by federal, state, or local government programs for low-income individuals or by charitable organizations.” This change is being made to avoid overlap with the conditions under which an individual or family living in a hotel or motel qualifies as homeless under paragraph (1)(ii) of the “homeless” definition (section 103(a)(3) of the McKinney-Vento Act).

The fifth risk factor, “lives in severely overcrowded housing,” is interpreted as “lives in a single-room occupancy or efficiency apartment unit in which more than two persons, on average, reside or another type of housing in which there reside more than 1.5 persons per room, as defined by the U.S. Census Bureau.”

The sixth risk factor, “is exiting an institution,” is interpreted as “a

publicly funded institution or system of care, such as a health-care facility, mental health facility, foster care or other youth facility, or correction program or institution.” This language is derived from section 406 of the McKinney-Vento Act to include all public institutions and systems of care from which people may be discharged into homelessness.

The seventh risk factor, “otherwise lives in housing that has characteristics associated with instability and an increased risk of homelessness,” remains as is, but requires the particular housing characteristics to be identified in the recipient’s HUD-approved consolidated plan. This requirement strives to balance the need for consistent application of this risk factor with sensitivity to the differences in the conditions of each community’s housing stock.

The second and third categories under which individuals and families may qualify as “at risk of homelessness” are based on the last sentence of section 401(1) of the McKinney-Vento Act, which provides that the term “at risk of homelessness” includes all families with children and youth defined as homeless under other federal statutes. The term “families with children and youth defined as homeless under other federal statutes” is defined under section 401(7) of the McKinney-Vento Act. Section 401(7) provides that this term means “any children or youth that are defined as ‘homeless’ under any Federal statute other than this subtitle, but are not defined as homeless under section 103, and shall also include the parent, parents, or guardian of such children or youth under subtitle B of title VII this Act (42 U.S.C. 11431 *et seq.*).”

For the sake of clarity, the definition of “at risk of homelessness” this interim rule uses separate categories to describe the children and youth defined as homeless under other federal statutes and to describe the children and youth defined as homeless under subtitle B of title VII of the McKinney-Vento Act and their parent(s) or guardian(s). In light of comments received in response to the proposed rule concerning the definition of “homeless” HUD has provided specific citations to the other federal statutes that are applicable to the first of these two categories. As for the last category, the interim rule clarifies that the parent(s) or guardian(s) of the children or youth defined as homeless under subtitle B of title VII of the McKinney-Vento Act must be living with those children or youth to qualify as “at risk of homelessness” under that category.

Emergency shelter. This interim rule revises certain definitions currently found in the existing part 576 regulations. The definition of “emergency shelter” has been revised to distinguish this type of shelter from transitional housing. This distinction is necessitated by the McKinney-Vento Act’s explicit distinction between what activities can or cannot be funded under the Continuum of Care program and the Rural Housing Stability program (see section 423(a)(2) and section 491(b)(1)(E) of the McKinney-Vento Act). However, under the definition, any project that received funding in FY 2010 as an emergency shelter may continue to be funded under the ESG program, regardless of whether the project meets the revised definition.

Homeless. The interim rule includes the definition of “homeless” which is made final by the Defining Homeless rule, published elsewhere in today’s **Federal Register**. No further public comment is being solicited or taken on this definition.

Metropolitan city. This interim rule revises the definition of “metropolitan city” to clarify that the definition includes the District of Columbia, since the McKinney-Vento Act includes the District of Columbia in both its definitions of “state” and “metropolitan city”. HUD has decided to resolve this conflict in favor of treating the District of Columbia under the ESG program as a metropolitan city. This interpretation will provide the District of Columbia with the flexibility afforded to metropolitan cities and urban counties for carrying out activities directly, rather than being compelled to subgrant all ESG funds. In addition, the definition of “territory” in 24 CFR 576.3 has been updated to exclude the Trust Territory of the Pacific Islands, which is no longer a U.S. territory.

Private nonprofit organization; unit of general purpose local government. The changes to the definitions of “private nonprofit organization” and “unit of general local government” are intended to make clear that governmental organizations, such as public housing agencies or state or local housing finance agencies, are not eligible subrecipients under the ESG program. To recognize these entities under either definition would be inconsistent with section 411 of the McKinney-Vento Act, which refers specifically to “private nonprofit organizations” and “unit of general purpose local government.”

Recipient and subrecipient. In the interim rule, the terms “recipient” and “subrecipient” replace the existing terminology for entities that received grants and subgrants under the ESG

program. Under the McKinney-Vento Act, “recipient” means “any governmental or private nonprofit entity approved by the Secretary [of HUD] as to financial responsibility” (Sec. 42 U.S.C. 11371(6)). The interim rule clarifies that “recipient” means any state, territory, metropolitan city, or urban county, or in the case of reallocation, any unit of general purpose local government, approved by HUD to assume financial responsibility and which enters into a grant agreement with HUD to administer Emergency Solutions Grant (ESG). Private nonprofit organizations are excluded from the definition, because they are not direct recipients under the program. The interim rule defines “subrecipient” as any unit of general purpose local government or private nonprofit organization to which a recipient awards ESG grant funds.

Allocation of Funding (Section 576.3)

Under the interim rule, the existing set-aside of funding for the territories has been changed for the Emergency Solutions Grant program to “up to 0.2 percent, but not less than 0.1 percent” of the total fiscal year appropriation for Emergency Solutions Grant (ESG). This change provides HUD with greater administrative discretion if there are significant increases in the annual appropriations for ESG. In addition, the formula for distributing the set-aside among the territories has been modified for this program to incorporate the rate at which each territory has completed its expenditures by the previous expenditure deadline. In all other respects, the allocation of funding will remain the same as the current practice.

Eligible Activities (Subpart B)

The major changes to this subpart of part 576 include the addition of an annual funding cap on street outreach and emergency shelter activities; clarification of the eligible costs for street outreach and emergency shelter activities; the expansion of the homelessness prevention component of the program and addition of a new rapid re-housing assistance component, which both include rental assistance and housing relocation and stabilization services; expansion of the range of eligible administrative costs; and the addition of a new category of eligible activities for Homeless Management Information Systems (HMIS), to the extent that costs are necessary to meet the new HMIS participation requirement under the McKinney-Vento Act.

General Provisions. In general, the interim rule allows ESG funds to be

used for five program components (street outreach, emergency shelter, homelessness prevention, rapid re-housing assistance, and HMIS) and necessary administrative costs. However, in accordance with the McKinney-Vento Act, some restrictions apply to the amounts that can be spent on street outreach, emergency shelter, and administrative costs. Funds used for street outreach and emergency shelter activities will be limited to the greater of 60 percent of the recipient’s total fiscal year grant for ESG or the hold-harmless amount established by the section 415(b) of the McKinney-Vento Act (“the amount expended by [the recipient] for such activities during fiscal year most recently completed before effective date under section 1503 of the [HEARTH Act]”). To reasonably and practicably implement the statute’s hold-harmless language, the interim rule makes the hold-harmless amount the amount of FY 2010 grant funds committed for street outreach and emergency shelter activities in FY 2010.

In accordance with the amendments to the McKinney-Vento Act, the interim rule provides that the total funds that can be spent on administrative activities are 7.5 percent of the recipient’s ESG grant. In addition, the interim rule clarifies that, subject to the cost principles in Office of Management and Budget (OMB) Circulars A–87 (2 CFR part 225) and A–122 (2 CFR part 230),¹ employee compensation and other overhead costs directly related to carrying out street outreach, emergency shelter, homelessness prevention, rapid re-housing, and HMIS activities are eligible costs of those activities and not subject to the spending limit for administrative costs. This clarification is in response to questions and concerns raised by HPRP grantees and subgrantees and the recent U.S. Government Accountability Office (GAO) study, *Homelessness: Information on Administrative Costs for HUD’s Emergency Shelter Grants Program* (GAO–10–491).²

Street outreach and emergency shelter components. Consistent with section 415(a)(2) of the McKinney-Vento Act, the interim rule clarifies that the costs of essential services related to street outreach are eligible costs under the ESG program. The eligible costs for street outreach activities differ from the eligible costs for essential services

¹ OMB Circular A–87 and the regulations at 2 CFR part 225 pertain to “Cost Principles for State, Local, and Indian Tribal Governments.” OMB Circular A–122 and the regulations codified at 24 CFR part 230 pertain to “Cost Principles for Non-Profit Organizations.”

² See <http://www.gao.gov/new.items/d10491.pdf>.

related to emergency shelter, as they are limited to those necessary to provide emergency care on the street. To the extent possible, essential services related to emergency shelter and street outreach are the same as the eligible costs for supportive services under the Continuum of Care program. This consistency across these three sets of services is intended to improve understanding of the programs' requirements, facilitate coordination, and maximize efficiency.

The interim rule revises the eligible costs for operating emergency shelters by removing the limit on staff costs, adding the cost of supplies, and allowing the cost of a hotel or motel stay under certain conditions.

The interim rule clarifies the "maintenance of effort" requirement in two respects. First, the references to new service and quantifiable increase in services are eliminated in favor of simply prohibiting a unit of general purpose local government from using ESG funds to replace funds the local government provided for street outreach or emergency shelter services during the immediately preceding 12-month period, unless HUD determines that the unit of general purpose local government is in a severe financial deficit. Second, the interim rule specifies how this determination would be made.

Homelessness Prevention and Rapid Re-Housing Components. HUD has interpreted sections 415(a)(4) and (5) of the McKinney-Vento Act to authorize ESG funds to be used for short- and medium-term rental assistance and housing relocation and stabilization services for homelessness prevention and rapid re-housing of homeless individuals and families into permanent housing. Consistent with this interpretation and to serve HUD's programmatic goals, the interim rule categorizes the eligible activities under sections 415(a)(4) and (5) of the McKinney-Vento Act under two program components—one for homelessness prevention and one for rapid re-housing assistance. This organization is intended to be function/outcome-focused and helps emphasize the integral relationship between rental assistance and housing relocation and stabilization services in both homelessness prevention and rapid re-housing assistance. This organization also provides for differentiation between the conditions for providing homelessness prevention and the conditions for providing rapid re-housing assistance. These conditions are intended to facilitate the strategic and efficient targeting of resources.

Housing Relocation and Stabilization Services. The eligible costs and requirements for providing housing relocation and stabilization services are based on HUD's experience in developing and administering HPRP. For the purpose of determining compliance with the statutory limit on street outreach and emergency shelter activities, housing stability case management and legal services are distinguished from the case management and legal services in the essential services sections of street outreach and emergency shelter by when and for what purpose the case management and legal services are provided. Note that "housing relocation and stabilization services," the name of which comes from section 415(a)(5) of the McKinney-Vento Act, are not to be confused with the relocation assistance and payments required under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4601–4655). Costs arising under the URA are eligible for federal financial assistance in the same manner and to the same extent as other program or project costs (see 42 U.S.C. 4631(a)), and are separately listed at § 576.102 of this interim rule.

Short-term and Medium-term Rental Assistance. Consistent with HPRP, HUD has interpreted short-term rental assistance to be up to 3 months of assistance. Unlike HPRP, HUD has interpreted medium-term rental assistance to be up to 24 months. This change is intended for consistency with the period for transitional housing in the Continuum of Care (CoC) program.

The requirements for short- and medium-term rental assistance require that a program participant and a housing owner have a written lease for the provision of rental assistance. In addition, the interim rule also requires a rental assistance agreement between the recipient or subrecipient and the housing owner. Similar to HPRP, the interim rule gives Emergency Solutions Grant (ESG) recipients broad discretion in determining the type, amount, and duration of rental assistance a program participant can receive for homelessness prevention or rapid re-housing assistance. But where HPRP allows only tenant-based rental assistance, the interim rule allows rental assistance to be tenant-based or project-based, as provided under section 415(a)(4) of the McKinney-Vento Act. However, the requirements for project-based rental assistance under this interim rule have been specially designed to accommodate both the impermanent nature of the rental assistance and the program goal of helping people quickly

re-enter permanent housing and achieve long-term stability in that housing. For example, instead of requiring an individual or family to move from an assisted unit when the individual or family's assistance ends, the interim rule provides for the assistance to be suspended, terminated, or transferred to another unit.

HUD specifically requests comments on how short- to medium-term project-based rental assistance can best be fashioned to avoid forcing each program participant to move at the end of the program participant's term of assistance and to make project-based rental assistance a feasible and useful alternative to tenant-based rental assistance.

Similar to the rules of other HUD housing programs, the interim rule prohibits rental assistance from being provided for a housing unit, unless the total rent for the unit does not exceed the fair market rent established by HUD, as provided under 24 CFR 982.503, and complies with HUD's standard of rent reasonableness, as established under 24 CFR 982.507. These rent restrictions are intended to make sure that program participants can remain in their housing after their ESG assistance ends.

HMIS Component. Section 416(f) of the McKinney-Vento Act requires for the first time that projects receiving funding under Emergency Solutions Grant (ESG) program participate in an HMIS. The interim rule makes certain HMIS costs eligible to the extent necessary to enable this participation. HUD will soon be publishing a proposed rule on HMIS to establish in 24 CFR part 580, the regulations that will govern HMIS. In addition to establishing HMIS regulations in a new part 580 provisions, the HMIS rule will propose corresponding amendments to this interim rule regarding the use of Emergency Solutions Grant (ESG) funds for HMIS and the incorporation of the requirements under part 580 that will apply to ESG recipients.

Administrative Activities. Under this interim rule, the eligible costs for administrative activities have been expanded to reflect most of the eligible administrative costs under the CDBG program. The revisions to the sharing requirement also clarify that, although not required, funds for administrative costs may be shared with private nonprofit organizations, and a reasonable amount must be shared with units of general purpose local government. This clarification is made in response to grantee and subgrantee concerns and questions raised through the recent GAO report, *Homelessness: Information on Administrative Costs for*

HUD's Emergency Shelter Grants Program (GAO-10-491).

Indirect Costs. This interim rule reflects HUD's decision to adopt a consistent policy for indirect costs for the Emergency Solutions Grant (ESG), Continuum of Care and Rural Housing Stability Programs, in response to further grantee and subgrantee questions and concerns. The interim rule provides that Emergency Solutions Grant (ESG) funds may be used to pay indirect costs in accordance with OMB Circulars A-87 (2 CFR part 225) and A-122 (2 CFR part 230), as applicable. Indirect costs may be allocated to each eligible activity, so long as the allocation is consistent with an indirect cost rate proposal developed in accordance with OMB Circulars A-87 (2 CFR part 225) and A-122 (2 CFR part 230), as applicable. The indirect costs charged to an activity subject to an expenditure limit must be added to the direct costs charged for that activity when determining the total costs subject to the expenditure limit.

Award and Use of Grant Amounts (Subpart C)

The major changes to this subpart include clarification of the submission requirements for territories, elaboration of the matching requirements, clarification of the obligation requirements, and the addition of minimum requirements for making timely drawdowns and payments to subrecipients.

Submission Requirements. The application requirements generally remain the same as the current application requirements, except that territories will be required to submit a consolidated plan in accordance with the requirements that apply to local governments under HUD's Consolidated Plan regulations codified in 24 CFR part 91. The interim rule also clarifies that certain changes in the recipients' Emergency Solutions Grant (ESG) programs require an amendment to the consolidated plan in accordance with 24 CFR 91.505.

Matching Requirements. The revisions to the matching contribution requirements (and recordkeeping requirements related to the matching requirements) integrate the matching requirements in 24 CFR 85.24³ and provide further clarification on how matching contributions must be counted. The interim rule also specifies that program income is to be used as a match, rather than being treated as an

³ HUD's regulations in 24 CFR part 85 address administrative requirements for grants and cooperative agreements to state, local, and federally recognized Indian tribal governments.

addition to the (ESG) grant, because of the sizable matching requirement in Emergency Solutions Grant (ESG).

Obligation, expenditure, and payment requirements. The interim rule clarifies the obligation of funds requirements and imposes new expenditure-of-funds requirements. The interim rule requires the recipient to draw down its funds from each year's allocation not less than once during each quarter of the recipient's program year. This requirement is based on HUD's experience in administering homeless assistance grants, and is intended to ensure the timely reimbursements from HUD to recipients. In addition, the recipient (and its subrecipients that are units of general purpose local government) will be required to make timely payments to each of its subrecipients within 30 days after the date of receiving the subrecipient's complete payment request. This requirement is also based on HUD's experience in administering homeless assistance grants and is intended to ensure timely payment of private nonprofit organizations, which may not be able to cover their expenses for as long a period as state and local governments. As in the Emergency Shelter Grants program, 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.

Reallocation (Subpart D)

The interim rule makes substantial changes to the Emergency Solutions Grant (ESG) reallocation provisions in order to improve administrative efficiency. For example, if the amount of unused or returned funds is not sufficient to justify the administrative burden of reallocating those funds, whether for HUD or ESG recipients, the interim rule provides for those funds to be added to the next fiscal year allocation.

Program Requirements (Subpart E)

The major changes to this subpart include the addition of new requirements that facilitate coordination at the state and local levels as a means to prevent and reduce homelessness; elaboration on the requirements concerning the integration and use of appropriate assistance and services, termination of assistance, habitability standards, and conflicts of interest; modification of the homeless participation requirement to reasonably and practicably implement the statutory requirement; and clarification of the applicable requirements under other federal laws and regulations.

Systems coordination. Consistent with sections 402(f) and 413(b) of the McKinney-Vento Act, the interim rule contains a new requirement for Emergency Solutions Grant (ESG) recipients to consult with Continuums of Care in allocating funds for eligible activities; developing performance standards, evaluating outcomes of (ESG)-assisted projects and developing funding, policies, and procedures for the administration and operation of the HMIS. This requirement will be discussed in further detail in regard to the revisions of the consolidated planning requirements at 24 CFR part 91 (section II.B of this preamble).

The interim rule requires ESG recipients and subrecipients to coordinate and integrate, to the maximum extent practicable, ESG-funded activities with other programs targeted toward homeless people, as well as mainstream housing, health, social services, employment, education, and youth programs for which families and individuals at risk of homelessness and homeless individuals and families may be eligible. These requirements are consistent with recurring HUD appropriations language for the homeless assistance grants and with the *Federal Strategic Plan to Prevent and End Homelessness (FSP)*.⁴

Centralized or coordinated assessment. This interim rule introduces a proposed requirement for ESG recipients and subrecipients to use a centralized or coordinated system to initially assess the eligibility and needs of each individual or family who seeks homeless assistance or homelessness prevention assistance. This centralized or coordinated assessment system would be developed and implemented by the Continuum of Care in accordance with minimum requirements to be established by HUD. HUD is currently developing its minimum requirements for these systems and will present these requirements for public review and comment in the upcoming proposed rule for the Continuum of Care program. Please note that this interim rule does not require any ESG recipient or subrecipient to use a centralized or coordinated assessment system until the Continuum of Care program final rule has been published and until the Continuum of Care for the area develops and implements a system that meets the minimum requirements in that final rule.

Through the administration of the Rapid Re-Housing for Families Demonstration program and the

⁴ See http://www.usich.gov/PDF/OpeningDoors_2010_FSPPPreventEndHomeless.pdf.

Homelessness Prevention and Rapid Re-Housing Program, as well as best practices identified in communities, HUD has learned that centralized or coordinated assessment systems are important in ensuring the success of homeless assistance and homeless prevention programs in communities. In particular, such assessment systems help communities systematically assess the needs of program participants and effectively match each individual or family with the most appropriate resources available to address that individual or family's particular needs.

Therefore, HUD intends to require each Continuum of Care to develop and implement a centralized or coordinated assessment system in its geographic area. Such a system must be designed locally in response to local needs and conditions. For example, rural areas will have significantly different systems than urban ones. While the common thread between typical models is the use of a common assessment tool (such as a vulnerability index), the form, detail, and use of that tool will vary from one community to the next. Some examples of centralized or coordinated assessment systems include: A central location or locations within a geographic area where individuals and families must present for homeless services; a 211 or other hotline system that screens and directly connects callers to appropriate homeless housing/service providers in the area; a "no wrong door" approach in which a homeless family or individual can present at any homeless service provider in the geographic area but is assessed using the same tool and methodology so that referrals are consistently completed across the Continuum of Care; a specialized team of case workers that provides assessment services to providers within the Continuum of Care; or in larger geographic areas, a regional approach in which "hubs" are created within smaller geographic areas.

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

from ESG-funded victim service providers on this question. HUD also plans to require each Continuum of Care to develop a specific policy on how its particular system will address the needs of individuals and families who are fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, or stalking, but who are seeking shelter or services from non-victim service providers. These policies could include reserving private areas at an assessment location for evaluations of individuals or families who are fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, or stalking; a separate "track" within the assessment framework that is specifically designed for domestic violence victims; or the co-location of victim service providers with centralized assessment teams.

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

In addition to comments addressing the needs of victims of domestic violence, dating violence, sexual assault, and stalking, HUD invites general comments on the use of a centralized or coordinated assessment

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

Standards for administering assistance and minimum assistance requirements. As discussed later in this preamble with respect to the revisions to HUD's Consolidated Plan regulations in 24 CFR part 91, this interim rule requires a number of written standards to be established by recipients and subrecipients for administering ESG assistance, in order to balance the broad discretion given to recipients in developing street outreach, emergency shelter, rapid re-housing, and homelessness prevention programs to accommodate the unique needs, strengths, and other characteristics of their communities.

The interim rule also specifies that all program participants must be assisted as needed in obtaining services and financial assistance through other homeless and public assistance programs. Furthermore, each program participant receiving homelessness prevention or rapid re-housing assistance must be required to meet regularly with a case manager (except where prohibited by Violence Against Women Act (VAWA) and the Family Violence Prevention and Services Act (FVPSA)), and the assistance provider must develop an individualized plan to help that program participant retain permanent housing after the ESG assistance ends. These requirements are intended to help ensure that the ESG-funded emergency, short-term or medium-term assistance will be effective in helping program participants regain long-term housing stability and avoid relapses into homelessness.

Terminating Assistance. If a program participant who receives ESG assistance violates program requirements, the recipient or subrecipient may terminate the assistance in accordance with a formal process established by the recipient or subrecipient that protects the rights of the individuals affected. This applies to all forms of ESG assistance. In this interim rule, HUD enhances the minimum process

requirements for the termination of homelessness prevention or rapid rehousing assistance, in order to reflect the process set forth in the Supportive Housing Program (SHP) regulations. These enhanced process requirements are prompted by the longer duration and higher expectations involved in homelessness prevention and rapid rehousing assistance, as compared to the duration and expectations involved in street outreach or emergency shelter activities.

To terminate rental assistance or housing relocation and stabilization services to a program participant, the minimum required formal process must consist of a written notice to the program participant containing a clear statement of the reasons for termination, a review of the decision, and a prompt written notice of the final decision to the program participant. The review of the decision must give the program participant the opportunity to present written or oral objections before a person other than the person (or a subordinate of that person) who made or approved the termination decision. In addition, the interim rule provides that the recipient or subrecipient may resume assistance to a family or individual whose assistance has been terminated.

Shelter and Housing Standards. The revised habitability standards incorporate lead-based paint remediation and disclosure requirements. The revised standards for emergency shelters require all shelters to meet minimum habitability standards adopted from the SHP regulations and current Emergency Solutions Grant guidance. Shelters renovated with ESG funds are also required to meet state or local government safety and sanitation standards, as applicable, include energy-efficient appliances and materials. If ESG funds are used to help a program participant remain in or move into permanent housing, that housing must meet habitability standards.

Conflicts of Interest. This interim rule clarifies the existing personal conflicts-of-interest provision by incorporating language from the CDBG program regulation. In addition, the interim rule adds a new provision to reduce organizational conflicts of interest, based on HUD's experience in administering HPRP.

Homeless Participation. The interim rule revises the current homeless participation requirement so that if a recipient is unable to meet the participation of homeless individuals requirement in section 416(d) of the McKinney-Vento Act, the recipient need not submit and obtain HUD approval of

a formal waiver request, so long as the recipient develops a plan to consult with homeless or formerly homeless individuals in considering and making policies and decisions regarding any facilities, services, or other assistance that receive ESG funding; includes the plan in its annual action plan to be submitted under 24 CFR part 91; and obtains HUD's approval of its annual action plan. This revision is intended to reduce administrative burden to both recipients and to HUD.

Other Federal Requirements. In general, the revisions to the section on "other Federal requirements" clarify the degree to which certain requirements are applicable, remove certain requirements that are redundant or moved elsewhere in the rule for improved organizational purposes, and change certain requirements to correspond with changes in the McKinney-Vento Act or other changes made by this interim rule. Chief among these changes is the change to the environmental review requirements in accordance with the HEARTH Act's repeal of section 443 of the McKinney-Vento Act. Under this interim rule, Emergency Solutions Grant (ESG) activities would be made subject to environmental review by HUD under HUD's environmental regulations in 24 CFR part 50, and HUD's environmental regulations in 24 CFR part 58 will no longer be applicable to such activities.

The interim rule does not retain the provision in the current Emergency Shelter Grants program regulation specifying that for purposes of this program, the term "dwelling units" under 24 CFR part 8 includes "sleeping accommodations." The language is being removed because it did not provide grantees with direction on how to apply this provision. Nevertheless, Section 504 of the Rehabilitation Act of 1973 and HUD's implementing regulations at 24 CFR part 8 apply to the Emergency Solutions Grants program, including accessibility requirements under Subpart C—Program Accessibility. A recipient shall operate each existing program or activity receiving federal financial assistance so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities. Grantees are also required to provide reasonable accommodations for persons with disabilities in order to enable program participants with a disability to have an equal opportunity to participate in the program or activity.

Grantees that undertake alterations to shelters may be subject to additional accessibility requirements in accordance

with 24 CFR part 8. In certain instances, recipients undertaking alterations may be required to ensure that 5 percent of the total sleeping areas, such as 5 percent (or at least one) of the sleeping rooms where a number of sleeping rooms are provided, and 5 percent (or at least one) of the total number of sleeping areas, such as beds, where a number of beds are provided in a room, are accessible for persons with mobility impairments and that an additional 2 percent of the total individual sleeping areas are accessible for persons with visual impairments. The Americans with Disabilities Act may also apply and require a greater level of accessibility in certain shelters.

Relocation and Acquisition. The interim rule updates the relocation and acquisition requirements and makes them more consistent with the requirements in other HUD programs. Section 576.102 specifies that the cost of providing relocation assistance and payments arising out of the Uniform Act (URA) is an eligible activity, as per section 211 of the URA (42 U.S.C. 4631(a)). Temporary relocation and other alternatives to minimize displacement in other HUD programs that provide permanent housing are inapplicable due to the nature of the ESG program. Emergency shelters assisted under the ESG program provide temporary shelter for the homeless. Existing tenants would not fall within the program definition of "homeless." Section 576.408(b) provides that temporary relocation is not an available alternative to permanently displacing a tenant who moves as a direct result of acquisition, demolition, or rehabilitation for a project assisted with ESG funds. Additionally, § 576.408(b) provides that an agency cannot avoid treating such tenant as a displaced person by offering the tenant a unit in the same building/complex upon project completion. Finally, § 576.408(d) of the interim rule clearly states that the URA applies to an acquisition undertaken in connection with an ESG-assisted project irrespective of the source of funding for the acquisition.

Grant Administration (Subpart F)

The changes to this subpart substantially revise the Emergency Solutions Grant (ESG) recordkeeping and reporting requirements and the enforcement provisions. The changes to the recordkeeping requirements include the addition of specific documentation requirements to demonstrate compliance with ESG regulations, as well as new requirements regarding record retention periods, confidentiality, and rights of access to

records. The reporting requirements and the enforcement provisions are each expanded and further clarified.

Recordkeeping and reporting requirements. Grant recipients under the ESG program have always been required to show compliance with the program's regulations through appropriate records. However, the existing regulations for the Emergency Shelter Grants program are not specific about the records to be maintained. The interim rule elaborates upon the recordkeeping requirements to provide sufficient notice and clarify the documentation that HUD requires for assessing compliance with the new requirements of the program. The recordkeeping requirements for documenting homeless status were published in the proposed rule for the homeless definition.⁵ Recordkeeping requirements with similar levels of specificity will apply to documentation of "at risk of homelessness" and "annual income." Further requirements are modeled after the recordkeeping requirements for the HOME Investment Partnerships program (24 CFR 92.508) and other HUD regulations.

Included along with these changes are new or expanded requirements regarding confidentiality, rights of access to records, record retention periods, and reporting requirements. Most significantly, to protect the safety and privacy of all program participants, the interim rule broadens program's confidentiality requirements. The McKinney-Vento Act only requires procedures to ensure the confidentiality of records pertaining to any individual provided family violence prevention or treatment services under the ESG program. The interim rule requires written procedures to ensure the security and confidentiality of all records containing personally identifying information of any individual or family who applies for and/or receives Emergency Solutions Grant (ESG) assistance.

Enforcement. The interim rule revises the sanctions section under the existing regulations for the Emergency Shelter Grants program, including the heading of the section on sanctions, to strengthen the enforcement procedures and the array of remedial actions and sanctions for recipients and subrecipients of Emergency Solutions Grant (ESG) funds. These revisions draw from the requirements at 24 CFR 85.43 and other HUD program regulations.

B. Consolidated Submissions for Community Planning and Development Programs (24 CFR Part 91)

In addition to revising regulations for the Emergency Shelter Grants program at 24 CFR part 576 to establish the regulations for Emergency Solutions Grant (ESG), this interim rule revises selected sections of the consolidated planning regulations at 24 CFR part 91, in order to reflect both the HEARTH Act amendments to the McKinney-Vento Act and significant developments in HUD's homelessness policies and program administration over the last 15 years. In developing and implementing the Continuum of Care concept through the annual notices of funding availability (NOFAs) for its competitive programs, HUD sought to establish and standardize complementary planning requirements between the homeless components of the Consolidated Plan and the annual submission of the Continuum of Care Plan. The structure of the annual Continuum of Care Plan (CoC) plan and the plan's sections on community participation, needs assessment, inventory of housing and services, strategies, annual application, and performance were developed to harmonize with the Consolidated Plan's homelessness components. Many communities closely aligned the Consolidated Plan and the Continuum of Care Plan (CoC) Plan covering their jurisdiction.

The HEARTH Act amendments to the McKinney-Vento Act contain provisions requiring coordination, collaboration, and consultation between Continuums of Care and ESG state and local government recipients. The McKinney-Vento Act requires "collaborative applicants" under the Continuum of Care program to participate in the Consolidated Plan for the geographic areas they serve and analyze patterns of use and evaluate outcomes for ESG projects in those areas. ESG recipients in turn must consult with these collaborative applicants on the allocation of ESG funds and participate in HMIS, which the collaborative applicants are required to establish.

In describing these and related requirements for cross-program coordination, this interim rule uses the term "Continuum of Care" instead of "collaborative applicant." The interim rule defines "Continuum of Care" as the group composed of representatives of relevant organizations, which generally includes nonprofit homeless providers; victim service providers; faith-based organizations; governments; businesses; advocates; public housing agencies; school districts; social service providers;

mental health agencies; hospitals; universities; affordable housing developers; law enforcement; organizations that serve homeless and formerly homeless veterans, and homeless and formerly homeless persons that are organized to plan for and provide, as necessary, a system of outreach, engagement, and assessment; emergency shelter; rapid re-housing; transitional housing; permanent housing; and prevention strategies to address the various needs of homeless persons and persons at risk of homelessness for a specific geographic area.

The use of "Continuum of Care" instead of "collaborative applicant" is intended to maintain consistency with the terminology HUD has established and grantees have become familiar with in the Continuum of Care planning process for the Supportive Housing program, the Shelter Plus Care program, and the Moderate Rehabilitation/Single Room Occupancy program. The term "collaborative applicant," as used in the McKinney-Vento Act, covers two distinct entities under the existing Continuum of Care planning process: One entity whose function is planning and facilitating collaboration and another entity whose function is applying for and managing the homeless assistance grant. Because HUD has always called the planning entity the Continuum of Care, HUD is continuing that practice in this interim rule.

The interim rule strengthens and standardizes the homelessness elements affecting all jurisdictions required to submit a Consolidated Plan. The changes to the Consolidated Plan sections on homelessness have been guided by the larger purposes of the HEARTH Act and the principles and priorities put forth in the *Federal Strategic Plan to Prevent and End Homelessness (FSP)*. The changes to the Consolidated Plan will foster closer coordination between not only Emergency Solutions Grant (ESG) and Continuum of Care (CoC) programs, but other mainstream housing and services programs that can provide greater resources to homeless persons and people at imminent risk of homelessness.

Definitions. The Consolidated Plan regulations are modified to add and revise this section to conform to definitions used in this interim rule for 24 CFR part 576 and the proposed rule that will soon be published for the Continuum of Care program. A definition of rapid re-housing assistance is added to bring coverage of general homeless assistance models in 24 CFR part 91 up-to-date. Other definitions are

⁵ See the April 20, 2010, edition of the *Federal Register* at 75 FR 20544.

eliminated because they will no longer be used in part 91 after the changes in the regulations to the McKinney-Vento Act programs.

HUD specifically invites comments regarding the definition of chronically homeless. The McKinney-Vento Act defines "chronically homeless" as an individual or family who: (i) Is homeless and lives or resides in a place not meant for human habitation, a safe haven, or in an emergency shelter; (ii) has been homeless and living or residing in a place not meant for human habitation, a safe haven, or in an emergency shelter continuously for at least 1 year or on at least 4 separate occasions in the last 3 years; and (iii) has an adult head of household (or a minor head of household if no adult is present in the household) with a diagnosable substance use disorder, serious mental illness, developmental disability (as defined in section 102 of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15002)), post traumatic stress disorder, cognitive impairments resulting from a brain injury, or chronic physical illness or disability, including the co-occurrence of 2 or more of those conditions. Additionally, the statutory definition includes as chronically homeless a person who currently lives or resides in an institutional care facility, including a jail, substance abuse or mental health treatment facility, hospital or other similar facility, and has resided there for fewer than 90 days if such person met the other criteria for homeless prior to entering that facility. (See 42 U.S.C. 11360(2))

The regulatory definition of "chronically homeless" does not elaborate significantly on the statutory definition. However, HUD has determined that when an individual or family has not been continuously homeless for at least one year but has been homeless on at least four separate occasions in the last 3 years, each separate occasion must be at least 15 days in duration to ensure consistency for counting and eligibility purposes. HUD has determined that the 15-day minimum is an appropriate measure to distinguish the chronically homeless from the homeless population in general, so as to recognize chronically homeless people who have spent a significant amount of time as homeless.

The regulatory definition also clarifies that a family will qualify as chronically homeless if the head of household has met all of the requirements in paragraphs (i) through (iii) of the statutory definition, given that a family's composition may fluctuate

during the course of the head of household's homeless experience.

Consultation: Local Governments/States. The interim rule revises the consultation requirements in 24 CFR part 91 to implement the McKinney-Vento Act's new requirement that ESG recipients consult with Continuums of Care when allocating their ESG funds to carry out eligible activities. In response to the concerns of prospective grantees under the Continuum of Care program, the interim rule includes several requirements to make it easier for Continuums of Care to meet their requirements under the McKinney-Vento Act, including participating in the Consolidated Plan for their jurisdiction and designing a collaborative process for evaluating the outcomes of ESG projects. Similar changes to facilitate the participation of Continuums of Care (CoCs) in the Consolidated Planning process are also made to the sections on citizen participation at 24 CFR 91.105 and 91.115.

The consultation sections were also revised to conform to the FSP's emphasis not only on chronically homeless people, but on families with children, veterans and their families, and unaccompanied youth, and the FSP's emphasis on strengthening collaboration with programs and entities beyond the programs targeted to homeless people. The consultation sections refer specifically to "publicly funded institutions and systems of care that may discharge people into homelessness (such as health-care facilities, mental health facilities, foster care and other youth facilities, and corrections programs and institutions)." This is done to be consistent with the emphasis on discharge planning in section 406 of the McKinney-Vento Act. For this same reason, HUD also refers to these publicly funded institutions and systems of care in each section of the interim rule that specifically addresses the prevention of homelessness.

Housing Needs Assessment; Local Governments/States. The interim rule adds a new category of persons for whom states and local jurisdictions are required to assess housing assistance needs: Formerly homeless families and individuals who are receiving rapid re-housing assistance and are nearing the termination of that assistance. The addition of this category is intended to help focus communities on helping these families stay housed after their rapid re-housing assistance ends.

Homeless Needs Assessment; Local Government/States. The changes under the interim rule increase HUD's flexibility in establishing and modifying

standards for collecting data on homeless populations and subpopulations and performance measures. The changes also provide additional definition to the description of the characteristics and needs of persons who are currently housed but threatened with homelessness. These changes permit HUD to more closely harmonize data included in each jurisdiction's Consolidated Plan with data that the Continuum(s) of Care for that jurisdiction will be required to collect and submit under the Continuum of Care program. The collection of consistent homeless needs data in these two planning processes will permit local and national assessment of progress in meeting the goals set forth in the FSP.

Housing Market Analysis; Facilities, Housing, and Services for Homeless Persons; Local Governments/States. The interim rule allows HUD to establish and modify descriptions of the facilities, housing, and services for homeless persons to increase consistency between the Consolidated Plan and the Continuum of Care Plan. The interim rule adds mainstream services to the inventory of services meeting the needs of homeless persons, consistent with the overall emphasis on using and collaborating with mainstream assistance programs to prevent and end homelessness. Similar to changes made to other sections, the special focus accorded to chronically homeless people is broadened to include families with children, veterans and their families, and unaccompanied youth, in order to reflect the priorities in the FSP.

Strategic Plan; Homelessness Strategies; Local Government/States. The interim rule refocuses the general homelessness-related strategies on the ultimate goals of reducing and ending homelessness and aligns them with Continuum of Care planning strategies and performance measures, such as shortening the period of time that persons experience homelessness and helping persons who were recently homeless avoid becoming homeless again. The changes under the interim rule also emphasize the priorities of the FSP. The strategic framework set out in this section is carried through in conforming changes to the Action Plan and performance reporting sections of the Consolidated Plan.

Action Plan; Local Government/States. The changes to the Action Plan sections for local governments and States require the ESG recipient to consult with applicable Continuums of Care when allocating funds in the area(s) served by the Continuum(s) of Care and the ESG recipient and when

developing the performance standards for the assisted activities. These changes reflect the McKinney-Vento Act requirements that ESG recipients consult with Continuums of Care on their allocation of ESG funds and that Continuums of Care in turn analyze patterns of use of ESG funds and help evaluate outcomes for ESG-funded projects. These changes are also consistent with the statutory scheme of the HEARTH Act, which generally requires increased collaboration between Continuums of Care and ESG recipients.

The changes under the interim rule for the ESG portion of the action plan require each local government seeking an ESG grant to specify the standards under which homelessness prevention and rapid re-housing assistance will be administered and describe the centralized or coordinated assessments system(s) that will be used. By helping to ensure that the program is administered fairly and methodically, these requirements provide balance to the broad discretion that ESG recipients are given in the design of their ESG programs. Including these standards in the action plan allows the program design to be strengthened as the plan is developed and refined through the consultation and citizen participation stages in the planning process. The requirements for states differ slightly from those that apply to local governments, in order to accommodate for the restrictions on states' use of ESG funds and the variety of areas and Continuums of Care their programs encompass. Under the state programs, the written standards for providing ESG assistance may vary by subrecipient, Continuum of Care, or the geographic area over which services are coordinated.

Certifications. The changes to the ESG certifications clarify the certifications and bring them into closer conformance with the corresponding requirements under part 576 and the McKinney-Vento Act.

III. Justification for Interim Rulemaking

In accordance with its regulations on rulemaking at 24 CFR part 10, HUD generally publishes its rules for advance public comment. Notice and public procedures may be omitted, however, if HUD determines that, in a particular case or class of cases, notice and public procedure are "impracticable, unnecessary, or contrary to the public interest." (See 24 CFR 10.1.)

In this case, HUD has determined that it would be contrary to the public interest to delay promulgation of the

regulations for the Emergency Solutions Grants program because Congress has provided funding for this new program in the Department of Defense and Full-Year Continuing Appropriations Act, 2011 (Pub. L. 112-10, approved April 15, 2011) (FY 2011 Appropriations Act). The FY 2011 Appropriations Act appropriates, in section 2241 of the statute, \$1,905,000,000 for homeless assistance grants, of which at least \$225,000,000 shall be for the Emergency Solutions Grant program. While many federal programs, including HUD programs, received a reduction in funding in the FY 2011 Appropriations Act, Congress increased funding for HUD's homeless assistance grants, and for the first time, authorized funding for a program, (the Emergency Solutions Grants program). HUD interprets this increase in funding as recognition by Congress of the significant needs that remain to help America's homeless population and the expectation of Congress that HUD will move expeditiously to expend this funding to assist and serve the homeless through its programs. HUD interprets the substantial funding, a minimum of \$225,000,000, for the Emergency Solutions Grant program, as recognition by Congress that this program, which is an expansion of the predecessor Emergency Shelter Grants program, and includes features that were part of the Recovery Act's HPRP, is one that can have an immediate impact in helping the homeless.

Given what HUD sees as a congressional charge to move expeditiously, HUD is issuing this rule providing for regulations for the Emergency Solutions Grants program as an interim rule. Interim regulations in place will allow HUD to move forward in making FY 2011 funds available to grantees. As has been discussed in this preamble, the foundation for the regulations for the Emergency Solutions Grants program are those of its predecessor program, the Emergency Shelters Grant program, regulations with which HUD grantees are well familiar. HUD grantees are also familiar with the requirements of the HPRP and, as the preamble has highlighted, this interim rule adopts many of the features and requirements of HPRP.

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

IV. Findings and Certifications

Regulatory Planning and Review

OMB reviewed this rule under Executive Order 12866, *Regulatory Planning and Review*. This rule was determined to be a "significant regulatory action," as defined in section 3(f) of the order (although not an economically significant regulatory action under the order). As discussed earlier in this preamble, this interim rule establishes the regulations for the Emergency Solutions Grants program, which is the successor program to the Emergency Shelter Grants program. In establishing the regulations for the Emergency Solutions Grants program, the interim rule uses as its base the regulations for the Emergency Shelter Grants program and makes such changes as necessary to reflect the changes and focus of the Emergency Solutions Grants program. While emergency shelter remains an important component of the Emergency Solutions Grants program, the new Emergency Solutions Grants program places a greater focus on homelessness prevention for persons at risk of homelessness and rapid re-housing assistance for homeless persons. Accordingly, the rule does not alter the fundamental goal of the program, which is to assist those who are homeless and in danger of becoming homeless. Therefore, the administrative changes made by this rule do not result in an economic effect equal to \$100 million, which would be approximately half of the program's funding (\$225 million). HUD believes that the administrative changes made by the interim rule would also have no discernible impact upon the economy.

The slight shift in emphasis from emergency shelter in the Emergency Shelter Grants program to homelessness prevention and rapid rehousing assistance in the Emergency Solutions Grants program does not represent a significant regulatory change. Rapid rehousing is already familiar to HUD's homeless grantee providers from funding received under the HPRP, a temporary program funded through the American Recovery and Reinvestment Act of 2009, and their experience with this program which continues to today. Because HPRP activities will continue through September 30, 2012, the interim rule is directed to ensuring continuity between HPRP and Emergency Solutions Grant (ESG) program.

The docket file is available for public inspection in the Regulations Division, Office of the General Counsel, 451 7th Street SW., Room 10276, Washington, DC 20410-0500. Due to security measures at the HUD Headquarters

building, please schedule an appointment to review the docket file by calling the Regulations Division at (202) 708-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at (800) 877-8339.

Environmental Impact

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

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and on the private

sector. This interim rule does not impose a federal mandate on any state, local, or tribal government, or on the private sector, within the meaning of UMRA.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule solely addresses the allocation and use of grant funds under the new McKinney-Vento Act homeless assistance programs as consolidated and amended by the HEARTH Act. As discussed in the preamble, the majority of the regulatory provisions in this rule track the regulatory provisions of the existing Emergency Shelter Grants program, with which prospective recipients of Emergency Solutions Grant (ESG) are familiar. Accordingly, the transition from the Emergency Shelter Grants program to the Emergency Solutions Grant program, in regard to funding and program requirements, should raise minimal issues because applicants and grantees are well-familiar with these requirements and, through the years, in soliciting information on the burden of the Emergency Solutions Grant requirements, grantees have not advised that such requirements are burdensome. Therefore, HUD has determined that this rule would not have a significant

economic impact on a substantial number of small entities.

Notwithstanding that determination, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either: (1) Imposes substantial direct compliance costs on state and local governments and is not required by statute, or (2) preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This final rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments nor preempt state law within the meaning of the executive order.

Paperwork Reduction Act

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

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

REPORTING AND RECORDKEEPING BURDEN

Information collection	Number of respondents	Response frequency (average)	Total annual responses	Burden hours per response	Total annual hours
576.400(a) Consultation With Continuums of Care	360	1	360	6.00	2,160
576.400(b) Coordination With Other Targeted Homeless Services	2,360	1	2,360	8.00	18,880
576.400(c) System and Program Coordination With Mainstream Resources	2,360	1	2,360	16.00	37,760
576.400(d) Centralized or Coordinated Assessment	2,000	1	2,000	3.00	6,000
576.400(e) Written Standards for Determining the Amount of Assistance	808	1	808	5.00	4,040
576.400(f) Participation in HMIS	78,000	1	78,000	0.50	39,000
576.401(a) Initial Evaluation	50,000	1	30,000	1.00	30,000
576.401(b) Recertification	20,000	2	40,000	0.50	20,000
576.401(d) Connection to Mainstream Resources	78,000	3	234,000	0.25	58,500
576.401(e) Housing Retention Plan	50,000	1	50,000	0.75	37,500
576.402 Terminating Assistance	808	1	808	4.00	3,232
576.403 Habitability Review	52,000	1	52,000	0.6	31,200
576.405 Homeless Participation	2,360	12	28,320	1.00	28,320
576.500 Recordkeeping Requirements	2,360	1	2,360	12.75	30,009
576.501(b) Remedial Actions	20	1	20	8.00	160
576.501(c) Recipient Sanctions	360	1	360	12.00	4,320
576.501(c) Subrecipient Response	2,000	1	2,000	8.00	16,000

REPORTING AND RECORDKEEPING BURDEN—Continued

Information collection	Number of respondents	Response frequency (average)	Total annual responses	Burden hours per response	Total annual hours
Total	367,081

Total estimated burden hours:
367,081.

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

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

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

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

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

Interested persons are invited to submit comments regarding the information collection requirements in this rule. Comments must refer to the proposal by name and docket number (FR-5474-I-01) and be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Fax: (202) 395-6947, and Reports Liaison Officer, Office of the Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development, Room 7233, 451 Seventh Street SW., Washington, DC 20410-7000.

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

instructions provided on that site to submit comments electronically.

List of Subjects

24 CFR Part 91

Aged, Grant programs—housing and community development, Homeless, Individuals with disabilities, Low- and moderate-income housing, Reporting and recordkeeping requirements.

24 CFR Part 576

Community facilities, Emergency solutions grants, Grant programs—housing and community development, Grant program—social programs, Homeless, Reporting and recordkeeping requirements.

Accordingly, for the reasons described in the preamble, parts 91 and 576 of title 24 of the Code of Federal Regulations are amended as follows:

PART 91—CONSOLIDATED SUBMISSIONS FOR COMMUNITY PLANNING AND DEVELOPMENT PROGRAMS

■ 1. The authority citation for 24 CFR part 91 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 3601–3619, 5301–5315, 11331–11388, 12701–12711, 12741–12756, and 12901–12912.

■ 2. In § 91.2, paragraph (a)(2) is revised to read as follows:

§ 91.2 Applicability.

(a) * * *

(2) The Emergency Solutions Grants (ESG) program (see 24 CFR part 576);

■ 3. In § 91.5, the definitions of “Chronically homeless person,” “Disabling condition,” “Homeless family with children,” and “Homeless subpopulations” are removed; the definition of “Emergency shelter” is revised; and the definitions of “At risk of homelessness,” “Chronically homeless,” “Continuum of Care,” “Homeless Management Information System (HMIS),” “Rapid re-housing assistance,” and “Victim service provider” are added to read as follows:

§ 91.5 Definitions.

* * * * *

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

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

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

(iii) Meets one of the following conditions:

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

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

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

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

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

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

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

(2) A child or youth who does not qualify as “homeless” under this section, but qualifies as “homeless” under section 387(3) of the Runaway and Homeless Youth Act (42 U.S.C. 5732a(3)), section 637(11) of the Head Start Act (42 U.S.C. 9832(11)), section 41403(6) of the Violence Against Women Act of 1994 (42 U.S.C. 14043e-2(6)), section 330(h)(5)(A) of the Public Health Service Act (42 U.S.C.

254b(h)(5)(A)), section 3(m) of the Food and Nutrition Act of 2008 (7 U.S.C. 2012(m)), or section 17(b)(15) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)(15)); or

(3) A child or youth who does not qualify as "homeless" under this section, but qualifies as "homeless" under section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), and the parent(s) or guardian(s) of that child or youth if living with her or him.

* * * * *

Chronically homeless. (1) An individual who:

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

(ii) Has been homeless and living or residing in a place not meant for human habitation, a safe haven, or in an emergency shelter continuously for at least one year or on at least four separate occasions in the last 3 years, where each homeless occasion was at least 15 days; and

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

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

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

* * * * *

Continuum of Care. The group composed of representatives of relevant organizations, which generally includes nonprofit homeless providers, victim service providers, faith-based organizations, governments, businesses, advocates, public housing agencies, school districts, social service providers, mental health agencies, hospitals, universities, affordable housing developers, law enforcement, organizations that serve homeless and

formerly homeless veterans, and homeless and formerly homeless persons that are organized to plan for and provide, as necessary, a system of outreach, engagement, and assessment; emergency shelter; rapid re-housing; transitional housing; permanent housing; and prevention strategies to address the various needs of homeless persons and persons at risk of homelessness for a specific geographic area.

Emergency shelter. Any facility, the primary purpose of which is to provide a temporary shelter for the homeless in general or for specific populations of the homeless, and which does not require occupants to sign leases or occupancy agreements.

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Homeless Management Information System (HMIS). The information system designated by the Continuum of Care to comply with 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.

* * * * *

Rapid re-housing assistance. The provision of housing relocation and stabilization services and short- and/or medium-term rental assistance as necessary to help a homeless individual or family move as quickly as possible into permanent housing and achieve stability in that housing.

* * * * *

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

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■ 4. In § 91.100, paragraph (a)(2) is revised and a new paragraph (d) is added to read as follows:

§91.100 Consultation; local governments.

(a) * * *

(2) When preparing the portions of the consolidated plan describing the jurisdiction's homeless strategy and the resources available to address the needs of homeless persons (particularly chronically homeless individuals and families, families with children, veterans and their families, and unaccompanied youth) and persons at risk of homelessness, the jurisdiction must consult with:

(i) The Continuum(s) of Care that serve(s) the jurisdiction's geographic area;

(ii) Public and private agencies that address housing, health, social service, victim services, employment, or education needs of low-income individuals and families; homeless individuals and families, including homeless veterans; youth; and/or other persons with special needs;

(iii) Publicly funded institutions and systems of care that may discharge persons into homelessness (such as health-care facilities, mental health facilities, foster care and other youth facilities, and corrections programs and institutions); and

(iv) Business and civic leaders.

* * * * *

(d) Emergency Solutions Grants (ESG). A jurisdiction that receives an ESG grant must consult with the Continuum of Care in determining how to allocate its ESG grant for eligible activities; in developing the performance standards for, and evaluating the outcomes of, projects and activities assisted by ESG funds; and in developing funding, policies, and procedures for the operation and administration of the HMIS.

* * * * *

■ 5. In § 91.105, paragraph (a)(2) is revised to read as follows:

§ 91.105 Citizen participation plan; local governments.

(a) * * *

(2) *Encouragement of citizen participation.* (i) The citizen participation plan must provide for and encourage citizens to participate in the development of any consolidated plan, any substantial amendment to the consolidated plan, and the performance report. These requirements are designed especially to encourage participation by low- and moderate-income persons, particularly those living in slum and blighted areas and in areas where CDBG funds are proposed to be used, and by residents of predominantly low- and moderate-income neighborhoods, as defined by the jurisdiction. A jurisdiction is also expected to take whatever actions are appropriate to encourage the participation of all its citizens, including minorities and non-English speaking persons, as well as persons with disabilities.

(ii) The jurisdiction shall encourage the participation of local and regional institutions, the Continuum of Care and other organizations (including businesses, developers, nonprofit organizations, philanthropic organizations, and community-based

and faith-based organizations) in the process of developing and implementing the consolidated plan.

(iii) The jurisdiction shall encourage, in conjunction with consultation with public housing agencies, the participation of residents of public and assisted housing developments, in the process of developing and implementing the consolidated plan, along with other low-income residents of targeted revitalization areas in which the developments are located. The jurisdictions shall make an effort to provide information to the public housing agency (PHA) about consolidated plan activities related to its developments and surrounding communities so that the PHA can make this information available at the annual public hearing required for the PHA Plan.

(iv) The jurisdiction should explore alternative public involvement techniques and quantitative ways to measure efforts that encourage citizen participation in a shared vision for change in communities and neighborhoods, and the review of program performance; *e.g.*, use of focus groups and the Internet.

* * * * *

■ 6. Section 91.110 is revised to read as follows:

§ 91.110 Consultation; States.

(a) When preparing the consolidated plan, the State shall consult with other public and private agencies that provide assisted housing (including any state housing agency administering public housing), health services, and social and fair housing services (including those focusing on services to children, elderly persons, persons with disabilities, persons with HIV/AIDS and their families, and homeless persons) during preparation of the consolidated plan.

(b) When preparing the portions of the consolidated plan describing the State's homeless strategy and the resources available to address the needs of homeless persons (particularly chronically homeless individuals and families, families with children, veterans and their families, and unaccompanied youth) and persons at risk of homelessness, the State must consult with:

- (1) Each Continuum of Care within the state;
- (2) Public and private agencies that address housing, health, social services, victim services, employment, or education needs of low-income individuals and families; of homeless individuals and families, including homeless veterans; youth; and/or of other persons with special needs;

(3) Publicly funded institutions and systems of care that may discharge persons into homelessness (such as health-care facilities, mental health facilities, foster care and other youth facilities, and corrections programs and institutions); and

(4) Business and civic leaders.

(c) When preparing the portion of its consolidated plan concerning lead-based paint hazards, the State shall consult with state or local health and child welfare agencies and examine existing data related to lead-based paint hazards and poisonings, including health department data on the addresses of housing units in which children have been identified as lead-poisoned.

(d) When preparing its method of distribution of assistance under the CDBG program, a State must consult with local governments in nonentitlement areas of the state.

(e) The State must also consult with each Continuum of Care within the state in determining how to allocate its ESG grant for eligible activities; developing the performance standards for, and evaluating the outcomes of, projects and activities assisted by ESG funds; and developing funding, policies, and procedures for the operation and administration of the HMIS.

■ 7. In § 91.115, paragraph (a)(2) is revised to read as follows:

§ 91.115 Citizen participation plan; States.

(a) * * *

(2) *Encouragement of citizen participation.* (i) The citizen participation plan must provide for and encourage citizens to participate in the development of the consolidated plan, any substantial amendments to the consolidated plan, and the performance report. These requirements are designed especially to encourage participation by low- and moderate-income persons, particularly those living in slum and blighted areas and in areas where CDBG funds are proposed to be used, and by residents of predominantly low- and moderate-income neighborhoods. A State is also expected to take whatever actions are appropriate to encourage the participation of all its citizens, including minorities and non-English speaking persons, as well as persons with disabilities.

(ii) The State shall encourage the participation of local, regional, and statewide institutions, Continuums of Care, and other organizations (including businesses, developers, nonprofit organizations, philanthropic organizations, and community-based and faith-based organizations) that are involved with or affected by the programs or activities covered by the

consolidated plan in the process of developing and implementing the consolidated plan.

(iii) The state should explore alternative public involvement techniques that encourage a shared vision of change for the community and the review of program performance; *e.g.*, the use of focus groups and the Internet.

* * * * *

■ 8. In § 91.200, paragraph (b) is revised to read as follows:

§ 91.200 General.

* * * * *

(b) The jurisdiction shall describe:

(1) The lead agency or entity responsible for overseeing the development of the plan and the significant aspects of the process by which the consolidated plan was developed;

(2) The identity of the agencies, groups, organizations, and others who participated in the process; and

(3) A jurisdiction's consultations with:

(i) The Continuum of Care that serves the jurisdiction's geographic area;

(ii) Public and private agencies that address housing, health, social services, employment, or education needs of low-income individuals and families, of homeless individuals and families, of youth, and/or of other persons with special needs;

(iii) Publicly funded institutions and systems of care that may discharge persons into homelessness (such as health-care facilities, mental health facilities, foster care and other youth facilities, and corrections programs and institutions);

(iv) Other entities.

* * * * *

■ 9. In § 91.205, paragraph (b)(1) and paragraph (c) are revised to read as follows:

§ 91.205 Housing and homeless needs assessment.

* * * * *

(b)(1)(i) The plan shall estimate the number and type of families in need of housing assistance for:

(A) Extremely low-income, low-income, moderate-income, and middle-income families;

(B) Renters and owners;

(C) Elderly persons;

(D) Single persons;

(E) Large families;

(F) Public housing residents;

(G) Families on the public housing and Section 8 tenant-based waiting list;

(H) Persons with HIV/AIDS and their families;

(I) Victims of domestic violence, dating violence, sexual assault, and stalking;

(J) Persons with disabilities; and
(K) Formerly homeless families and individuals who are receiving rapid re-housing assistance and are nearing the termination of that assistance.

(ii) The description of housing needs shall include a concise summary of the cost burden and severe cost burden, overcrowding (especially for large families), and substandard housing conditions being experienced by extremely low-income, low-income, moderate-income, and middle-income renters and owners compared to the jurisdiction as a whole. (The jurisdiction must define in its consolidated plan the terms "standard condition" and "substandard condition but suitable for rehabilitation.")

(c) *Persons who are homeless or at risk of homelessness.* (1) The plan must describe, in a form prescribed by HUD, the nature and extent of unsheltered and sheltered homelessness, including rural homelessness, within the jurisdiction. At a minimum, the recipient must use data from the Homeless Management Information System (HMIS) and data from the Point-In-Time (PIT) count conducted in accordance with HUD standards.

(i) The description must include, for each category of homeless persons specified by HUD (including chronically homeless individuals and families, families with children, veterans and their families, and unaccompanied youth), the number of persons experiencing homelessness on a given night, the number of persons who experience homelessness each year, the number of persons who lose their housing and become homeless each year, the number of persons who exit homelessness each year, the number of days that persons experience homelessness, and other measures specified by HUD.

(ii) The plan also must contain a brief narrative description of the nature and extent of homelessness by racial and ethnic group, to the extent information is available.

(2) The plan must include a narrative description of the characteristics and needs of low-income individuals and families with children (especially extremely low-income) who are currently housed but threatened with homelessness. This information may be evidenced by the characteristics and needs of individuals and families with children who are currently entering the homeless assistance system or appearing for the first time on the streets. The description must also specify particular housing characteristics that have been

linked with instability and an increased risk of homelessness.

* * * * *
10. In § 91.210, paragraph (c) is revised to read as follows:

§ 91.210 Housing market analysis.

(c) *Facilities, housing, and services for homeless persons.* The plan must include a brief inventory of facilities, housing, and services that meet the needs of homeless persons within the jurisdiction, particularly chronically homeless individuals and families, families with children, veterans and their families, and unaccompanied youth.

(1) The inventory of facilities and housing (e.g., emergency shelter, transitional housing, and permanent supportive housing) must be presented in a form specified by HUD.

(2) The inventory of services must include both services targeted to homeless persons and mainstream services, such as health, mental health, and employment services to the extent those services are used to complement services targeted to homeless persons.

* * * * *
■ 11. In § 91.215, paragraphs (b), (d), (k), and (l) are revised to read as follows:

§ 91.215 Strategic plan.

(b) *Affordable housing.* With respect to affordable housing, the consolidated plan must include the priority housing needs table prescribed by HUD and must do the following:

(1) The affordable housing section shall describe how the characteristics of the housing market and the severity of housing problems and needs of extremely low-income, low-income, and moderate-income renters and owners, persons at risk of homelessness, and homeless persons identified in accordance with § 91.205 provided the rationale for establishing allocation priorities and use of funds made available for rental assistance, production of new units, rehabilitation of existing units, or acquisition of existing units (including preserving affordable housing units that may be lost from the assisted housing inventory for any reason). Household and income types may be grouped together for discussion where the analysis would apply to more than one of them. If the jurisdiction intends to use HOME funds for tenant-based assistance, the jurisdiction must specify local market conditions that led to the choice of that option.

(2) The affordable housing section shall include specific objectives that

describe proposed accomplishments, that the jurisdiction hopes to achieve and must specify the number of extremely low-income, low-income, and moderate-income families, and homeless persons to whom the jurisdiction will provide affordable housing as defined in 24 CFR 92.252 for rental housing and 24 CFR 92.254 for homeownership over a specific time period.

* * * * *
(d) *Homelessness.* The consolidated plan must include the priority homeless needs table prescribed by HUD and must describe the jurisdiction's strategy for reducing and ending homelessness through:

(1) Reaching out to homeless persons (especially unsheltered persons) and assessing their individual needs;

(2) Addressing the emergency shelter and transitional housing needs of homeless persons;

(3) Helping homeless persons (especially chronically homeless individuals and families, families with children, veterans and their families, and unaccompanied youth) make the transition to permanent housing and independent living, including shortening the period of time individuals and families experience homelessness, facilitating access for homeless individuals and families to affordable housing units, and preventing individuals and families who were recently homeless from becoming homeless again; and

(4) Helping low-income individuals and families avoid becoming homeless, especially extremely low-income individuals and families who are:

(i) Likely to become homeless after being discharged from publicly funded institutions and systems of care into homelessness (such as health-care facilities, mental health facilities, foster care and other youth facilities, and corrections programs and institutions) or

(ii) Receiving assistance from public and private agencies that address housing, health, social services, employment, education, or youth needs.

* * * * *
(k) *Institutional structure.* The consolidated plan must provide a concise summary of the institutional structure, including private industry; nonprofit organizations; community and faith-based organizations; philanthropic organizations; the Continuum of Care; and public institutions, departments and agencies through which the jurisdiction will carry out its housing, homeless, and community development plan; a brief assessment of the strengths

and gaps in that delivery system; and a concise summary of what the jurisdiction will do to overcome gaps in the institutional structure for carrying out its strategy for addressing its priority needs.

(l) *Coordination.* The consolidated plan must provide a concise summary of the jurisdiction's activities to enhance coordination among the Continuum of Care, public and assisted housing providers, and private and governmental health, mental health, and service agencies. The summary must address the jurisdiction's efforts to coordinate housing assistance and services for homeless persons (especially chronically homeless individuals and families, families with children, veterans and their families, and unaccompanied youth) and persons who were recently homeless but now live in permanent housing. With respect to the public entities involved, the plan must describe the means of cooperation and coordination among the State and any units of general local government in the metropolitan area in the implementation of its consolidated plan. With respect to economic development, the jurisdiction should describe efforts to enhance coordination with private industry, businesses, developers, and social service agencies.

■ 12. In § 91.220, paragraph (i) is revised and a new paragraph (l)(4) is added to read as follows:

§ 91.220 Action plan.

* * * * *

(i) *Homeless and other special needs activities.* (1) The jurisdiction must describe its one-year goals and specific actions steps for reducing and ending homelessness through:

(i) Reaching out to homeless persons (especially unsheltered persons) and assessing their individual needs;

(ii) Addressing the emergency shelter and transitional housing needs of homeless persons; and

(iii) Helping homeless persons (especially chronically homeless individuals and families, families with children, veterans and their families, and unaccompanied youth) make the transition to permanent housing and independent living, including shortening the period of time that individuals and families experience homelessness, facilitating access for homeless individuals and families to affordable housing units, and preventing individuals and families who were recently homeless from becoming homeless again; and

(iv) Helping low-income individuals and families avoid becoming homeless,

especially extremely low-income individuals and families who are:

(A) Being discharged from publicly funded institutions and systems of care, such as health-care facilities, mental health facilities, foster care and other youth facilities, and corrections programs and institutions; or

(B) Receiving assistance from public and private agencies that address housing, health, social services, employment, education, or youth needs.

(2) The jurisdiction must specify the activities that it plans to undertake during the next year to address the housing and supportive service needs identified in accordance with § 91.215(e) with respect to persons who are not homeless but have other special needs.

* * * * *

(l) * * *

(4) *ESG.* (i) The jurisdiction must include its written standards for providing ESG assistance. The minimum requirements regarding these standards are set forth in 24 CFR 576.400(e)(1) and (e)(3).

(ii) If the Continuum of Care for the jurisdiction's area has established a centralized or coordinated assessment system that meets HUD requirements, the jurisdiction must describe that centralized or coordinated assessment system. The requirements for using a centralized or coordinated assessment system, including the exception for victim service providers, are set forth under 24 CFR 576.400(d).

(iii) The jurisdiction must identify its process for making subawards and a description of how the jurisdiction intends to make its allocation available to private nonprofit organizations (including community and faith-based organizations), and in the case of urban counties, funding to participating units of local government.

(iv) If the jurisdiction is unable to meet the homeless participation requirement in 24 CFR 576.405(a), the jurisdiction must specify its plan for reaching out to and consulting with homeless or formerly homeless individuals in considering and making policies and decisions regarding any facilities or services that receive funding under ESG.

(v) The jurisdiction must describe the performance standards for evaluating ESG activities.

(vi) The jurisdiction must describe its consultation with each Continuum of Care that serves the jurisdiction in determining how to allocate ESG funds each program year; developing the performance standards for, and evaluating the outcomes of, projects and

activities assisted by ESG funds; and developing funding, policies, and procedures for the administration and operation of the HMIS.

■ 13. In § 91.225, paragraph (c) is revised to read as follows:

§ 91.225 Certifications.

* * * * *

(c) *ESG.* For jurisdictions that seek ESG funding under 24 CFR part 576, the following certifications are required:

(1) If an emergency shelter's rehabilitation costs exceed 75 percent of the value of the building before rehabilitation, the jurisdiction will maintain the building as a shelter for homeless individuals and families for a minimum of 10 years after the date the building is first occupied by a homeless individual or family after the completed rehabilitation;

(2) If the cost to convert a building into an emergency shelter exceeds 75 percent of the value of the building after conversion, the jurisdiction will maintain the building as a shelter for homeless individuals and families for a minimum of 10 years after the date the building is first occupied by a homeless individual or family after the completed conversion;

(3) In all other cases where ESG funds are used for renovation, the jurisdiction will maintain the building as a shelter for homeless individuals and families for a minimum of 3 years after the date the building is first occupied by a homeless individual or family after the completed renovation;

(4) In the case of assistance involving shelter operations or essential services related to street outreach or emergency shelter, the jurisdiction will provide services or shelter to homeless individuals and families for the period during which the ESG assistance is provided, without regard to a particular site or structure, so long as the jurisdiction serves the same type of persons (e.g., families with children, unaccompanied youth, disabled individuals, or victims of domestic violence) or persons in the same geographic area;

(5) Any renovation carried out with ESG assistance shall be sufficient to ensure that the building involved is safe and sanitary;

(6) The jurisdiction will assist homeless individuals in obtaining permanent housing, appropriate supportive services (including medical and mental health treatment, victim services, counseling, supervision, and other services essential for achieving independent living), and other Federal, State, local, and private assistance available for these individuals;

(7) The jurisdiction will obtain matching amounts required under 24 CFR 576.201;

(8) The jurisdiction has established and is implementing procedures to ensure the confidentiality of records pertaining to any individual provided family violence prevention or treatment services under any project assisted under the ESG program, including protection against the release of the address or location of any family violence shelter project, except with the written authorization of the person responsible for the operation of that shelter;

(9) To the maximum extent practicable, the jurisdiction will involve, through employment, volunteer services, or otherwise, homeless individuals and families in constructing, renovating, maintaining, and operating facilities assisted under the ESG program, in providing services assisted under the program, and in providing services for occupants of facilities assisted under the program;

(10) All activities the jurisdiction undertakes with assistance under ESG are consistent with the jurisdiction's consolidated plan; and

(11) The jurisdiction will establish and implement, to the maximum extent practicable and where appropriate, policies and protocols for the discharge of persons from publicly funded institutions or systems of care (such as health-care facilities, mental health facilities, foster care or other youth facilities, or correction programs and institutions) in order to prevent this discharge from immediately resulting in homelessness for these persons.

* * * * *

■ 14. In § 91.300, paragraph (b) is revised to read as follows:

§ 91.300 General.

* * * * *

(b) The State shall describe:

(1) The lead agency or entity responsible for overseeing the development of the plan and the significant aspects of the process by which the consolidated plan was developed;

(2) The identity of the agencies, groups, organizations, and others who participated in the process;

(3) The State's consultations with:

(i) Continuums of Care;

(ii) Public and private agencies that address housing, health, social services, employment, or education needs of low-income individuals and families, homeless individuals and families, youth, and/or other persons with special needs;

(iii) Publicly funded institutions and systems of care that may discharge persons into homelessness (such as health-care facilities, mental health facilities, foster care and other youth facilities, and corrections programs and institutions); and

(iv) Other entities.

* * * * *

■ 15. In § 91.305, paragraphs (b)(1) and (c) are revised to read as follows:

§ 91.305 Housing and homeless needs assessment.

* * * * *

(b)(1)(i) The plan shall estimate the number and type of families in need of housing assistance for:

(A) Extremely low-income, low-income, moderate-income, and middle-income families;

(B) Renters and owners;

(C) Elderly persons;

(D) Single persons;

(E) Large families;

(F) Public housing residents;

(G) Families on the public housing and Section 8 tenant-based waiting list;

(H) Persons with HIV/AIDS and their families;

(I) Victims of domestic violence, dating violence, sexual assault, and stalking;

(J) Persons with disabilities; and

(K) Formerly homeless families and individuals who are receiving rapid re-housing assistance and are nearing the termination of that assistance.

(ii) The description of housing needs shall include a concise summary of the cost burden and severe cost burden, overcrowding (especially for large families), and substandard housing conditions being experienced by extremely low-income, low-income, moderate-income, and middle-income renters and owners compared to the state as a whole. (The state must define in its consolidated plan the terms "standard condition" and "substandard condition but suitable for rehabilitation.")

* * * * *

(c) *Persons who are homeless or at risk of homelessness.* (1) The plan must describe, in a form prescribed by HUD, the nature and extent of homelessness, including rural homelessness, within the state.

(i) The description must include, for each category of homeless persons specified by HUD (including chronically homeless individuals and families, families with children, veterans and their families, and unaccompanied youth), the number of persons experiencing homelessness on a given night, the number of persons who

experience homelessness each year, the number of persons who lose their housing and become homeless each year, the number of persons who exit homelessness each year, and the number of days that persons experience homelessness, and any other measures specified by HUD.

(ii) The plan also must contain a brief narrative description of the nature and extent of homelessness by racial and ethnic group, to the extent that information is available.

(2) The plan must include a narrative description of the characteristics and needs of low-income individuals and families with children (especially extremely low-income) who are currently housed but threatened with homelessness. This information may be evidenced by the characteristics and needs of individuals and families with children who are currently entering the homeless assistance system or appearing for the first time on the streets. The description must also include specific housing characteristics linked to instability and an increased risk of homelessness.

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■ 16. In § 91.310, paragraph (b) is revised to read as follows:

§ 91.310 Housing market analysis.

* * * * *

(b) *Facilities, housing, and services for homeless persons.* The plan must include a brief inventory of facilities and services that meet the needs of homeless persons within the state, particularly chronically homeless individuals and families, families with children, veterans and their families, and unaccompanied youth.

(1) The inventory of facilities and housing (e.g., emergency shelter, transitional housing, and permanent supportive housing) must be presented in a form specified by HUD.

(2) The inventory of services must include both services targeted to homeless persons and mainstream services, such as health, mental health, and employment services to the extent those services are used to complement services targeted to homeless persons.

* * * * *

■ 17. In § 91.315, paragraphs (b), (d), (k), and (l) are revised to read as follows:

§ 91.315 Strategic plan.

* * * * *

(b) *Affordable housing.* With respect to affordable housing, the consolidated plan must include the priority housing needs table prescribed by HUD and the following:

(1) The affordable housing section shall describe how the characteristics of

the housing market and the severity of housing problems and needs of extremely low-income, low-income, and moderate-income renters and owners, persons at risk of homelessness, and homeless persons identified in accordance with § 91.305 provided the rationale for establishing allocation priorities and use of funds made available for rental assistance, production of new units, rehabilitation of existing units, or acquisition of existing units (including preserving affordable housing units that may be lost from the assisted housing inventory for any reason). Household and income types may be grouped together for discussion where the analysis would apply to more than one of them. If the State intends to use HOME funds for tenant-based rental assistance, the State must specify local market conditions that led to the choice of that option.

(2) The affordable housing section shall include specific objectives that describe proposed accomplishments that the jurisdiction hopes to achieve and must specify the number of extremely low-income, low-income, and moderate-income families, and homeless persons to whom the jurisdiction will provide affordable housing as defined in 24 CFR 92.252 for rental housing and 24 CFR 92.254 for homeownership over a specific time period.

* * * * *

(d) *Homelessness*. The consolidated plan must include the priority homeless needs table prescribed by HUD and must describe the State's strategy for reducing and ending homelessness through:

(1) Reaching out to homeless persons (especially unsheltered persons) and assessing their individual needs;

(2) Addressing the emergency shelter and transitional housing needs of homeless persons;

(3) Helping homeless persons (especially chronically homeless individuals and families, families with children, veterans and their families, and unaccompanied youth) make the transition to permanent housing and independent living, including shortening the period of time individuals and families experience homelessness, facilitating access for homeless individuals and families to affordable housing units, and preventing individuals and families who were recently homeless from becoming homeless again; and

(4) Helping low-income individuals and families avoid becoming homeless, especially extremely low-income individuals and families who are:

(i) Likely to become homeless after being discharged from publicly funded institutions and systems of care (such as health-care facilities, mental health facilities, foster care and other youth facilities, and corrections programs and institutions); or

(ii) Receiving assistance from public or private agencies that address housing, health, social services, employment, education, or youth needs.

* * * * *

(k) *Institutional structure*. The consolidated plan must provide a concise summary of the institutional structure, including businesses, developers, nonprofit organizations, philanthropic organizations, community-based and faith-based organizations, the Continuum of Care, and public institutions, departments, and agencies through which the State will carry out its housing, homeless, and community development plan; a brief assessment of the strengths and gaps in that delivery system; and a concise summary of what the State will do to overcome gaps in the institutional structure for carrying out its strategy for addressing its priority needs.

(l) *Coordination*. The consolidated plan must provide a concise summary of the jurisdiction's activities to enhance coordination among Continuums of Care, public and assisted housing providers, and private and governmental health, mental health, and service agencies. The summary must include the jurisdiction's efforts to coordinate housing assistance and services for homeless persons (especially chronically homeless individuals and families, families with children, veterans and their families, and unaccompanied youth) and persons who were recently homeless but now live in permanent housing. With respect to the public entities involved, the plan must describe the means of cooperation and coordination among the State and any units of general local government in the implementation of its consolidated plan. With respect to economic development, the State should describe efforts to enhance coordination with private industry, businesses, developers, and social service agencies.

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■ 18. In § 91.320, paragraphs (h) and (k)(3) are revised to read as follows:

§ 91.320 Action plan.

* * * * *

(h) *Homeless and other special needs activities*. (1) The State must describe its one-year goals and specific actions steps for reducing and ending homelessness through:

(i) Reaching out to homeless persons (especially unsheltered persons) and assessing their individual needs;

(ii) Addressing the emergency shelter and transitional housing needs of homeless persons;

(iii) Helping homeless persons (especially chronically homeless individuals and families, families with children, veterans and their families, and unaccompanied youth) make the transition to permanent housing and independent living, including shortening the period of time that individuals and families experience homelessness, facilitating access for homeless individuals and families to affordable housing units, and preventing individuals and families who were recently homeless from becoming homeless again; and

(iv) Helping low-income individuals and families avoid becoming homeless, especially extremely low-income individuals and families who are:

(A) Being discharged from publicly funded institutions and systems of care (such as health-care facilities, mental health facilities, foster care and other youth facilities, and corrections programs and institutions); or

(B) Receiving assistance from public or private agencies that address housing, health, social services, employment, education, or youth needs.

(2) The State must specify the activities that it plans to undertake during the next year to address the housing and supportive service needs identified in accordance with § 91.315(e) with respect to persons who are not homeless but have other special needs.

* * * * *

(k) * * *

(3) *ESG*. (i) The State must either include its written standards for providing Emergency Solutions Grant (ESG) assistance or describe its requirements for its subrecipients to establish and implement written standards for providing ESG assistance. The minimum requirements regarding these standards are set forth in 24 CFR 576.400(e)(2) and (e)(3).

(ii) For each area of the State in which a Continuum of Care has established a centralized or coordinated assessment system that meets HUD requirements, the State must describe that centralized or coordinated assessment system. The requirements for using a centralized or coordinated assessment system, including the exception for victim service providers, are set forth under 24 CFR 576.400(d).

(iii) The State must identify its process for making subawards and a

description of how the State intends to make its allocation available to units of general local government and private nonprofit organizations, including community and faith-based organizations.

(iv) The State must describe the performance standards for evaluating ESG activities.

(v) The State must describe its consultation with each Continuum of Care in determining how to allocate ESG funds each program year; developing the performance standards for, and evaluating the outcomes of, projects and activities assisted by ESG funds; and developing funding, policies and procedures for the administration and operation of the HMIS.

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■ 19. In § 91.325, paragraph (c) is revised to read as follows:

§ 91.325 Certifications.

* * * * *

(c) *ESG*. Each State that seeks funding under ESG must provide the following certifications:

(1) The State will obtain any matching amounts required under 24 CFR 576.201 in a manner so that its subrecipients that are least capable of providing matching amounts receive the benefit of the exception under 24 CFR 576.201(a)(2);

(2) The State will establish and implement, to the maximum extent practicable and where appropriate, policies, and protocols for the discharge of persons from publicly funded institutions or systems of care (such as health-care facilities, mental health facilities, foster care or other youth facilities, or correction programs and institutions) in order to prevent this discharge from immediately resulting in homelessness for these persons;

(3) The State will develop and implement procedures to ensure the confidentiality of records pertaining to any individual provided family violence prevention or treatment services under any project assisted under the ESG program, including protection against the release of the address or location of any family violence shelter project, except with the written authorization of the person responsible for the operation of that shelter; and

(4) The State will ensure that its subrecipients comply with the following criteria:

(i) If an emergency shelter's rehabilitation costs exceed 75 percent of the value of the building before rehabilitation, the building will be maintained as a shelter for homeless individuals and families for a minimum

of 10 years after the date the building is first occupied by a homeless individual or family after the completed rehabilitation;

(ii) If the cost to convert a building into an emergency shelter exceeds 75 percent of the value of the building after conversion, the building will be maintained as a shelter for homeless individuals and families for a minimum of 10 years after the date the building is first occupied by a homeless individual or family after the completed conversion;

(iii) In all other cases where ESG funds are used for renovation, the building will be maintained as a shelter for homeless individuals and families for a minimum of 3 years after the date the building is first occupied by a homeless individual or family after the completed renovation;

(iv) If ESG funds are used for shelter operations or essential services related to street outreach or emergency shelter, the subrecipient will provide services or shelter to homeless individuals and families for the period during which the ESG assistance is provided, without regard to a particular site or structure, so long as the applicant serves the same type of persons (e.g., families with children, unaccompanied youth, veterans, disabled individuals, or victims of domestic violence) or persons in the same geographic area;

(v) Any renovation carried out with ESG assistance shall be sufficient to ensure that the building involved is safe and sanitary;

(vi) The subrecipient will assist homeless individuals in obtaining permanent housing, appropriate supportive services (including medical and mental health treatment, counseling, supervision, and other services essential for achieving independent living), and other Federal, State, local, and private assistance available for such individuals;

(vii) To the maximum extent practicable, the subrecipient will involve, through employment, volunteer services, or otherwise, homeless individuals and families in constructing, renovating, maintaining, and operating facilities assisted under ESG, in providing services assisted under ESG, and in providing services for occupants of facilities assisted under ESG; and

(viii) All activities the subrecipient undertakes with assistance under ESG are consistent with the State's current HUD-approved consolidated plan.

* * * * *

■ 20. In § 91.520, paragraph (b) is revised, paragraphs (c), (d), (e), (f), and

(g) are redesignated as paragraphs (d), (e), (f), (h), and (i), respectively, and new paragraphs (c) and (g) are added to read as follows:

§ 91.520 Performance reports.

* * * * *

(b) *Affordable housing*. The report shall include an evaluation of the jurisdiction's progress in meeting its specific objective of providing affordable housing, including the number and types of families served. This element of the report must include the number of extremely low-income, low-income, moderate-income, middle-income, and homeless persons served.

(c) *Homelessness*. The report must include, in a form prescribed by HUD, an evaluation of the jurisdiction's progress in meeting its specific objectives for reducing and ending homelessness through:

(1) Reaching out to homeless persons (especially unsheltered persons) and assessing their individual needs;

(2) Addressing the emergency shelter and transitional housing needs of homeless persons;

(3) Helping homeless persons (especially chronically homeless individuals and families, families with children, veterans and their families, and unaccompanied youth) make the transition to permanent housing and independent living, including shortening the period of time that individuals and families experience homelessness, facilitating access for homeless individuals and families to affordable housing units, and preventing individuals and families who were recently homeless from becoming homeless again; and

(4) Helping low-income individuals and families avoid becoming homeless, especially extremely low-income individuals and families and those who are

(i) Likely to become homeless after being discharged from publicly funded institutions and systems of care (such as health-care facilities, mental health facilities, foster care and other youth facilities, and corrections programs and institutions);

(ii) Receiving assistance from public or private agencies that address housing, health, social services, employment, education, or youth needs.

* * * * *

(g) *ESG*. For jurisdictions receiving funding under the ESG program provided in 24 CFR part 576, the report, in a form prescribed by HUD, must include the number of persons assisted, the types of assistance provided, and the project or program outcomes data measured under the performance

standards developed in consultation with the Continuum(s) of Care.

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■ 21. Part 576 is revised to read as follows:

PART 576—EMERGENCY SOLUTIONS GRANTS PROGRAM

Subpart A—General Provisions

Sec.

- 576.1 Applicability and purpose.
- 576.2 Definitions.
- 576.3 Allocation of funding.

Subpart B—Program Components and Eligible Activities

- 576.100 General provisions and expenditure limits.
- 576.101 Street outreach component.
- 576.102 Emergency shelter component.
- 576.103 Homelessness prevention component.
- 576.104 Rapid re-housing assistance component.
- 576.105 Housing relocation and stabilization services.
- 576.106 Short-term and medium-term rental assistance.
- 576.107 HMIS component.
- 576.108 Administrative activities.
- 576.109 Indirect costs.

Subpart C—Award and Use of Funds

- 576.200 Submission requirements and grant approval.
- 576.201 Matching requirement.
- 576.202 Means of carrying out grant activities.
- 576.203 Obligation, expenditure, and payment requirements.

Subpart D—Reallocations

- 576.300 In general.
- 576.301 Metropolitan cities and urban counties.
- 576.302 States.
- 576.303 Territories.
- 576.304 Alternative method.

Subpart E—Program Requirements

- 576.400 Area-wide systems coordination requirements.
- 576.401 Evaluation of program participant eligibility and needs.
- 576.402 Terminating assistance.
- 576.403 Shelter and housing standards.
- 576.404 Conflicts of interest.
- 576.405 Homeless participation.
- 576.406 Faith-based activities.
- 576.407 Other Federal requirements.
- 576.408 Displacement, relocation, and acquisition.

Subpart F—Grant Administration

- 576.500 Recordkeeping and reporting requirements.
- 576.501 Enforcement.

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

Subpart A—General Provisions

§ 576.1 Applicability and purpose.

This part implements the Emergency Solutions Grants (ESG) program authorized by subtitle B of title IV of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11371–11378). The program authorizes the Department of Housing and Urban Development (HUD) to make grants to States, units of general purpose local government, and territories for the rehabilitation or conversion of buildings for use as emergency shelter for the homeless, for the payment of certain expenses related to operating emergency shelters, for essential services related to emergency shelters and street outreach for the homeless, and for homelessness prevention and rapid re-housing assistance.

§ 576.2 Definitions.

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

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

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

(iii) Meets one of the following conditions:

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

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

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

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

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

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

facility, or correction program or institution); or

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

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

(3) A child or youth who does not qualify as “homeless” under this section, but qualifies as “homeless” under section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), and the parent(s) or guardian(s) of that child or youth if living with her or him.

Consolidated plan means a plan prepared in accordance with 24 CFR part 91. An *approved consolidated plan* means a consolidated plan that has been approved by HUD in accordance with 24 CFR part 91.

Continuum of Care means the group composed of representatives of relevant organizations, which generally includes nonprofit homeless providers; victim service providers; faith-based organizations; governments; businesses; advocates; public housing agencies; school districts; social service providers; mental health agencies; hospitals; universities; affordable housing developers; law enforcement; organizations that serve homeless and formerly homeless veterans, and homeless and formerly homeless persons that are organized to plan for and provide, as necessary, a system of outreach, engagement, and assessment; emergency shelter; rapid re-housing; transitional housing; permanent housing; and prevention strategies to address the various needs of homeless persons and persons at risk of homelessness for a specific geographic area.

Emergency shelter means any facility, the primary purpose of which is to provide a temporary shelter for the homeless in general or for specific populations of the homeless and which does not require occupants to sign leases or occupancy agreements. Any project funded as an emergency shelter

under a Fiscal Year 2010 Emergency Solutions grant may continue to be funded under ESG.

Homeless means:

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

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

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

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

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

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

(ii) No subsequent residence has been identified; and

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

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

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

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

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

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

(4) Any individual or family who:

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

(ii) Has no other residence; and

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

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

Metropolitan city means a city that was classified as a metropolitan city under 42 U.S.C. 5302(a) for the fiscal year immediately preceding the fiscal year for which ESG funds are made available. This term includes the District of Columbia.

Private nonprofit organization means a private nonprofit organization that is a secular or religious organization described in section 501(c) of the Internal Revenue Code of 1986 and which is exempt from taxation under subtitle A of the Code, has an accounting system and a voluntary board, and practices nondiscrimination in the provision of assistance. A private nonprofit organization does not include a governmental organization, such as a

public housing agency or housing finance agency.

Program income shall have the meaning provided in 24 CFR 85.25. Program income includes any amount of a security or utility deposit returned to the recipient or subrecipient.

Program participant means an individual or family who is assisted under ESG program.

Program year means the consolidated program year established by the recipient under 24 CFR part 91.

Recipient means any State, territory, metropolitan city, or urban county, or in the case of reallocation, any unit of general purpose local government that is approved by HUD to assume financial responsibility and enters into a grant agreement with HUD to administer assistance under this part.

State means each of the several States and the Commonwealth of Puerto Rico.

Subrecipient means a unit of general purpose local government or private nonprofit organization to which a recipient makes available ESG funds.

Territory means each of the following: the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.

Unit of general purpose local government means any city, county, town, township, parish, village, or other general purpose political subdivision of a State.

Urban county means a county that was classified as an urban county under 42 U.S.C. 5302(a) for the fiscal year immediately preceding the fiscal year for which ESG funds are made available.

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

§ 576.3 Allocation of funding.

(a) *Territories*. HUD will set aside for allocation to the territories up to 0.2 percent, but not less than 0.1 percent, of the total amount of each appropriation under this part in any fiscal year. HUD will allocate this set-aside amount to each territory based on its proportionate share of the total population of all territories and its rate of compliance with the most recent expenditure deadline under § 576.203.

(b) *States, metropolitan cities, and urban counties*. HUD will allocate the amounts that remain after the set-aside to territories under paragraph (a) of this section to States, metropolitan cities, and urban counties, as follows:

(1) HUD will provide that the percentage of the total amount available for allocation to each State, metropolitan city, or urban county is equal to the percentage of the total amount available under section 106 of the Housing and Community Development Act of 1974 for the prior fiscal year that was allocated to that State, metropolitan city, or urban county.

(2) Except as otherwise provided by law, if the amount a metropolitan city or urban county would be allocated under paragraph (b)(1) is less than 0.05 percent of the total fiscal year appropriation for ESG, that amount will be added to the allocation for the State in which the city or county is located.

(c) *Notification of allocation amount.* HUD will notify each State, metropolitan city, urban county, and territory that is eligible to receive an allocation under this section of the amount of its allocation.

Subpart B—Program Components and Eligible Activities

§ 576.100 General provisions and expenditure limits.

(a) ESG funds may be used for five program components: street outreach, emergency shelter, homelessness prevention, rapid re-housing assistance, and HMIS; as well as administrative activities. The five program components and the eligible activities that may be funded under each are set forth in § 576.101 through § 576.107. Eligible administrative activities are set forth in § 576.108.

(b) The total amount of the recipient's fiscal year grant that may be used for street outreach and emergency shelter activities cannot exceed the greater of:

(1) 60 percent of the recipient's fiscal year grant; or

(2) The amount of Fiscal Year 2010 grant funds committed for homeless assistance activities.

(c) The total amount of ESG funds that may be used for administrative activities cannot exceed 7.5 percent of the recipient's fiscal year grant.

(d) Subject to the cost principles in OMB Circulars A–87 (2 CFR 225) and A–122 (2 CFR 230) and other requirements in this part, employee compensation and other overhead costs directly related to carrying out street outreach, emergency shelter, homelessness prevention, rapid re-housing, and HMIS are eligible costs of those program components. These costs are not subject to the expenditure limit in paragraph (c) of this section.

§ 576.101 Street outreach component.

(a) *Eligible costs.* Subject to the expenditure limit in § 576.100(b), ESG funds may be used for costs of providing essential services necessary to reach out to unsheltered homeless people; connect them with emergency shelter, housing, or critical services; and provide urgent, nonfacility-based care to unsheltered homeless people who are unwilling or unable to access emergency shelter, housing, or an appropriate health facility. For the purposes of this section, the term “unsheltered homeless people” means individuals and families who qualify as homeless under paragraph (1)(i) of the “homeless” definition under § 576.2. The eligible costs and requirements for essential services consist of:

(1) *Engagement.* The costs of activities to locate, identify, and build relationships with unsheltered homeless people and engage them for the purpose of providing immediate support, intervention, and connections with homeless assistance programs and/or mainstream social services and housing programs. These activities consist of making an initial assessment of needs and eligibility; providing crisis counseling; addressing urgent physical needs, such as providing meals, blankets, clothes, or toiletries; and actively connecting and providing information and referrals to programs targeted to homeless people and mainstream social services and housing programs, including emergency shelter, transitional housing, community-based services, permanent supportive housing, and rapid re-housing programs. Eligible costs include the cell phone costs of outreach workers during the performance of these activities.

(2) *Case management.* The cost of assessing housing and service needs, arranging, coordinating, and monitoring the delivery of individualized services to meet the needs of the program participant. Eligible services and activities are as follows: using the centralized or coordinated assessment system as required under § 576.400(d); conducting the initial evaluation required under § 576.401(a), including verifying and documenting eligibility; counseling; developing, securing and coordinating services; obtaining Federal, State, and local benefits; monitoring and evaluating program participant progress; providing information and referrals to other providers; and developing an individualized housing and service plan, including planning a path to permanent housing stability.

(3) *Emergency health services.* (i) Eligible costs are for the direct outpatient treatment of medical

conditions and are provided by licensed medical professionals operating in community-based settings, including streets, parks, and other places where unsheltered homeless people are living.

(ii) ESG funds may be used only for these services to the extent that other appropriate health services are inaccessible or unavailable within the area.

(iii) Eligible treatment consists of assessing a program participant's health problems and developing a treatment plan; assisting program participants to understand their health needs; providing directly or assisting program participants to obtain appropriate emergency medical treatment; and providing medication and follow-up services.

(4) *Emergency mental health services.* (i) Eligible costs are the direct outpatient treatment by licensed professionals of mental health conditions operating in community-based settings, including streets, parks, and other places where unsheltered people are living.

(ii) ESG funds may be used only for these services to the extent that other appropriate mental health services are inaccessible or unavailable within the community.

(iii) Mental health services are the application of therapeutic processes to personal, family, situational, or occupational problems in order to bring about positive resolution of the problem or improved individual or family functioning or circumstances.

(iv) Eligible treatment consists of crisis interventions, the prescription of psychotropic medications, explanation about the use and management of medications, and combinations of therapeutic approaches to address multiple problems.

(5) *Transportation.* The transportation costs of travel by outreach workers, social workers, medical professionals, or other service providers are eligible, provided that this travel takes place during the provision of services eligible under this section. The costs of transporting unsheltered people to emergency shelters or other service facilities are also eligible. These costs include the following:

(i) The cost of a program participant's travel on public transportation;

(ii) If service workers use their own vehicles, mileage allowance for service workers to visit program participants;

(iii) The cost of purchasing or leasing a vehicle for the recipient or subrecipient in which staff transports program participants and/or staff serving program participants, and the cost of gas, insurance, taxes and maintenance for the vehicle; and

(iv) The travel costs of recipient or subrecipient staff to accompany or assist program participants to use public transportation.

(6) *Services for special populations.* ESG funds may be used to provide services for homeless youth, victim services, and services for people living with HIV/AIDS, so long as the costs of providing these services are eligible under paragraphs (a)(1) through (a)(5) of this section. The term *victim services* means services that assist program participants who are victims of domestic violence, dating violence, sexual assault, or stalking, including services offered by rape crisis centers and domestic violence shelters, and other organizations with a documented history of effective work concerning domestic violence, dating violence, sexual assault, or stalking.

(b) *Minimum period of use.* The recipient or subrecipient must provide services to homeless individuals and families for at least the period during which ESG funds are provided.

(c) *Maintenance of effort.* (1) If the recipient or subrecipient is a unit of general purpose local government, its ESG funds cannot be used to replace funds the local government provided for street outreach and emergency shelter services during the immediately preceding 12-month period, unless HUD determines that the unit of general purpose local government is in a severe financial deficit.

(2) Upon the recipient's request, HUD will determine whether the unit of general purpose local government is in a severe financial deficit, based on the recipient's demonstration of each of the following:

(i) The average poverty rate in the unit of general purpose local government's jurisdiction was equal to or greater than 125 percent of the average national poverty rate, during the calendar year for which the most recent data are available, as determined according to information from the U.S. Census Bureau.

(ii) The average per-capita income in the unit of general purpose local government's jurisdiction was less than 75 percent of the average national per-capita income, during the calendar year for which the most recent data are available, as determined according to information from the Census Bureau.

(iii) The unit of general purpose local government has a current annual budget deficit that requires a reduction in funding for services for homeless people.

(iv) The unit of general purpose local government has taken all reasonable steps to prevent a reduction in funding

of services for homeless people. Reasonable steps may include steps to increase revenue generation, steps to maximize cost savings, or steps to reduce expenditures in areas other than services for homeless people.

§ 576.102 Emergency shelter component.

(a) *General.* Subject to the expenditure limit in § 576.100(b), ESG funds may be used for costs of providing essential services to homeless families and individuals in emergency shelters, renovating buildings to be used as emergency shelter for homeless families and individuals, and operating emergency shelters.

(1) *Essential services.* ESG funds may be used to provide essential services to individuals and families who are in an emergency shelter, as follows:

(i) *Case management.* The cost of assessing, arranging, coordinating, and monitoring the delivery of individualized services to meet the needs of the program participant is eligible. Component services and activities consist of:

(A) Using the centralized or coordinated assessment system as required under § 576.400(d);

(B) Conducting the initial evaluation required under § 576.401(a), including verifying and documenting eligibility;

(C) Counseling;

(D) Developing, securing, and coordinating services and obtaining Federal, State, and local benefits;

(E) Monitoring and evaluating program participant progress;

(F) Providing information and referrals to other providers;

(G) Providing ongoing risk assessment and safety planning with victims of domestic violence, dating violence, sexual assault, and stalking; and

(H) Developing an individualized housing and service plan, including planning a path to permanent housing stability.

(ii) *Child care.* The costs of child care for program participants, including providing meals and snacks, and comprehensive and coordinated sets of appropriate developmental activities, are eligible. The children must be under the age of 13, unless they are disabled. Disabled children must be under the age of 18. The child-care center must be licensed by the jurisdiction in which it operates in order for its costs to be eligible.

(iii) *Education services.* When necessary for the program participant to obtain and maintain housing, the costs of improving knowledge and basic educational skills are eligible. Services include instruction or training in consumer education, health education,

substance abuse prevention, literacy, English as a Second Language, and General Educational Development (GED). Component services or activities are screening, assessment and testing; individual or group instruction; tutoring; provision of books, supplies and instructional material; counseling; and referral to community resources.

(iv) *Employment assistance and job training.* The costs of employment assistance and job training programs are eligible, including classroom, online, and/or computer instruction; on-the-job instruction; and services that assist individuals in securing employment, acquiring learning skills, and/or increasing earning potential. The cost of providing reasonable stipends to program participants in employment assistance and job training programs is an eligible cost. Learning skills include those skills that can be used to secure and retain a job, including the acquisition of vocational licenses and/or certificates. Services that assist individuals in securing employment consist of employment screening, assessment, or testing; structured job skills and job-seeking skills; special training and tutoring, including literacy training and prevocational training; books and instructional material; counseling or job coaching; and referral to community resources.

(v) *Outpatient health services.* Eligible costs are for the direct outpatient treatment of medical conditions and are provided by licensed medical professionals. Emergency Solutions Grant (ESG) funds may be used only for these services to the extent that other appropriate health services are unavailable within the community. Eligible treatment consists of assessing a program participant's health problems and developing a treatment plan; assisting program participants to understand their health needs; providing directly or assisting program participants to obtain appropriate medical treatment, preventive medical care, and health maintenance services, including emergency medical services; providing medication and follow-up services; and providing preventive and noncosmetic dental care.

(vi) *Legal services.* (A) Eligible costs are the hourly fees for legal advice and representation by attorneys licensed and in good standing with the bar association of the State in which the services are provided, and by person(s) under the supervision of the licensed attorney, regarding matters that interfere with the program participant's ability to obtain and retain housing.

(B) Emergency Solutions Grant (ESG) funds may be used only for these

services to the extent that other appropriate legal services are unavailable or inaccessible within the community.

(C) Eligible subject matters are child support, guardianship, paternity, emancipation, and legal separation, orders of protection and other civil remedies for victims of domestic violence, dating violence, sexual assault, and stalking, appeal of veterans and public benefit claim denials, and the resolution of outstanding criminal warrants.

(D) Component services or activities may include client intake, preparation of cases for trial, provision of legal advice, representation at hearings, and counseling.

(E) Fees based on the actual service performed (*i.e.*, fee for service) are also eligible, but only if the cost would be less than the cost of hourly fees. Filing fees and other necessary court costs are also eligible. If the subrecipient is a legal services provider and performs the services itself, the eligible costs are the subrecipient's employees' salaries and other costs necessary to perform the services.

(F) Legal services for immigration and citizenship matters and issues relating to mortgages are ineligible costs. Retainer fee arrangements and contingency fee arrangements are ineligible costs.

(vii) *Life skills training*. The costs of teaching critical life management skills that may never have been learned or have been lost during the course of physical or mental illness, domestic violence, substance use, and homelessness are eligible costs. These services must be necessary to assist the program participant to function independently in the community. Component life skills training are budgeting resources, managing money, managing a household, resolving conflict, shopping for food and needed items, improving nutrition, using public transportation, and parenting.

(viii) *Mental health services*. (A) Eligible costs are the direct outpatient treatment by licensed professionals of mental health conditions.

(B) ESG funds may only be used for these services to the extent that other appropriate mental health services are unavailable or inaccessible within the community.

(C) Mental health services are the application of therapeutic processes to personal, family, situational, or occupational problems in order to bring about positive resolution of the problem or improved individual or family functioning or circumstances. Problem areas may include family and marital

relationships, parent-child problems, or symptom management.

(D) Eligible treatment consists of crisis interventions; individual, family, or group therapy sessions; the prescription of psychotropic medications or explanations about the use and management of medications; and combinations of therapeutic approaches to address multiple problems.

(ix) *Substance abuse treatment services*. (A) Eligible substance abuse treatment services are designed to prevent, reduce, eliminate, or deter relapse of substance abuse or addictive behaviors and are provided by licensed or certified professionals.

(B) ESG funds may only be used for these services to the extent that other appropriate substance abuse treatment services are unavailable or inaccessible within the community.

(C) Eligible treatment consists of client intake and assessment, and outpatient treatment for up to 30 days. Group and individual counseling and drug testing are eligible costs. Inpatient detoxification and other inpatient drug or alcohol treatment are not eligible costs.

(x) *Transportation*. Eligible costs consist of the transportation costs of a program participant's travel to and from medical care, employment, child care, or other eligible essential services facilities. These costs include the following:

(A) The cost of a program participant's travel on public transportation;

(B) If service workers use their own vehicles, mileage allowance for service workers to visit program participants;

(C) The cost of purchasing or leasing a vehicle for the recipient or subrecipient in which staff transports program participants and/or staff serving program participants, and the cost of gas, insurance, taxes, and maintenance for the vehicle; and

(D) The travel costs of recipient or subrecipient staff to accompany or assist program participants to use public transportation.

(xi) *Services for special populations*. ESG funds may be used to provide services for homeless youth, victim services, and services for people living with HIV/AIDS, so long as the costs of providing these services are eligible under paragraphs (a)(1)(i) through (a)(1)(x) of this section. The term *victim services* means services that assist program participants who are victims of domestic violence, dating violence, sexual assault, or stalking, including services offered by rape crisis centers and domestic violence shelters, and other organizations with a documented

history of effective work concerning domestic violence, dating violence, sexual assault, or stalking.

(2) *Renovation*. Eligible costs include labor, materials, tools, and other costs for renovation (including major rehabilitation of an emergency shelter or conversion of a building into an emergency shelter). The emergency shelter must be owned by a government entity or private nonprofit organization.

(3) *Shelter operations*. Eligible costs are the costs of maintenance (including minor or routine repairs), rent, security, fuel, equipment, insurance, utilities, food, furnishings, and supplies necessary for the operation of the emergency shelter. Where no appropriate emergency shelter is available for a homeless family or individual, eligible costs may also include a hotel or motel voucher for that family or individual.

(4) *Assistance required under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA)*. Eligible costs are the costs of providing URA assistance under § 576.408, including relocation payments and other assistance to persons displaced by a project assisted with ESG funds. Persons that receive URA assistance are not considered "program participants" for the purposes of this part, and relocation payments and other URA assistance are not considered "rental assistance" or "housing relocation and stabilization services" for the purposes of this part.

(b) *Prohibition against involuntary family separation*. The age, of a child under age 18 must not be used as a basis for denying any family's admission to an emergency shelter that uses Emergency Solutions Grant (ESG) funding or services and provides shelter to families with children under age 18.

(c) *Minimum period of use*. (1) *Renovated buildings*. Each building renovated with ESG funds must be maintained as a shelter for homeless individuals and families for not less than a period of 3 or 10 years, depending on the type of renovation and the value of the building. The "value of the building" is the reasonable monetary value assigned to the building, such as the value assigned by an independent real estate appraiser. The minimum use period must begin on the date the building is first occupied by a homeless individual or family after the completed renovation. A minimum period of use of 10 years, required for major rehabilitation and conversion, must be enforced by a recorded deed or use restriction.

(i) *Major rehabilitation*. If the rehabilitation cost of an emergency

shelter exceeds 75 percent of the value of the building before rehabilitation, the minimum period of use is 10 years.

(ii) *Conversion*. If the cost to convert a building into an emergency shelter exceeds 75 percent of the value of the building after conversion, the minimum period of use is 10 years.

(iii) *Renovation other than major rehabilitation or conversion*. In all other cases where ESG funds are used for renovation, the minimum period of use is 3 years.

(2) *Essential services and shelter operations*. Where the recipient or subrecipient uses ESG funds solely for essential services or shelter operations, the recipient or subrecipient must provide services or shelter to homeless individuals and families at least for the period during which the ESG funds are provided. The recipient or subrecipient does not need to limit these services or shelter to a particular site or structure, so long as the site or structure serves the same type of persons originally served with the assistance (e.g., families with children, unaccompanied youth, disabled individuals, or victims of domestic violence) or serves homeless persons in the same area where the recipient or subrecipient originally provided the services or shelter.

(d) *Maintenance of effort*. The maintenance of effort requirements under § 576.101(c), which apply to the use of ESG funds for essential services related to street outreach, also apply for the use of such funds for essential services related to emergency shelter.

§ 576.103 Homelessness prevention component.

ESG funds may be used to provide housing relocation and stabilization services and short- and/or medium-term rental assistance necessary to prevent an individual or family from moving into an emergency shelter or another place described in paragraph (1) of the “homeless” definition in § 576.2. This assistance, referred to as homelessness prevention, may be provided to individuals and families who meet the criteria under the “at risk of homelessness” definition, or who meet the criteria in paragraph (2), (3), or (4) of the “homeless” definition in § 576.2 and have an annual income below 30 percent of median family income for the area, as determined by HUD. The costs of homelessness prevention are only eligible to the extent that the assistance is necessary to help the program participant regain stability in the program participant’s current permanent housing or move into other permanent housing and achieve stability in that housing. Homelessness

prevention must be provided in accordance with the housing relocation and stabilization services requirements in § 576.105, the short-term and medium-term rental assistance requirements in § 576.106, and the written standards and procedures established under § 576.400.

§ 576.104 Rapid re-housing assistance component.

ESG funds may be used to provide housing relocation and stabilization services and short- and/or medium-term rental assistance as necessary to help a homeless individual or family move as quickly as possible into permanent housing and achieve stability in that housing. This assistance, referred to as rapid re-housing assistance, may be provided to program participants who meet the criteria under paragraph (1) of the “homeless” definition in § 576.2 or who meet the criteria under paragraph (4) of the “homeless” definition and live in an emergency shelter or other place described in paragraph (1) of the “homeless” definition. The rapid re-housing assistance must be provided in accordance with the housing relocation and stabilization services requirements in § 576.105, the short- and medium-term rental assistance requirements in § 576.106, and the written standards and procedures established under § 576.400.

§ 576.105 Housing relocation and stabilization services.

(a) *Financial assistance costs*. Subject to the general conditions under § 576.103 and § 576.104, ESG funds may be used to pay housing owners, utility companies, and other third parties for the following costs:

(1) *Rental application fees*. ESG funds may pay for the rental housing application fee that is charged by the owner to all applicants.

(2) *Security deposits*. ESG funds may pay for a security deposit that is equal to no more than 2 months’ rent.

(3) *Last month’s rent*. If necessary to obtain housing for a program participant, the last month’s rent may be paid from ESG funds to the owner of that housing at the time the owner is paid the security deposit and the first month’s rent. This assistance must not exceed one month’s rent and must be included in calculating the program participant’s total rental assistance, which cannot exceed 24 months during any 3-year period.

(4) *Utility deposits*. ESG funds may pay for a standard utility deposit required by the utility company for all customers for the utilities listed in paragraph (5) of this section.

(5) *Utility payments*. ESG funds may pay for up to 24 months of utility payments per program participant, per service, including up to 6 months of utility payments in arrears, per service. A partial payment of a utility bill counts as one month. This assistance may only be provided if the program participant or a member of the same household has an account in his or her name with a utility company or proof of responsibility to make utility payments. Eligible utility services are gas, electric, water, and sewage. No program participant shall receive more than 24 months of utility assistance within any 3-year period.

(6) *Moving costs*. ESG funds may pay for moving costs, such as truck rental or hiring a moving company. This assistance may include payment of temporary storage fees for up to 3 months, provided that the fees are accrued after the date the program participant begins receiving assistance under paragraph (b) of this section and before the program participant moves into permanent housing. Payment of temporary storage fees in arrears is not eligible.

(b) *Services costs*. Subject to the general restrictions under § 576.103 and § 576.104, ESG funds may be used to pay the costs of providing the following services:

(1) *Housing search and placement*. Services or activities necessary to assist program participants in locating, obtaining, and retaining suitable permanent housing, include the following:

(i) Assessment of housing barriers, needs, and preferences;

(ii) Development of an action plan for locating housing;

(iii) Housing search;

(iv) Outreach to and negotiation with owners;

(v) Assistance with submitting rental applications and understanding leases;

(vi) Assessment of housing for compliance with Emergency Solutions Grant (ESG) requirements for habitability, lead-based paint, and rent reasonableness;

(vii) Assistance with obtaining utilities and making moving arrangements; and

(viii) Tenant counseling.

(2) *Housing stability case management*. ESG funds may be used to pay cost of assessing, arranging, coordinating, and monitoring the delivery of individualized services to facilitate housing stability for a program participant who resides in permanent housing or to assist a program participant in overcoming immediate barriers to obtaining housing. This

assistance cannot exceed 30 days during the period the program participant is seeking permanent housing and cannot exceed 24 months during the period the program participant is living in permanent housing. Component services and activities consist of:

(A) Using the centralized or coordinated assessment system as required under § 576.400(d), to evaluate individuals and families applying for or receiving homelessness prevention or rapid re-housing assistance;

(B) Conducting the initial evaluation required under § 576.401(a), including verifying and documenting eligibility, for individuals and families applying for homelessness prevention or rapid re-housing assistance;

(C) Counseling;

(D) Developing, securing, and coordinating services and obtaining Federal, State, and local benefits;

(E) Monitoring and evaluating program participant progress;

(F) Providing information and referrals to other providers;

(G) Developing an individualized housing and service plan, including planning a path to permanent housing stability; and

(H) Conducting re-evaluations required under § 576.401(b).

(3) *Mediation.* ESG funds may pay for mediation between the program participant and the owner or person(s) with whom the program participant is living, provided that the mediation is necessary to prevent the program participant from losing permanent housing in which the program participant currently resides.

(4) *Legal services.* ESG funds may pay for legal services, as set forth in § 576.102(a)(1)(vi), except that the eligible subject matters also include landlord/tenant matters, and the services must be necessary to resolve a legal problem that prohibits the program participant from obtaining permanent housing or will likely result in the program participant losing the permanent housing in which the program participant currently resides.

(5) *Credit repair.* ESG funds may pay for credit counseling and other services necessary to assist program participants with critical skills related to household budgeting, managing money, accessing a free personal credit report, and resolving personal credit problems. This assistance does not include the payment or modification of a debt.

(c) *Maximum amounts and periods of assistance.* The recipient may set a maximum dollar amount that a program participant may receive for each type of financial assistance under paragraph (a) of this section. The recipient may also

set a maximum period for which a program participant may receive any of the types of assistance or services under this section. However, except for housing stability case management, the total period for which any program participant may receive the services under paragraph (b) of this section must not exceed 24 months during any 3-year period. The limits on the assistance under this section apply to the total assistance an individual receives, either as an individual or as part of a family.

(d) *Use with other subsidies.* Financial assistance under paragraph (a) of this section cannot be provided to a program participant who is receiving the same type of assistance through other public sources or to a program participant who has been provided with replacement housing payments under the URA, during the period of time covered by the URA payments.

§ 576.106 Short-term and medium-term rental assistance.

(a) *General provisions.* Subject to the general conditions under § 576.103 and § 576.104, the recipient or subrecipient may provide a program participant with up to 24 months of rental assistance during any 3-year period. This assistance may be short-term rental assistance, medium-term rental assistance, payment of rental arrears, or any combination of this assistance.

(1) Short-term rental assistance is assistance for up to 3 months of rent.

(2) Medium-term rental assistance is assistance for more than 3 months but not more than 24 months of rent.

(3) Payment of rental arrears consists of a one-time payment for up to 6 months of rent in arrears, including any late fees on those arrears.

(4) Rental assistance may be tenant-based or project-based, as set forth in paragraphs (h) and (i) of this section.

(b) *Discretion to set caps and conditions.* Subject to the requirements of this section, the recipient may set a maximum amount or percentage of rental assistance that a program participant may receive, a maximum number of months that a program participant may receive rental assistance, or a maximum number of times that a program participant may receive rental assistance. The recipient may also require program participants to share in the costs of rent.

(c) *Use with other subsidies.* Except for a one-time payment of rental arrears on the tenant's portion of the rental payment, rental assistance cannot be provided to a program participant who is receiving tenant-based rental assistance, or living in a housing unit receiving project-based rental assistance

or operating assistance, through other public sources. Rental assistance may not be provided to a program participant who has been provided with replacement housing payments under the URA during the period of time covered by the URA payments.

(d) *Rent restrictions.* (1) Rental assistance cannot be provided unless the rent does not exceed the Fair Market Rent established by HUD, as provided under 24 CFR part 888, and complies with HUD's standard of rent reasonableness, as established under 24 CFR 982.507.

(2) For purposes of calculating rent under this section, the rent shall equal the sum of the total monthly rent for the unit, any fees required for occupancy under the lease (other than late fees and pet fees) and, if the tenant pays separately for utilities, the monthly allowance for utilities (excluding telephone) established by the public housing authority for the area in which the housing is located.

(e) *Rental assistance agreement.* The recipient or subrecipient may make rental assistance payments only to an owner with whom the recipient or subrecipient has entered into a rental assistance agreement. The rental assistance agreement must set forth the terms under which rental assistance will be provided, including the requirements that apply under this section. The rental assistance agreement must provide that, during the term of the agreement, the owner must give the recipient or subrecipient a copy of any notice to the program participant to vacate the housing unit, or any complaint used under state or local law to commence an eviction action against the program participant.

(f) *Late payments.* The recipient or subrecipient must make timely payments to each owner in accordance with the rental assistance agreement. The rental assistance agreement must contain the same payment due date, grace period, and late payment penalty requirements as the program participant's lease. The recipient or subrecipient is solely responsible for paying late payment penalties that it incurs with non-ESG funds.

(g) *Lease.* Each program participant receiving rental assistance must have a legally binding, written lease for the rental unit, unless the assistance is solely for rental arrears. The lease must be between the owner and the program participant. Where the assistance is solely for rental arrears, an oral agreement may be accepted in place of a written lease, if the agreement gives the program participant an enforceable leasehold interest under state law and

the agreement and rent owed are sufficiently documented by the owner's financial records, rent ledgers, or canceled checks. For program participants living in housing with project-based rental assistance under paragraph (i) of this section, the lease must have an initial term of one year.

(h) *Tenant-based rental assistance.*

(1) A program participant who receives tenant-based rental assistance may select a housing unit in which to live and may move to another unit or building and continue to receive rental assistance, as long as the program participant continues to meet the program requirements.

(2) The recipient may require that all program participants live within a particular area for the period in which the rental assistance is provided.

(3) The rental assistance agreement with the owner must terminate and no further rental assistance payments under that agreement may be made if:

(i) The program participant moves out of the housing unit for which the program participant has a lease;

(ii) The lease terminates and is not renewed; or

(iii) The program participant becomes ineligible to receive ESG rental assistance.

(i) *Project-based rental assistance.* If the recipient or subrecipient identifies a permanent housing unit that meets ESG requirements and becomes available before a program participant is identified to lease the unit, the recipient or subrecipient may enter into a rental assistance agreement with the owner to reserve the unit and subsidize its rent in accordance with the following requirements:

(1) The rental assistance agreement may cover one or more permanent housing units in the same building. Each unit covered by the rental assistance agreement ("assisted unit") may only be occupied by program participants, except as provided under paragraph (i)(4) of this section.

(2) The recipient or subrecipient may pay up to 100 percent of the first month's rent, provided that a program participant signs a lease and moves into the unit before the end of the month for which the first month's rent is paid. The rent paid before a program participant moves into the unit must not exceed the rent to be charged under the program participant's lease and must be included when determining that program participant's total rental assistance.

(3) The recipient or subrecipient may make monthly rental assistance payments only for each whole or partial month an assisted unit is leased to a program participant. When a program

participant moves out of an assisted unit, the recipient or subrecipient may pay the next month's rent, *i.e.*, the first month's rent for a new program participant, as provided in paragraph (i)(2) of this section.

(4) The program participant's lease must not condition the term of occupancy to the provision of rental assistance payments. If the program participant is determined ineligible or reaches the maximum number of months over which rental assistance can be provided, the recipient or subrecipient must suspend or terminate the rental assistance payments for the unit. If the payments are suspended, the individual or family may remain in the assisted unit as permitted under the lease, and the recipient or subrecipient may resume payments if the individual or family again becomes eligible and needs further rental assistance. If the payments are terminated, the rental assistance may be transferred to another available unit in the same building, provided that the other unit meets all ESG requirements.

(5) The rental assistance agreement must have an initial term of one year. When a new program participant moves into an assisted unit, the term of the rental assistance agreement may be extended to cover the initial term of the program participant's lease. If the program participant's lease is renewed, the rental assistance agreement may be renewed or extended, as needed, up to the maximum number of months for which the program participant remains eligible. However, under no circumstances may the recipient or subrecipient commit ESG funds to be expended beyond the expenditure deadline in § 576.203 or commit funds for a future ESG grant before the grant is awarded.

(j) *Changes in household composition.* The limits on the assistance under this section apply to the total assistance an individual receives, either as an individual or as part of a family.

§ 576.107 HMIS component.

(a) *Eligible costs.*

(1) The recipient or subrecipient may use ESG funds to pay the costs of contributing data to the HMIS designated by the Continuum of Care for the area, including the costs of:

(i) Purchasing or leasing computer hardware;

(ii) Purchasing software or software licenses;

(iii) Purchasing or leasing equipment, including telephones, fax machines, and furniture;

(iv) Obtaining technical support;

(v) Leasing office space;

(vi) Paying charges for electricity, gas, water, phone service, and high-speed data transmission necessary to operate or contribute data to the HMIS;

(vii) Paying salaries for operating HMIS, including:

(A) Completing data entry;

(B) Monitoring and reviewing data quality;

(C) Completing data analysis;

(D) Reporting to the HMIS Lead;

(F) Training staff on using the HMIS or comparable database; and

(G) Implementing and complying with HMIS requirements;

(viii) Paying costs of staff to travel to and attend HUD-sponsored and HUD-approved training on HMIS and programs authorized by Title IV of the McKinney-Vento Homeless Assistance Act;

(ix) Paying staff travel costs to conduct intake; and

(x) Paying participation fees charged by the HMIS Lead, if the recipient or subrecipient is not the HMIS Lead. The HMIS Lead is the entity designated by the Continuum of Care to operate the area's HMIS.

(2) If the recipient is the HMIS lead agency, as designated by the Continuum of Care in the most recent fiscal year Continuum of Care Homeless Assistance Grants Competition, it may also use ESG funds to pay the costs of:

(i) Hosting and maintaining HMIS software or data;

(ii) Backing up, recovering, or repairing HMIS software or data;

(iii) Upgrading, customizing, and enhancing the HMIS;

(iv) Integrating and warehousing data, including development of a data warehouse for use in aggregating data from subrecipients using multiple software systems;

(v) Administering the system;

(vi) Reporting to providers, the Continuum of Care, and HUD; and

(vii) Conducting training on using the system or a comparable database, including traveling to the training.

(3) If the subrecipient is a victim services provider or a legal services provider, it may use ESG funds to establish and operate a comparable database that collects client-level data over time (*i.e.*, longitudinal data) and generates unduplicated aggregate reports based on the data. Information entered into a comparable database must not be entered directly into or provided to an HMIS.

(b) *General restrictions.* Activities funded under this section must comply with HUD's standards on participation, data collection, and reporting under a local HMIS.

§ 576.108 Administrative activities.

(a) *Eligible costs.* The recipient may use up to 7.5 percent of its ESG grant for the payment of administrative costs related to the planning and execution of ESG activities. This does not include staff and overhead costs directly related to carrying out activities eligible under § 576.101 through § 576.107, because those costs are eligible as part of those activities. Eligible administrative costs include:

(1) *General management, oversight and coordination.* Costs of overall program management, coordination, monitoring, and evaluation. These costs include, but are not limited to, necessary expenditures for the following:

(i) Salaries, wages, and related costs of the recipient's staff, the staff of subrecipients, or other staff engaged in program administration. In charging costs to this category, the recipient may either include the entire salary, wages, and related costs allocable to the program of each person whose *primary* responsibilities with regard to the program involve program administration assignments, or the pro rata share of the salary, wages, and related costs of each person whose job includes *any* program administration assignments. The recipient may use only one of these methods for each fiscal year grant. Program administration assignments include the following:

(A) Preparing program budgets and schedules, and amendments to those budgets and schedules;

(B) Developing systems for assuring compliance with program requirements;

(C) Developing interagency agreements and agreements with subrecipients and contractors to carry out program activities;

(D) Monitoring program activities for progress and compliance with program requirements;

(E) Preparing reports and other documents directly related to the program for submission to HUD;

(F) Coordinating the resolution of audit and monitoring findings;

(G) Evaluating program results against stated objectives; and

(H) Managing or supervising persons whose primary responsibilities with regard to the program include such assignments as those described in paragraph (a)(1)(i)(A) through (G) of this section.

(ii) Travel costs incurred for monitoring of subrecipients;

(iii) Administrative services performed under third-party contracts or agreements, including general legal

services, accounting services, and audit services; and

(iv) Other costs for goods and services required for administration of the program, including rental or purchase of equipment, insurance, utilities, office supplies, and rental and maintenance (but not purchase) of office space.

(2) *Training on ESG requirements.* Costs of providing training on ESG requirements and attending HUD-sponsored ESG trainings.

(3) *Consolidated plan.* Costs of preparing and amending the ESG and homelessness-related sections of the consolidated plan in accordance with ESG requirements and 24 CFR part 91.

(4) *Environmental review.* Costs of carrying out the environmental review responsibilities under § 576.407.

(b) *Sharing requirement.* (1) *States.* If the recipient is a State, the recipient must share its funds for administrative costs with its subrecipients that are units of general purpose local government. The amount shared must be reasonable under the circumstances. The recipient may share its funds for administrative costs with its subrecipients that are private nonprofit organizations.

(2) *Territories, metropolitan cities, and urban counties.* If the recipient is a territory, metropolitan city, or urban county, the recipient may share its funds for administrative costs with its subrecipients.

§ 576.109 Indirect costs.

(a) *In general.* ESG grant funds may be used to pay indirect costs in accordance with OMB Circular A-87 (2 CFR part 225), or A-122 (2 CFR part 230), as applicable.

(b) *Allocation.* Indirect costs may be allocated to each eligible activity under § 576.101 through § 576.108, so long as that allocation is consistent with an indirect cost rate proposal developed in accordance with OMB Circular A-87 (2 CFR part 225), or A-122 (2 CFR part 230), as applicable.

(c) *Expenditure limits.* The indirect costs charged to an activity subject to an expenditure limit under § 576.100 must be added to the direct costs charged for that activity when determining the total costs subject to the expenditure limit.

Subpart C—Award and Use of Funds**§ 576.200 Submission requirements and grant approval.**

(a) *Application submission and approval.* In addition to meeting the application submission requirements in 24 CFR part 5, subpart K, each State, urban county, or metropolitan city must submit and obtain HUD approval of a

consolidated plan in accordance with the requirements in 24 CFR part 91, and each territory must submit and obtain HUD approval of a consolidated plan in accordance with the requirements that apply to local governments under 24 CFR part 91. As provided under 24 CFR 85.12, HUD may impose special conditions or restrictions on a grant, if the recipient is determined to be high risk.

(b) *Amendments.* The recipient must amend its approved consolidated plan in order to make a change in its allocation priorities; make a change in its method of distributing funds; carry out an activity not previously described in the plan; or change the purpose, scope, location, or beneficiaries of an activity. The amendment must be completed and submitted to HUD in accordance with the requirements under 24 CFR 91.505.

§ 576.201 Matching requirement.

(a) *Required amount of matching contributions.* (1) Except as provided under paragraphs (a)(2) and (a)(3) of this section, the recipient must make matching contributions to supplement the recipient's ESG program in an amount that equals the amount of ESG funds provided by HUD.

(2) If the recipient is a State, the first \$100,000 of the fiscal year grant is not required to be matched. However, the recipient must transfer the benefit of this exception to its subrecipients that are least capable of providing the recipient with matching contributions.

(3) This matching requirement does not apply if the recipient is a territory.

(b) *Eligible sources of matching contributions.* (1) Subject to the requirement for States under paragraph (a)(2) of this section, the recipient may require its subrecipients to make matching contributions consistent with this section to help meet the recipient's matching requirement.

(2) Matching contributions may be obtained from any source, including any Federal source other than the ESG program, as well as state, local, and private sources. However, the following requirements apply to matching contributions from a Federal source of funds:

(i) The recipient must ensure the laws governing any funds to be used as matching contributions do not prohibit those funds from being used to match Emergency Solutions Grant (ESG) funds.

(ii) If ESG funds are used to satisfy the matching requirements of another Federal program, then funding from that program may not be used to satisfy the matching requirements under this section.

(c) *Recognition of matching contributions.* (1) In order to meet the matching requirement, the matching contributions must meet all requirements that apply to the ESG funds provided by HUD, except for the expenditure limits in § 576.100.

(2) The matching contributions must be provided after the date that HUD signs the grant agreement.

(3) To count toward the required match for the recipient's fiscal year grant, cash contributions must be expended within the expenditure deadline in § 576.203, and noncash contributions must be made within the expenditure deadline in § 576.203.

(4) Contributions used to match a previous ESG grant may not be used to match a subsequent ESG grant.

(5) Contributions that have been or will be counted as satisfying a matching requirement of another Federal grant or award may not count as satisfying the matching requirement of this section.

(d) *Eligible types of matching contributions.* The matching requirement may be met by one or both of the following:

(1) *Cash contributions.* Cash expended for allowable costs, as defined in OMB Circulars A-87 (2 CFR part 225) and A-122 (2 CFR part 230), of the recipient or subrecipient.

(2) *Noncash contributions.* The value of any real property, equipment, goods, or services contributed to the recipient's or subrecipient's ESG program, provided that if the recipient or subrecipient had to pay for them with grant funds, the costs would have been allowable. Noncash contributions may also include the purchase value of any donated building.

(e) *Calculating the amount of noncash contributions.* (1) To determine the value of any donated material or building, or of any lease, the recipient must use a method reasonably calculated to establish the fair market value.

(2) Services provided by individuals must be valued at rates consistent with those ordinarily paid for similar work in the recipient's or subrecipient's organization. If the recipient or subrecipient does not have employees performing similar work, the rates must be consistent with those ordinarily paid by other employers for similar work in the same labor market.

(3) Some noncash contributions are real property, equipment, goods, or services that, if the recipient or subrecipient had to pay for them with grant funds, the payments would have been indirect costs. Matching credit for these contributions must be given only if the recipient or subrecipient has

established, along with its regular indirect cost rate, a special rate for allocating to individual projects or programs the value of those contributions.

(f) *Costs paid by program income.* Costs paid by program income shall count toward meeting the recipient's matching requirements, provided the costs are eligible ESG costs that supplement the recipient's ESG program.

§ 576.202 Means of carrying out grant activities.

(a) *States.* If the recipient is a State, the recipient may use an amount consistent with the restrictions in § 576.100 and § 576.108 to carry out administrative activities through its employees or procurement contracts. If the recipient is a State, and has been identified as the HMIS lead by the Continuum of Care, the State may use funds to carry out HMIS activities set forth in § 576.107(a)(2). The recipient must subgrant the remaining funds in its fiscal year grant to:

(1) Units of general purpose local government in the State, which may include metropolitan cities and urban counties that receive ESG funds directly from HUD; or

(2) Private nonprofit organizations, provided that for emergency shelter activities the recipient obtains a certification of approval from the unit of general purpose local government for the geographic area in which those activities are to be carried out.

(b) *Recipients other than States; subrecipients.* The recipient, if it is not a State, and all subrecipients may carry out all eligible activities through their employees, procurement contracts, or subgrants to private nonprofit organizations. If the recipient is an urban county, it may carry out activities through any of its member governments, so long as the county applies to its members the same requirements that are applicable to local government subrecipients under this part.

§ 576.203 Obligation, expenditure, and payment requirements.

(a) *Obligation of funds.* (1) *Funds allocated to States.* (i) Within 60 days from the date that HUD signs the grant agreement with the State (or grant amendment for reallocated funds), the recipient must obligate the entire grant, except the amount for its administrative costs. This requirement is met by a subgrant agreement with, or a letter of award requiring payment from the grant to, a subrecipient.

(ii) Within 120 days after the date that the State obligates its funds to a unit of

general purpose local government, the subrecipient must obligate all of those funds by a subgrant agreement with, or a letter of award requiring payment to, a private nonprofit organization; a procurement contract; or the written designation of a department within the government of the subrecipient to directly carry out an eligible activity.

(2) *Funds allocated to metropolitan cities, urban counties, and territories.* Within 180 days after the date that HUD signs the grant agreement (or a grant amendment for reallocation of funds) with the metropolitan city, urban county, or territory, the recipient must obligate all the grant amount, except the amount for its administrative costs. This requirement is met by an agreement with, or a letter of award requiring payment to, a subrecipient; a procurement contract; or a written designation of a department within the government of the recipient to directly carry out an eligible activity. If the recipient is an urban county, this requirement may also be met with an agreement with, or letter of award requiring payment to, a member government, which has designated a department to directly carry out an eligible activity.

(b) *Expenditures.* The recipient must draw down and expend funds from each year's grant not less than once during each quarter of the recipient's program year. 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. For the purposes of this paragraph, expenditure means either an actual cash disbursement for a direct charge for a good or service or an indirect cost or the accrual of a direct charge for a good or service or an indirect cost.

(c) *Payments to subrecipients.* The recipient must pay each subrecipient for allowable costs within 30 days after receiving the subrecipient's complete payment request. This requirement also applies to each subrecipient that is a unit of general purpose local government.

Subpart D—Reallocations

§ 576.300 In general.

(1) Funds not awarded by HUD due to failure by the recipient to submit and obtain HUD approval of a consolidated plan will be reallocated in accordance with §§ 576.301 through 576.303.

(2) Recaptured funds will be awarded by formula. In October and April each year, HUD will determine if the amount of recaptured funds is at least 30 percent of the most recent fiscal year

appropriation. If so, HUD will amend all existing grants and reallocate the funds. If the amount is less than 30 percent of the most recent fiscal year appropriation, the funds will be reallocated in conjunction with the next fiscal year's allocation of funding.

§ 576.301 Metropolitan cities and urban counties.

Grant funds returned by a metropolitan city or urban county will be reallocated as follows:

(a) *Eligible recipient.* HUD will make the funds available to the State in which the city or county is located.

(b) *Notification of availability.* HUD will promptly notify the State of the availability of the amounts to be reallocated.

(c) *Application requirement.* Within 45 days after the date of notification, the State must submit to HUD a substantial amendment to its consolidated plan in accordance with 24 CFR part 91.

(d) *Restrictions that apply to reallocated amounts.* The same requirements that apply to grant funds allocated under § 576.3 apply to grant funds reallocated under this section, except that the State must distribute the reallocated funds:

(1) To private nonprofit organizations and units of general purpose local government in the geographic area in which the metropolitan city or urban county is located;

(2) If funds remain, to private nonprofit organizations and units of general purpose local government located throughout the State.

§ 576.302 States.

Grant funds returned by a State will be reallocated as follows:

(a) *Eligible recipients.* HUD will make the funds available:

(1) To metropolitan cities and urban counties in the State that were not allocated funds under § 576.3 because the amount they would have been allocated did not meet the minimum requirement under § 576.3(b)(2);

(2) If funds remain, to county governments in the State other than urban counties;

(3) Then, if funds remain, to metropolitan cities and urban counties in the State that were allocated funds under § 576.3.

(b) *Notification of availability.* HUD will notify eligible recipients of the availability of the funds by a notification letter or **Federal Register** notice, which will specify how the awards of funds will be made.

(c) *Application requirements.* Within 45 days after the date of notification, the eligible recipient must submit to HUD:

(1) A substantial amendment to its approved consolidated plan in accordance with 24 CFR part 91; or

(2) If the eligible recipient does not have an approved consolidated plan, an abbreviated consolidated plan that meets the requirements in the **Federal Register** notice or notification letter from HUD.

(d) *Restrictions that apply to reallocated amounts.* The same requirements that apply to grant funds allocated under § 576.3 apply to grant funds reallocated under this section.

§ 576.303 Territories.

(a) *General.* Grant funds returned by a territory will be reallocated to other territories, then if funds remain, to States.

(b) *Allocation method.* The funds will be allocated as follows:

(1) For territories, the funds will be allocated among the territories in direct proportion with each territory's share of the total population of all of the eligible territories. If HUD determines that a territory failed to spend its funds in accordance with ESG requirements, then HUD may exclude the territory from the allocation of reallocation amounts under this section.

(2) For States, the funds will be allocated to each State in direct proportion with each State's share of the total amount of funds allocated to States under § 576.3.

(c) *Notification of availability.* HUD will notify eligible recipients of the availability of the fund by a letter or **Federal Register** notice, which will specify how the awards of funds will be made.

(d) *Application requirements.* Within 45 days after the date of notification, the eligible recipient must submit to HUD a substantial amendment to its consolidated plan in accordance with 24 CFR part 91.

(e) *Restrictions that apply to reallocated amounts.* The same requirements that apply to grant funds allocated under § 576.3 apply to grant funds reallocated under this section.

Subpart E—Program Requirements

§ 576.400 Area-wide systems coordination requirements.

(a) *Consultation with Continuums of Care.* The recipient must consult with each Continuum of Care that serves the recipient's jurisdiction in determining how to allocate ESG funds each program year; developing the performance standards for, and evaluating the outcomes of, projects and activities assisted by ESG funds; and developing funding, policies, and procedures for

the administration and operation of the HMIS.

(b) *Coordination with other targeted homeless services.* The recipient and its subrecipients must coordinate and integrate, to the maximum extent practicable, ESG-funded activities with other programs targeted to homeless people in the area covered by the Continuum of Care or area over which the services are coordinated to provide a strategic, community-wide system to prevent and end homelessness for that area. These programs include:

(1) Shelter Plus Care Program (24 CFR part 582);

(2) Supportive Housing Program (24 CFR part 583);

(3) Section 8 Moderate Rehabilitation Program for Single Room Occupancy Program for Homeless Individuals (24 CFR part 882);

(4) HUD—Veterans Affairs Supportive Housing (HUD—VASH) (division K, title II, Consolidated Appropriations Act, 2008, Pub. L. 110–161 (2007), 73 FR 25026 (May 6, 2008));

(5) Education for Homeless Children and Youth Grants for State and Local Activities (title VII–B of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 *et seq.*));

(6) Grants for the Benefit of Homeless Individuals (section 506 of the Public Health Services Act (42 U.S.C. 290aa–5));

(7) Healthcare for the Homeless (42 CFR part 51c);

(8) Programs for Runaway and Homeless Youth (Runaway and Homeless Youth Act (42 U.S.C. 5701 *et seq.*));

(9) Projects for Assistance in Transition from Homelessness (part C of title V of the Public Health Service Act (42 U.S.C. 290cc–21 *et seq.*));

(10) Services in Supportive Housing Grants (section 520A of the Public Health Service Act);

(11) Emergency Food and Shelter Program (title III of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11331 *et seq.*));

(12) Transitional Housing Assistance Grants for Victims of Sexual Assault, Domestic Violence, Dating Violence, and Stalking Program (section 40299 of the Violent Crime Control and Law Enforcement Act (42 U.S.C. 13975));

(13) Homeless Veterans Reintegration Program (section 5(a)(1)) of the Homeless Veterans Comprehensive Assistance Act (38 U.S.C. 2021);

(14) Domiciliary Care for Homeless Veterans Program (38 U.S.C. 2043);

(15) VA Homeless Providers Grant and Per Diem Program (38 CFR part 61);

(16) Health Care for Homeless Veterans Program (38 U.S.C. 2031);

(17) Homeless Veterans Dental Program (38 U.S.C. 2062);

(18) Supportive Services for Veteran Families Program (38 CFR part 62); and

(19) Veteran Justice Outreach Initiative (38 U.S.C. 2031).

(c) *System and program coordination with mainstream resources.* The recipient and its subrecipients must coordinate and integrate, to the maximum extent practicable, ESG-funded activities with mainstream housing, health, social services, employment, education, and youth programs for which families and individuals at risk of homelessness and homeless individuals and families may be eligible. Examples of these programs include:

(1) Public housing programs assisted under section 9 of the U.S. Housing Act of 1937 (42 U.S.C. 1437g) (24 CFR parts 905, 968, and 990);

(2) Housing programs receiving tenant-based or project-based assistance under section 8 of the U.S. Housing Act of 1937 (42 U.S.C. 1437f) (respectively 24 CFR parts 982 and 983);

(3) Supportive Housing for Persons with Disabilities (Section 811) (24 CFR part 891);

(4) HOME Investment Partnerships Program (24 CFR part 92);

(5) Temporary Assistance for Needy Families (TANF) (45 CFR parts 260–265);

(6) Health Center Program (42 CFR part 51c);

(7) State Children's Health Insurance Program (42 CFR part 457);

(8) Head Start (45 CFR chapter XIII, subchapter B);

(9) Mental Health and Substance Abuse Block Grants (45 CFR part 96); and

(10) Services funded under the Workforce Investment Act (29 U.S.C. 2801 *et seq.*).

(d) *Centralized or coordinated assessment.* Once the Continuum of Care has developed a centralized assessment system or a coordinated assessment system in accordance with requirements to be established by HUD, each ESG-funded program or project within the Continuum of Care's area must use that assessment system. The recipient and subrecipient must work with the Continuum of Care to ensure the screening, assessment and referral of program participants are consistent with the written standards required by paragraph (e) of this section. A victim service provider may choose not to use the Continuum of Care's centralized or coordinated assessment system.

(e) *Written standards for providing ESG assistance.* (1) If the recipient is a metropolitan city, urban county, or

territory, the recipient must have written standards for providing Emergency Solutions Grant (ESG) assistance and must consistently apply those standards for all program participants. The recipient must describe these standards in its consolidated plan.

(2) If the recipient is a state:

(i) The recipient must establish and consistently apply, or require that its subrecipients establish and consistently apply, written standards for providing ESG assistance. If the written standards are established by the subrecipients, the recipient may require these written standards to be:

(A) Established for each area covered by a Continuum of Care or area over which the services are coordinated and followed by each subrecipient providing assistance in that area; or

(B) Established by each subrecipient and applied consistently within the subrecipient's program.

(ii) Written standards developed by the state must be included in the state's Consolidated Plan. If the written standards are developed by its subrecipients, the recipient must describe its requirements for the establishment and implementation of these standards in the state's Consolidated Plan.

(3) At a minimum these written standards must include:

(i) Standard policies and procedures for evaluating individuals' and families' eligibility for assistance under Emergency Solutions Grant (ESG);

(ii) Standards for targeting and providing essential services related to street outreach;

(iii) Policies and procedures for admission, diversion, referral, and discharge by emergency shelters assisted under ESG, including standards regarding length of stay, if any, and safeguards to meet the safety and shelter needs of special populations, *e.g.*, victims of domestic violence, dating violence, sexual assault, and stalking; and individuals and families who have the highest barriers to housing and are likely to be homeless the longest;

(iv) Policies and procedures for assessing, prioritizing, and reassessing individuals' and families' needs for essential services related to emergency shelter;

(v) Policies and procedures for coordination among emergency shelter providers, essential services providers, homelessness prevention, and rapid re-housing assistance providers; other homeless assistance providers; and mainstream service and housing providers (see § 576.400(b) and (c) for a list of programs with which ESG-funded

activities must be coordinated and integrated to the maximum extent practicable);

(vi) Policies and procedures for determining and prioritizing which eligible families and individuals will receive homelessness prevention assistance and which eligible families and individuals will receive rapid re-housing assistance;

(vii) Standards for determining what percentage or amount of rent and utilities costs each program participant must pay while receiving homelessness prevention or rapid re-housing assistance;

(viii) Standards for determining how long a particular program participant will be provided with rental assistance and whether and how the amount of that assistance will be adjusted over time; and

(ix) Standards for determining the type, amount, and duration of housing stabilization and/or relocation services to provide to a program participant, including the limits, if any, on the homelessness prevention or rapid re-housing assistance that each program participant may receive, such as the maximum amount of assistance, maximum number of months the program participant receive assistance; or the maximum number of times the program participant may receive assistance.

(f) *Participation in HMIS.* The recipient must ensure that data on all persons served and all activities assisted under ESG are entered into the applicable community-wide HMIS in the area in which those persons and activities are located, or a comparable database, in accordance with HUD's standards on participation, data collection, and reporting under a local HMIS. If the subrecipient is a victim service provider or a legal services provider, it may use a comparable database that collects client-level data over time (*i.e.*, longitudinal data) and generates unduplicated aggregate reports based on the data. Information entered into a comparable database must not be entered directly into or provided to an HMIS.

§ 576.401 Evaluation of program participant eligibility and needs.

(a) *Evaluations.* The recipient or its subrecipient must conduct an initial evaluation to determine the eligibility of each individual or family's eligibility for ESG assistance and the amount and types of assistance the individual or family needs to regain stability in permanent housing. These evaluations must be conducted in accordance with the centralized or coordinated

assessment requirements set forth under § 576.400(d) and the written standards established under § 576.400(e).

(b) *Re-evaluations for homelessness prevention and rapid re-housing assistance.* (1) The recipient or subrecipient must re-evaluate the program participant's eligibility and the types and amounts of assistance the program participant needs not less than once every 3 months for program participants receiving homelessness prevention assistance, and not less than once annually for program participants receiving rapid re-housing assistance. At a minimum, each re-evaluation of eligibility must establish that:

(i) The program participant does not have an annual income that exceeds 30 percent of median family income for the area, as determined by HUD; and

(ii) The program participant lacks sufficient resources and support networks necessary to retain housing without ESG assistance.

(2) The recipient or subrecipient may require each program participant receiving homelessness prevention or rapid re-housing assistance to notify the recipient or subrecipient regarding changes in the program participant's income or other circumstances (e.g., changes in household composition) that affect the program participant's need for assistance under ESG. When notified of a relevant change, the recipient or subrecipient must re-evaluate the program participant's eligibility and the amount and types of assistance the program participant needs.

(c) *Annual income.* When determining the annual income of an individual or family, the recipient or subrecipient must use the standard for calculating annual income under 24 CFR 5.609.

(d) *Connecting program participants to mainstream and other resources.* The recipient and its subrecipients must assist each program participant, as needed, to obtain:

(1) Appropriate supportive services, including assistance in obtaining permanent housing, medical health treatment, mental health treatment, counseling, supervision, and other services essential for achieving independent living; and

(2) Other Federal, State, local, and private assistance available to assist the program participant in obtaining housing stability, including:

(i) Medicaid (42 CFR chapter IV, subchapter C);

(ii) Supplemental Nutrition Assistance Program (7 CFR parts 271–283);

(iii) Women, Infants and Children (WIC) (7 CFR part 246);

(iv) Federal-State Unemployment Insurance Program (20 CFR parts 601–603, 606, 609, 614–617, 625, 640, 650);

(v) Social Security Disability Insurance (SSDI) (20 CFR part 404);

(vi) Supplemental Security Income (SSI) (20 CFR part 416);

(vii) Child and Adult Care Food Program (42 U.S.C. 1766(t) (7 CFR part 226));

(viii) Other assistance available under the programs listed in § 576.400(c).

(e) *Housing stability case management.* (1) While providing homelessness prevention or rapid re-housing assistance to a program participant, the recipient or subrecipient must:

(i) Require the program participant to meet with a case manager not less than once per month to assist the program participant in ensuring long-term housing stability; and

(ii) Develop a plan to assist the program participant to retain permanent housing after the ESG assistance ends, taking into account all relevant considerations, such as the program participant's current or expected income and expenses; other public or private assistance for which the program participant will be eligible and likely to receive; and the relative affordability of available housing in the area.

(2) The recipient or subrecipient is exempt from the requirement under paragraph (e)(1)(i) of this section if the Violence Against Women Act of 1994 (42 U.S.C. 13701 *et seq.*) or the Family Violence Prevention and Services Act (42 U.S.C. 10401 *et seq.*) prohibits that recipient or subrecipient from making its shelter or housing conditional on the participant's acceptance of services.

§ 576.402 Terminating assistance.

(a) *In general.* If a program participant violates program requirements, the recipient or subrecipient may terminate the assistance in accordance with a formal process established by the recipient or subrecipient that recognizes the rights of individuals affected. The recipient or subrecipient must exercise judgment and examine all extenuating circumstances in determining when violations warrant termination so that a program participant's assistance is terminated only in the most severe cases.

(b) *Program participants receiving rental assistance or housing relocation and stabilization services.* To terminate rental assistance or housing relocation and stabilization services to a program participant, the required formal process, at a minimum, must consist of:

(1) Written notice to the program participant containing a clear statement of the reasons for termination;

(2) A review of the decision, in which the program participant is given the opportunity to present written or oral objections before a person other than the person (or a subordinate of that person) who made or approved the termination decision; and

(3) Prompt written notice of the final decision to the program participant.

(c) *Ability to provide further assistance.* Termination under this section does not bar the recipient or subrecipient from providing further assistance at a later date to the same family or individual.

§ 576.403 Shelter and housing standards.

(a) *Lead-based paint remediation and disclosure.* The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations in 24 CFR part 35, subparts A, B, H, J, K, M, and R apply to all shelters assisted under ESG program and all housing occupied by program participants.

(b) *Minimum standards for emergency shelters.* Any building for which Emergency Solutions Grant (ESG) funds are used for conversion, major rehabilitation, or other renovation, must meet state or local government safety and sanitation standards, as applicable, and the following minimum safety, sanitation, and privacy standards. Any emergency shelter that receives assistance for shelter operations must also meet the following minimum safety, sanitation, and privacy standards. The recipient may also establish standards that exceed or add to these minimum standards.

(1) *Structure and materials.* The shelter building must be structurally sound to protect residents from the elements and not pose any threat to health and safety of the residents. Any renovation (including major rehabilitation and conversion) carried out with ESG assistance must use Energy Star and WaterSense products and appliances.

(2) *Access.* The shelter must be accessible in accordance with Section 504 of the Rehabilitation Act (29 U.S.C. 794) and implementing regulations at 24 CFR part 8; the Fair Housing Act (42 U.S.C. 3601 *et seq.*) and implementing regulations at 24 CFR part 100; and Title II of the Americans with Disabilities Act (42 U.S.C. 12131 *et seq.*) and 28 CFR part 35; where applicable.

(3) *Space and security.* Except where the shelter is intended for day use only,

the shelter must provide each program participant in the shelter with an acceptable place to sleep and adequate space and security for themselves and their belongings.

(4) *Interior air quality.* Each room or space within the shelter must have a natural or mechanical means of ventilation. The interior air must be free of pollutants at a level that might threaten or harm the health of residents.

(5) *Water supply.* The shelter's water supply must be free of contamination.

(6) *Sanitary facilities.* Each program participant in the shelter must have access to sanitary facilities that are in proper operating condition, are private, and are adequate for personal cleanliness and the disposal of human waste.

(7) *Thermal environment.* The shelter must have any necessary heating/cooling facilities in proper operating condition.

(8) *Illumination and electricity.* The shelter must have adequate natural or artificial illumination to permit normal indoor activities and support health and safety. There must be sufficient electrical sources to permit the safe use of electrical appliances in the shelter.

(9) *Food preparation.* Food preparation areas, if any, must contain suitable space and equipment to store, prepare, and serve food in a safe and sanitary manner.

(10) *Sanitary conditions.* The shelter must be maintained in a sanitary condition.

(11) *Fire safety.* There must be at least one working smoke detector in each occupied unit of the shelter. Where possible, smoke detectors must be located near sleeping areas. The fire alarm system must be designed for hearing-impaired residents. All public areas of the shelter must have at least one working smoke detector. There must also be a second means of exiting the building in the event of fire or other emergency.

(c) *Minimum standards for permanent housing.* The recipient or subrecipient cannot use ESG funds to help a program participant remain or move into housing that does not meet the minimum habitability standards provided in this paragraph (c). The recipient may also establish standards that exceed or add to these minimum standards.

(1) *Structure and materials.* The structures must be structurally sound to protect residents from the elements and not pose any threat to the health and safety of the residents.

(2) *Space and security.* Each resident must be provided adequate space and security for themselves and their

belongings. Each resident must be provided an acceptable place to sleep.

(3) *Interior air quality.* Each room or space must have a natural or mechanical means of ventilation. The interior air must be free of pollutants at a level that might threaten or harm the health of residents.

(4) *Water supply.* The water supply must be free from contamination.

(5) *Sanitary facilities.* Residents must have access to sufficient sanitary facilities that are in proper operating condition, are private, and are adequate for personal cleanliness and the disposal of human waste.

(6) *Thermal environment.* The housing must have any necessary heating/cooling facilities in proper operating condition.

(7) *Illumination and electricity.* The structure must have adequate natural or artificial illumination to permit normal indoor activities and support health and safety. There must be sufficient electrical sources to permit the safe use of electrical appliances in the structure.

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

(9) *Sanitary conditions.* The housing must be maintained in a sanitary condition.

(10) *Fire safety.* (i) There must be a second means of exiting the building in the event of fire or other emergency.

(ii) Each unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each occupied level of the unit. Smoke detectors must be located, to the extent practicable, in a hallway adjacent to a bedroom. If the unit is occupied by hearing impaired persons, smoke detectors must have an alarm system designed for hearing-impaired persons in each bedroom occupied by a hearing-impaired person.

(iii) The public areas of all housing must be equipped with a sufficient number, but not less than one for each area, of battery-operated or hard-wired smoke detectors. Public areas include, but are not limited to, laundry rooms, community rooms, day care centers, hallways, stairwells, and other common areas.

§ 576.404 Conflicts of interest.

(a) *Organizational conflicts of interest.* The provision of any type or amount of ESG assistance may not be conditioned on an individual's or family's acceptance or occupancy of emergency shelter or housing owned by the recipient, the subrecipient, or a parent or subsidiary of the subrecipient. No

subrecipient may, with respect to individuals or families occupying housing owned by the subrecipient, or any parent or subsidiary of the subrecipient, carry out the initial evaluation required under § 576.401 or administer homelessness prevention assistance under § 576.103.

(b) *Individual conflicts of interest.* For the procurement of goods and services, the recipient and its subrecipients must comply with the codes of conduct and conflict of interest requirements under 24 CFR 85.36 (for governments) and 24 CFR 84.42 (for private nonprofit organizations). For all other transactions and activities, the following restrictions apply:

(1) *Conflicts prohibited.* No person described in paragraph (b)(2) of this section who exercises or has exercised any functions or responsibilities with respect to activities assisted under the ESG program, or who is in a position to participate in a decision-making process or gain inside information with regard to activities assisted under the program, may obtain a financial interest or benefit from an assisted activity; have a financial interest in any contract, subcontract, or agreement with respect to an assisted activity; or have a financial interest in the proceeds derived from an assisted activity, either for him or herself or for those with whom he or she has family or business ties, during his or her tenure or during the one-year period following his or her tenure.

(2) *Persons covered.* The conflict-of-interest provisions of paragraph (b)(1) of this section apply to any person who is an employee, agent, consultant, officer, or elected or appointed official of the recipient or its subrecipients.

(3) *Exceptions.* Upon the written request of the recipient, HUD may grant an exception to the provisions of this subsection on a case-by-case basis, taking into account the cumulative effects of the criteria in paragraph (b)(3)(ii) of this section, provided that the recipient has satisfactorily met the threshold requirements of paragraph (b)(3)(i) of this section.

(i) *Threshold requirements.* HUD will consider an exception only after the recipient has provided the following documentation:

(A) If the recipient or subrecipient is a government, disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and

(B) An opinion of the recipient's attorney that the interest for which the

exception is sought would not violate state or local law.

(ii) *Factors to be considered for exceptions.* In determining whether to grant a requested exception after the recipient has satisfactorily met the threshold requirements under paragraph (b)(3)(i) of this section, HUD must conclude that the exception will serve to further the purposes of the ESG program and the effective and efficient administration of the recipient's or subrecipient's program or project, taking into account the cumulative effect of the following factors, as applicable:

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

(B) Whether an opportunity was provided for open competitive bidding or negotiation;

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

(D) Whether the interest or benefit was present before the affected person was in the position described in paragraph (b)(1) of this section;

(E) Whether undue hardship results to the recipient, the subrecipient, or the person affected, when weighed against the public interest served by avoiding the prohibited conflict; and

(F) Any other relevant considerations.

(c) *Contractors.* All contractors of the recipient or subrecipient must comply with the same requirements that apply to subrecipients under this section.

§ 576.405 Homeless participation.

(a) Unless the recipient is a State, the recipient must provide for the participation of not less than one homeless individual or formerly homeless individual on the board of directors or other equivalent policy-making entity of the recipient, to the extent that the entity considers and makes policies and decisions regarding any facilities, services, or other assistance that receive funding under Emergency Solutions Grant (ESG).

(b) If the recipient is unable to meet requirement under paragraph (a), it must instead develop and implement a plan to consult with homeless or formerly homeless individuals in considering and making policies and decisions regarding any facilities, services, or other assistance that receive funding under Emergency Solutions Grant (ESG). The plan must be included in the annual action plan required under 24 CFR 91.220.

(c) To the maximum extent practicable, the recipient or subrecipient must involve homeless individuals and families in constructing, renovating, maintaining, and operating facilities assisted under ESG, in providing services assisted under ESG, and in providing services for occupants of facilities assisted under ESG. This involvement may include employment or volunteer services.

§ 576.406 Faith-based activities.

(a) Organizations that are religious or faith-based are eligible, on the same basis as any other organization, to receive ESG funds. Neither the Federal Government nor a State or local government receiving funds under ESG shall discriminate against an organization on the basis of the organization's religious character or affiliation.

(b) Organizations that are directly funded under the ESG program may not engage in inherently religious activities, such as worship, religious instruction, or proselytization as part of the programs or services funded under ESG. If an organization conducts these activities, the activities must be offered separately, in time or location, from the programs or services funded under ESG, and participation must be voluntary for program participants.

(c) Any religious organization that receives ESG funds retains its independence from Federal, State, and local governments, and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, provided that the religious organization does not use direct ESG funds to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, faith-based organizations may use space in their facilities to provide ESG-funded services, without removing religious art, icons, scriptures, or other religious symbols. In addition, an ESG-funded religious organization retains its authority over its internal governance, and the organization may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

(d) An organization that receives ESG funds shall not, in providing ESG assistance, discriminate against a program participant or prospective program participant on the basis of religion or religious belief.

(e) ESG funds may not be used for the rehabilitation of structures to the extent

that those structures are used for inherently religious activities. Solutions ESG funds may be used for the rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under the ESG program. Where a structure is used for both eligible and inherently religious activities, ESG funds may not exceed the cost of those portions of the rehabilitation that are attributable to eligible activities in accordance with the cost accounting requirements applicable to ESG funds. Sanctuaries, chapels, or other rooms that an ESG-funded religious congregation uses as its principal place of worship, however, are ineligible for funded improvements under the program. Disposition of real property after the term of the grant, or any change in use of the property during the term of the grant, is subject to government-wide regulations governing real property disposition (*see* 24 CFR parts 84 and 85).

(f) If the recipient or a subrecipient that is a local government voluntarily contributes its own funds to supplement federally funded activities, the recipient or subrecipient has the option to segregate the Federal funds or commingle them. However, if the funds are commingled, this section applies to all of the commingled funds.

§ 576.407 Other Federal requirements.

(a) *General.* The requirements in 24 CFR part 5, subpart A are applicable, including the nondiscrimination and equal opportunity requirements at 24 CFR 5.105(a). Section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u, and implementing regulations at 24 CFR part 135 apply, except that homeless individuals have priority over other Section 3 residents in accordance with § 576.405(c).

(b) *Affirmative outreach.* The recipient or subrecipient must make known that use of the facilities, assistance, and services are available to all on a nondiscriminatory basis. If it is unlikely that the procedures that the recipient or subrecipient intends to use to make known the availability of the facilities, assistance, and services will to reach persons of any particular race, color, religion, sex, age, national origin, familial status, or disability who may qualify for those facilities and services, the recipient or subrecipient must establish additional procedures that ensure that those persons are made aware of the facilities, assistance, and services. The recipient and its subrecipients must take appropriate steps to ensure effective communication with persons with disabilities including, but not limited to, adopting procedures

that will make available to interested persons information concerning the location of assistance, services, and facilities that are accessible to persons with disabilities. Consistent with Title VI and Executive Order 13166, recipients and subrecipients are also required to take reasonable steps to ensure meaningful access to programs and activities for limited English proficiency (LEP) persons.

(c) *Uniform Administrative Requirements.* The requirements of 24 CFR part 85 apply to the recipient and subrecipients that are units of general purpose local government, except that 24 CFR 85.24 and 85.42 do not apply, and program income is to be used as match under 24 CFR 85.25(g). The requirements of 24 CFR part 84 apply to subrecipients that are private nonprofit organizations, except that 24 CFR 84.23 and 84.53 do not apply, and program income is to be used as the nonfederal share under 24 CFR 84.24(b). These regulations include allowable costs and non-Federal audit requirements.

(d) *Environmental review responsibilities.* (1) Activities under this part are subject to environmental review by HUD under 24 CFR part 50. The recipient shall supply all available, relevant information necessary for HUD to perform for each property any environmental review required by 24 CFR part 50. The recipient also shall carry out mitigating measures required by HUD or select alternate eligible property. HUD may eliminate from consideration any application that would require an Environmental Impact Statement (EIS).

(2) The recipient or subrecipient, or any contractor of the recipient or subrecipient, may not acquire, rehabilitate, convert, lease, repair, dispose of, demolish, or construct property for a project under this part, or commit or expend HUD or local funds for eligible activities under this part, until HUD has performed an environmental review under 24 CFR part 50 and the recipient has received HUD approval of the property.

(e) *Davis-Bacon Act.* The provisions of the Davis-Bacon Act (40 U.S.C. 276a to 276a-5) do not apply to the ESG program.

(f) *Procurement of Recovered Materials.* The recipient and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered

materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

§ 576.408 Displacement, relocation, and acquisition.

(a) *Minimizing displacement.* Consistent with the other goals and objectives of Emergency Solutions Grant (ESG), the recipient and its subrecipients must assure that they have taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of a project assisted under Emergency Solutions Grant (ESG).

(b) *Temporary relocation not permitted.* No tenant-occupant of housing (a dwelling unit) that is converted into an emergency shelter may be required to relocate temporarily for a project assisted with ESG funds, or be required to move to another unit in the same building/complex. When a tenant moves for a project assisted with ESG funds under conditions that trigger the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA), 42 U.S.C. 4601-4655, as described in paragraph (c) of this section, the tenant should be treated as permanently displaced and offered relocation assistance and payments consistent with that paragraph.

(c) *Relocation assistance for displaced persons.* (1) *In general.* A displaced person (defined in paragraph (c)(2) of this section) must be provided relocation assistance at the levels described in, and in accordance with, the URA and 49 CFR part 24. A displaced person must be advised of his or her rights under the Fair Housing Act (42 U.S.C. 3601 *et seq.*). Whenever possible, minority persons shall be given reasonable opportunities to relocate to comparable and suitable decent, safe, and sanitary replacement dwellings, not located in an area of minority concentration, that are within their financial means. This policy, however, does not require providing a person a larger payment than is necessary to enable a person to relocate to a comparable replacement dwelling. (See 49 CFR 24.205(c)(2)(ii)(D).) As required by Section 504 of the Rehabilitation Act (29 U.S.C. 794) and

49 CFR part 24, replacement dwellings must also contain the accessibility features needed by displaced persons with disabilities.

(2) *Displaced Person.* (i) For purposes of paragraph (c) of this section, the term "displaced person" means any person (family, individual, business, nonprofit organization, or farm, including any corporation, partnership, or association) that moves from real property, or moves personal property from real property, permanently, as a direct result of acquisition, rehabilitation, or demolition for a project assisted under the ESG program. This includes any permanent, involuntary move for an assisted project, including any permanent move from the real property that is made:

(A) After the owner (or person in control of the site) issues a notice to move permanently from the property or refuses to renew an expiring lease, if the move occurs on or after:

(I) The date of the submission by the recipient (or subrecipient, as applicable) of an application for assistance to HUD (or the recipient, as applicable) that is later approved and funded if the recipient (or subrecipient, as applicable) has site control as evidenced by a deed, sales contract, or option contract to acquire the property; or

(II) The date on which the recipient (or subrecipient, as applicable) selects the applicable site, if the recipient (or subrecipient, as applicable) does not have site control at the time of the application, provided that the recipient (or subrecipient, as applicable) eventually obtains control over the site;

(B) Before the date described in paragraph (c)(2)(i)(A) of this section, if the recipient or HUD determines that the displacement resulted directly from acquisition, rehabilitation, or demolition for the project; or

(C) By a tenant-occupant of a dwelling unit and the tenant moves after execution of the agreement covering the acquisition, rehabilitation, or demolition of the property for the project.

(ii) Notwithstanding paragraph (c)(2)(i) of this section, a person does not qualify as a displaced person if:

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

(B) The person moved into the property after the submission of the

application but, before signing a lease and commencing occupancy, was provided written notice of the project, its possible impact on the person (*e.g.*, the person may be displaced), and the fact that the person would not qualify as a “displaced person” (or for any assistance under this section) as a result of the project;

(C) The person is ineligible under 49 CFR 24.2(a)(9)(ii); or

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

(iii) The recipient or subrecipient may, at any time, request that HUD to determine whether a displacement is or would be covered by this rule.

(3) *Initiation of negotiations.* For purposes of determining the type of replacement housing payment assistance to be provided to a displaced person pursuant to this section:

(i) If the displacement is the direct result of privately undertaken rehabilitation, demolition, or acquisition of the real property, “initiation of negotiations” means the execution of the agreement between the recipient and the subrecipient or the agreement between the recipient (or subrecipient, as applicable) and the person owning or controlling the property;

(ii) If site control is only evidenced by an option contract to acquire the property, the “initiation of negotiations” does not become effective until the execution of a written agreement that creates a legally enforceable commitment to proceed with the purchase, such as a sales contract.

(d) *Real property acquisition requirements.* The acquisition of real property, whether funded privately or publicly, for a project assisted with Emergency Solutions Grant (ESG) funds is subject to the URA and Federal governmentwide regulations at 49 CFR part 24, subpart B.

(e) *Appeals.* A person who disagrees with the recipient’s (or subrecipient’s, if applicable) determination concerning whether the person qualifies as a displaced person, or the amount of relocation assistance for which the person may be eligible, may file a written appeal of that determination with the recipient under 49 CFR 24.10. A low-income person who disagrees with the recipient’s determination may submit a written request for review of that determination by the appropriate HUD field office.

Subpart F—Grant Administration

§ 576.500 Recordkeeping and reporting requirements.

(a) *In general.* The recipient must have policies and procedures to ensure the requirements of this part are met. The policies and procedures must be established in writing and implemented by the recipient and its subrecipients to ensure that ESG funds are used in accordance with the requirements. In addition, sufficient records must be established and maintained to enable the recipient and HUD to determine whether ESG requirements are being met.

(b) *Homeless status.* The recipient must maintain and follow written intake procedures to ensure compliance with the homeless definition in § 576.2. The procedures must require documentation at intake of the evidence relied upon to establish and verify homeless status. The procedures must establish the order of priority for obtaining evidence as third-party documentation first, intake worker observations second, and certification from the person seeking assistance third. However, lack of third-party documentation must not prevent an individual or family from being immediately admitted to emergency shelter, receiving street outreach services, or being immediately admitted to shelter or receiving services provided by a victim service provider. Records contained in an HMIS or comparable database used by victim service or legal service providers are acceptable evidence of third-party documentation and intake worker observations if the HMIS retains an auditable history of all entries, including the person who entered the data, the date of entry, and the change made; and if the HMIS prevents overrides or changes of the dates on which entries are made.

(1) If the individual or family qualifies as homeless under paragraph (1)(i) or (ii) of the homeless definition in § 576.2, acceptable evidence includes a written observation by an outreach worker of the conditions where the individual or family was living, a written referral by another housing or service provider, or a certification by the individual or head of household seeking assistance.

(2) If the individual qualifies as homeless under paragraph (1)(iii) of the homeless definition in § 576.2, because he or she resided in an emergency shelter or place not meant for human habitation and is exiting an institution where he or she resided for 90 days or less, acceptable evidence includes the evidence described in paragraph (b)(1) of this section and one of the following:

(i) Discharge paperwork or a written or oral referral from a social worker, case manager, or other appropriate official of the institution, stating the beginning and end dates of the time residing in the institution. All oral statements must be recorded by the intake worker; or

(ii) Where the evidence in paragraph (b)(2)(i) of this section is not obtainable, a written record of the intake worker’s due diligence in attempting to obtain the evidence described in paragraph (b)(2)(i) and a certification by the individual seeking assistance that states he or she is exiting or has just exited an institution where he or she resided for 90 days or less.

(3) If the individual or family qualifies as homeless under paragraph (2) of the homeless definition in § 576.2, because the individual or family will imminently lose their housing, the evidence must include:

(i)(A) A court order resulting from an eviction action that requires the individual or family to leave their residence within 14 days after the date of their application for homeless assistance; or the equivalent notice under applicable state law, a Notice to Quit, or a Notice to Terminate issued under state law;

(B) For individuals and families whose primary nighttime residence is a hotel or motel room not paid for by charitable organizations or federal, state, or local government programs for low-income individuals, evidence that the individual or family lacks the resources necessary to reside there for more than 14 days after the date of application for homeless assistance; or

(C) An oral statement by the individual or head of household that the owner or renter of the housing in which they currently reside will not allow them to stay for more than 14 days after the date of application for homeless assistance. The intake worker must record the statement and certify that it was found credible. To be found credible, the oral statement must either: (I) be verified by the owner or renter of the housing in which the individual or family resides at the time of application for homeless assistance and documented by a written certification by the owner or renter or by the intake worker’s recording of the owner or renter’s oral statement; or (II) if the intake worker is unable to contact the owner or renter, be documented by a written certification by the intake worker of his or her due diligence in attempting to obtain the owner or renter’s verification and the written certification by the individual or head of

household seeking assistance that his or her statement was true and complete;

(ii) Certification by the individual or head of household that no subsequent residence has been identified; and

(iii) Certification or other written documentation that the individual or family lacks the resources and support networks needed to obtain other permanent housing.

(4) If the individual or family qualifies as homeless under paragraph (3) of the homeless definition in § 576.2, because the individual or family does not otherwise qualify as homeless under the homeless definition but is an unaccompanied youth under 25 years of age, or homeless family with one or more children or youth, and is defined as homeless under another Federal statute or section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), the evidence must include:

(i) For paragraph (3)(i) of the homeless definition in § 576.2, certification of homeless status by the local private nonprofit organization or state or local governmental entity responsible for administering assistance under the Runaway and Homeless Youth Act (42 U.S.C. 5701 *et seq.*), the Head Start Act (42 U.S.C. 9831 *et seq.*), subtitle N of the Violence Against Women Act of 1994 (42 U.S.C. 14043e *et seq.*), section 330 of the Public Health Service Act (42 U.S.C. 254b), the Food and Nutrition Act of 2008 (7 U.S.C. 2011 *et seq.*), section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786), or subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 *et seq.*), as applicable;

(ii) For paragraph (3)(ii) of the homeless definition in § 576.2, referral by a housing or service provider, written observation by an outreach worker, or certification by the homeless individual or head of household seeking assistance;

(iii) For paragraph (3)(iii) of the homeless definition in § 576.2, certification by the individual or head of household and any available supporting documentation that the individual or family moved two or more times during the 60-day period immediately preceding the date of application for homeless assistance, including: recorded statements or records obtained from each owner or renter of housing, provider of shelter or housing, or social worker, case worker, or other appropriate official of a hospital or institution in which the individual or family resided; or, where these statements or records are unobtainable, a written record of the intake worker's due diligence in attempting to obtain these statements or records. Where a

move was due to the individual or family fleeing domestic violence, dating violence, sexual assault, or stalking, then the intake worker may alternatively obtain a written certification from the individual or head of household seeking assistance that they were fleeing that situation and that they resided at that address; and

(iv) For paragraph (3)(iv) of the homeless definition in § 576.2, written diagnosis from a professional who is licensed by the state to diagnose and treat that condition (or intake staff-recorded observation of disability that within 45 days of date of the application for assistance is confirmed by a professional who is licensed by the state to diagnose and treat that condition); employment records; department of corrections records; literacy, English proficiency tests; or other reasonable documentation of the conditions required under paragraph (3)(iv) of the homeless definition.

(5) If the individual or family qualifies under paragraph (4) of the homeless definition in § 576.2, because the individual or family is fleeing domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions related to violence, then acceptable evidence includes an oral statement by the individual or head of household seeking assistance that they are fleeing that situation, that no subsequent residence has been identified and that they lack the resources or support networks, *e.g.*, family, friends, faith-based or other social networks, needed to obtain other housing. If the individual or family is receiving shelter or services provided by a victim service provider, the oral statement must be documented by either a certification by the individual or head of household; or a certification by the intake worker. Otherwise, the oral statement that the individual or head of household seeking assistance has not identified a subsequent residence and lacks the resources or support networks, *e.g.*, family, friends, faith-based or other social networks, needed to obtain housing must be documented by a certification by the individual or head of household that the oral statement is true and complete, and, where the safety of the individual or family would not be jeopardized, the domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening condition must be verified by a written observation by the intake worker or a written referral by a housing or service provider, social worker, legal assistance provider, health-care provider, law enforcement agency, legal assistance provider, pastoral counselor, or any

other organization from whom the individual or head of household has sought assistance for domestic violence, dating violence, sexual assault, or stalking. The written referral or observation need only include the minimum amount of information necessary to document that the individual or family is fleeing, or attempting to flee domestic violence, dating violence, sexual assault, and stalking.

(c) *At risk of homelessness status.* For each individual or family who receives Emergency Solutions Grant (ESG) homelessness prevention assistance, the records must include the evidence relied upon to establish and verify the individual or family's "at risk of homelessness" status. This evidence must include an intake and certification form that meets HUD specifications and is completed by the recipient or subrecipient. The evidence must also include:

(1) If the program participant meets the criteria under paragraph (1) of the "at risk of homelessness" definition in § 576.2:

(i) The documentation specified under this section for determining annual income;

(ii) The program participant's certification on a form specified by HUD that the program participant has insufficient financial resources and support networks; *e.g.*, family, friends, faith-based or other social networks, immediately available to attain housing stability and meets one or more of the conditions under paragraph (1)(iii) of the definition of "at risk of homelessness" in § 576.2;

(iii) The most reliable evidence available to show that the program participant does not have sufficient resources or support networks; *e.g.*, family, friends, faith-based or other social networks, immediately available to prevent them from moving to an emergency shelter or another place described in paragraph (1) of the "homeless" definition. Acceptable evidence includes:

(A) Source documents (*e.g.*, notice of termination from employment, unemployment compensation statement, bank statement, health-care bill showing arrears, utility bill showing arrears);

(B) To the extent that source documents are unobtainable, a written statement by the relevant third party (*e.g.*, former employer, public administrator, relative) or the written certification by the recipient's or subrecipient's intake staff of the oral verification by the relevant third party that the applicant meets one or both of

the criteria under paragraph (1)(ii) of the definition of “at risk of homelessness” in § 576.2; or

(C) To the extent that source documents and third-party verification are unobtainable, a written statement by the recipient’s or subrecipient’s intake staff describing the efforts taken to obtain the required evidence; and

(iv) The most reliable evidence available to show that the program participant meets one or more of the conditions under paragraph (1)(iii) of the definition of “at risk of homelessness” in § 576.2. Acceptable evidence includes:

(A) Source documents that evidence one or more of the conditions under paragraph (1)(iii) of the definition (*e.g.*, eviction notice, notice of termination from employment, bank statement);

(B) To the extent that source documents are unobtainable, a written statement by the relevant third party (*e.g.*, former employer, owner, primary leaseholder, public administrator, hotel or motel manager) or the written certification by the recipient’s or subrecipient’s intake staff of the oral verification by the relevant third party that the applicant meets one or more of the criteria under paragraph (1)(iii) of the definition of “at risk of homelessness”; or

(C) To the extent that source documents and third-party verification are unobtainable, a written statement by the recipient’s or subrecipient’s intake staff that the staff person has visited the applicant’s residence and determined that the applicant meets one or more of the criteria under paragraph (1)(iii) of the definition or, if a visit is not practicable or relevant to the determination, a written statement by the recipient’s or subrecipient’s intake staff describing the efforts taken to obtain the required evidence; or

(2) If the program participant meets the criteria under paragraph (2) or (3) of the “at risk of homelessness” definition in § 576.2, certification of the child or youth’s homeless status by the agency or organization responsible for administering assistance under the Runaway and Homeless Youth Act (42 U.S.C. 5701 *et seq.*), the Head Start Act (42 U.S.C. 9831 *et seq.*), subtitle N of the Violence Against Women Act of 1994 (42 U.S.C. 14043e *et seq.*), section 330 of the Public Health Service Act (42 U.S.C. 254b), the Food and Nutrition Act of 2008 (7 U.S.C. 2011 *et seq.*), section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786) or subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 *et seq.*), as applicable.

(d) *Determinations of ineligibility.* For each individual and family determined ineligible to receive Emergency Solutions Grant (ESG) assistance, the record must include documentation of the reason for that determination.

(e) *Annual income.* For each program participant who receives homelessness prevention assistance, or who receives rapid re-housing assistance longer than one year, the following documentation of annual income must be maintained:

(1) Income evaluation form containing the minimum requirements specified by HUD and completed by the recipient or subrecipient; and

(2) Source documents for the assets held by the program participant and income received over the most recent period for which representative data is available before the date of the evaluation (*e.g.*, wage statement, unemployment compensation statement, public benefits statement, bank statement);

(3) To the extent that source documents are unobtainable, a written statement by the relevant third party (*e.g.*, employer, government benefits administrator) or the written certification by the recipient’s or subrecipient’s intake staff of the oral verification by the relevant third party of the income the program participant received over the most recent period for which representative data is available; or

(4) To the extent that source documents and third party verification are unobtainable, the written certification by the program participant of the amount of income the program participant received for the most recent period representative of the income that the program participant is reasonably expected to receive over the 3-month period following the evaluation.

(f) *Program participant records.* In addition to evidence of homeless status or “at risk of homelessness” status, as applicable, records must be kept for each program participant that document:

(1) The services and assistance provided to that program participant, including, as applicable, the security deposit, rental assistance, and utility payments made on behalf of the program participant;

(2) Compliance with the applicable requirements for providing services and assistance to that program participant under the program components and eligible activities provisions at § 576.101 through § 576.106, the provision on determining eligibility and amount and type of assistance at § 576.401(a) and (b), and the provision on using

appropriate assistance and services at § 576.401(d) and (e); and

(3) Where applicable, compliance with the termination of assistance requirement in § 576.402.

(g) *Centralized or coordinated assessment systems and procedures.* The recipient and its subrecipients must keep documentation evidencing the use of, and written intake procedures for, the centralized or coordinated assessment system(s) developed by the Continuum of Care(s) in accordance with the requirements established by HUD.

(h) *Rental assistance agreements and payments.* The records must include copies of all leases and rental assistance agreements for the provision of rental assistance, documentation of payments made to owners for the provision of rental assistance, and supporting documentation for these payments, including dates of occupancy by program participants.

(i) *Utility allowance.* The records must document the monthly allowance for utilities (excluding telephone) used to determine compliance with the rent restriction.

(j) *Shelter and housing standards.* The records must include documentation of compliance with the shelter and housing standards in § 576.403, including inspection reports.

(k) *Emergency shelter facilities.* The recipient must keep records of the emergency shelters assisted under the ESG program, including the amount and type of assistance provided to each emergency shelter. As applicable, the recipient’s records must also include documentation of the value of the building before the rehabilitation of an existing emergency shelter or after the conversion of a building into an emergency shelter and copies of the recorded deed or use restrictions.

(l) *Services and assistance provided.* The recipient must keep records of the types of essential services, rental assistance, and housing stabilization and relocation services provided under the recipient’s program and the amounts spent on these services and assistance. The recipient and its subrecipients that are units of general purpose local government must keep records to demonstrate compliance with the maintenance of effort requirement, including records of the unit of the general purpose local government’s annual budgets and sources of funding for street outreach and emergency shelter services.

(m) *Coordination with Continuum(s) of Care and other programs.* The recipient and its subrecipients must document their compliance with the

requirements of § 576.400 for consulting with the Continuum(s) of Care and coordinating and integrating ESG assistance with programs targeted toward homeless people and mainstream service and assistance programs.

(n) *HMIS*. The recipient must keep records of the participation in HMIS or a comparable database by all projects of the recipient and its subrecipients.

(o) *Matching*. The recipient must keep records of the source and use of contributions made to satisfy the matching requirement in § 576.201. The records must indicate the particular fiscal year grant for which each matching contribution is counted. The records must show how the value placed on third-party, noncash contributions was derived. To the extent feasible, volunteer services must be supported by the same methods that the organization uses to support the allocation of regular personnel costs.

(p) *Conflicts of interest*. The recipient and its subrecipients must keep records to show compliance with the organizational conflicts-of-interest requirements in § 576.404(a), a copy of the personal conflicts of interest policy or codes of conduct developed and implemented to comply with the requirements in § 576.404(b), and records supporting exceptions to the personal conflicts of interest prohibitions.

(q) *Homeless participation*. The recipient must document its compliance with the homeless participation requirements under § 576.405.

(r) *Faith-based activities*. The recipient and its subrecipients must document their compliance with the faith-based activities requirements under § 576.406.

(s) *Other Federal requirements*. The recipient and its subrecipients must document their compliance with the Federal requirements in § 576.407, as applicable, including:

(1) Records demonstrating compliance with the nondiscrimination and equal opportunity requirements under § 576.407(a), including data concerning race, ethnicity, disability status, sex, and family characteristics of persons and households who are applicants for, or program participants in, any program or activity funded in whole or in part with ESG funds and the affirmative outreach requirements in § 576.407(b).

(2) Records demonstrating compliance with the uniform administrative requirements in 24 CFR part 85 (for governments) and 24 CFR part 84 (for nonprofit organizations).

(3) Records demonstrating compliance with the environmental review

requirements, including flood insurance requirements.

(4) Certifications and disclosure forms required under the lobbying and disclosure requirements in 24 CFR part 87.

(t) *Relocation*. The records must include documentation of compliance with the displacement, relocation, and acquisition requirements in § 576.408.

(u) *Financial records*. (1) The recipient must retain supporting documentation for all costs charged to the ESG grant.

(2) The recipient and its subrecipients must keep documentation showing that ESG grant funds were spent on allowable costs in accordance with the requirements for eligible activities under § 576.101-§ 576.109 and the cost principles in OMB Circulars A-87 (2 CFR part 225) and A-122 (2 CFR part 230).

(3) The recipient and its subrecipients must retain records of the receipt and use of program income.

(4) The recipient must keep documentation of compliance with the expenditure limits in § 576.100 and the expenditure deadline in § 576.203.

(v) *Subrecipients and contractors*. (1) The recipient must retain copies of all solicitations and agreements with subrecipients, records of all payment requests by and dates of payments made to subrecipients, and documentation of all monitoring and sanctions of subrecipients, as applicable. If the recipient is a State, the recipient must keep records of each recapture and distribution of recaptured funds under § 576.501.

(2) The recipient and its subrecipients must retain copies of all procurement contracts and documentation of compliance with the procurement requirements in 24 CFR 85.36 and 24 CFR 84.40-84.48.

(3) The recipient must ensure that its subrecipients comply with the recordkeeping requirements specified by the recipient and HUD notice or regulations.

(w) *Other records specified by HUD*. The recipient must keep other records specified by HUD.

(x) *Confidentiality*. (1) The recipient and its subrecipients must develop and implement written procedures to ensure:

(i) All records containing personally identifying information (as defined in HUD's standards for participation, data collection, and reporting in a local HMIS) of any individual or family who applies for and/or receives ESG assistance will be kept secure and confidential;

(ii) The address or location of any domestic violence, dating violence, sexual assault, or stalking shelter project assisted under the ESG will not be made public, except with written authorization of the person responsible for the operation of the shelter; and

(iii) The address or location of any housing of a program participant will not be made public, except as provided under a preexisting privacy policy of the recipient or subrecipient and consistent with state and local laws regarding privacy and obligations of confidentiality.

(2) The confidentiality procedures of the recipient and its subrecipients must be in writing and must be maintained in accordance with this section.

(y) *Period of record retention*. All records pertaining to each fiscal year of ESG funds must be retained for the greater of 5 years or the period specified below. Copies made by microfilming, photocopying, or similar methods may be substituted for the original records.

(1) Documentation of each program participant's qualification as a family or individual at risk of homelessness or as a homeless family or individual and other program participant records must be retained for 5 years after the expenditure of all funds from the grant under which the program participant was served;

(2) Where ESG funds are used for the renovation of an emergency shelter involves costs charged to the ESG grant that exceed 75 percent of the value of the building before renovation, records must be retained until 10 years after the date that ESG funds are first obligated for the renovation; and

(3) Where ESG funds are used to convert a building into an emergency shelter and the costs charged to the ESG grant for the conversion exceed 75 percent of the value of the building after conversion, records must be retained until 10 years after the date that ESG funds are first obligated for the conversion.

(z) *Access to records*. (1) *Federal government rights*. Notwithstanding the confidentiality procedures established under paragraph (w) of this section, HUD, the HUD Office of the Inspector General, and the Comptroller General of the United States, or any of their authorized representatives, must have the right of access to all books, documents, papers, or other records of the recipient and its subrecipients that are pertinent to the ESG grant, in order to make audits, examinations, excerpts, and transcripts. These rights of access are not limited to the required retention period but last as long as the records are retained.

(2) *Public rights.* The recipient must provide citizens, public agencies, and other interested parties with reasonable access (consistent with state and local laws regarding privacy and obligations of confidentiality and the confidentiality requirements in this part) to records regarding any uses of ESG funds the recipient received during the preceding 5 years.

(aa) *Reports.* The recipient must collect and report data on its use of ESG funds in the Integrated Disbursement and Information System (IDIS) and other reporting systems, as specified by HUD. The recipient must also comply with the reporting requirements in 24 CFR parts 85 and 91 and the reporting requirements under the Federal Funding Accountability and Transparency Act of 2006, (31 U.S.C. 6101 note), which are set forth in Appendix A to 2 CFR part 170.

§ 576.501 Enforcement.

(a) *Performance reviews.*

(1) HUD will review the performance of each recipient in carrying out its responsibilities under this part whenever determined necessary by HUD, but at least annually. In conducting performance reviews, HUD will rely primarily on information obtained from the records and reports from the recipient and, when appropriate, its subrecipients, as well as information from onsite monitoring, audit reports, and information from IDIS and HMIS. Where applicable, HUD may also consider relevant information pertaining to the recipient's performance gained from other sources, including citizen comments, complaint determinations, and litigation. Reviews to determine compliance with specific requirements of this part will be conducted as necessary, with or without prior notice to the recipient.

(2) If HUD determines preliminarily that the recipient or one of its subrecipients has not complied with an ESG program requirement, HUD will give the recipient notice of this determination and an opportunity to demonstrate, within the time prescribed by HUD and on the basis of substantial facts and data, that the recipient has complied with Emergency Solutions Grant (ESG) requirements. HUD may change the method of payment to require the recipient to obtain HUD's prior approval each time the recipient draws down Emergency Solutions Grant (ESG) funds. To obtain prior approval, the recipient may be required to manually submit its payment requests and supporting documentation to HUD in order to show that the funds to be drawn down will be expended on

eligible activities in accordance with all ESG program requirements.

(3) If the recipient fails to demonstrate to HUD's satisfaction that the activities were carried out in compliance with ESG program requirements, HUD will take one or more of the remedial actions or sanctions specified in paragraph (b) of this section.

(b) *Remedial actions and sanctions.* Remedial actions and sanctions for a failure to meet an ESG program requirement will be designed to prevent a continuation of the deficiency; mitigate, to the extent possible, its adverse effects or consequences; and prevent its recurrence.

(1) HUD may instruct the recipient to submit and comply with proposals for action to correct, mitigate, and prevent noncompliance with ESG requirements, including:

(i) Preparing and following a schedule of actions for carrying out activities affected by the noncompliance, including schedules, timetables, and milestones necessary to implement the affected activities;

(ii) Establishing and following a management plan that assigns responsibilities for carrying out the remedial actions;

(iii) Canceling or revising activities likely to be affected by the noncompliance, before expending ESG funds for the activities;

(iv) Reprogramming ESG funds that have not yet been expended from affected activities to other eligible activities;

(v) Suspending disbursement of ESG funds for some or all activities;

(vi) Reducing or terminating the remaining grant of a subrecipient and reallocating those funds to other subrecipients; and

(vii) Making matching contributions before or as draws are made from the recipient's ESG grant.

(2) HUD may change the method of payment to a reimbursement basis.

(3) HUD may suspend payments to the extent HUD deems it necessary to preclude the further expenditure of funds for affected activities.

(4) HUD may remove the recipient from participation in reallocations of funds under subpart D of this part.

(5) HUD may deny matching credit for all or part of the cost of the affected activities and require the recipient to make further matching contributions to make up for the contribution determined to be ineligible.

(6) HUD may require the recipient to reimburse its line of credit in an amount equal to the funds used for the affected activities.

(7) HUD may reduce or terminate the remaining grant of a recipient and

reallocate those funds to other recipients in accordance with subpart D of this part.

(8) HUD may condition a future grant.

(9) HUD may take other remedies that are legally available.

(c) *Recipient sanctions.* If the recipient determines that a subrecipient is not complying with an ESG program requirement or its subgrant agreement, the recipient must take appropriate actions, as prescribed for HUD in paragraphs (a) and (b) of this section. If the recipient is a State and funds become available as a result of an action under this section, the recipient must reallocate those funds to other subrecipients as soon as practicable. If the recipient is a unit of general purpose local government of territory, it must either reallocate those funds to other subrecipients or reprogram the funds for other activities to be carried out by the recipient as soon as practicable. The recipient must amend its Consolidated Plan in accordance with its citizenship participation plan if funds become available and are reallocated or reprogrammed under this section. The reallocated or reprogrammed funds must be used by the expenditure deadline in § 576.203.

Dated: November 9, 2011.

Mercedes Márquez,

Assistant Secretary for Community Planning and Development.

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 91, 582, and 583

[Docket No. FR-5333-F-02]

RIN 2506-AC26

Homeless Emergency Assistance and Rapid Transition to Housing: Defining "Homeless"

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Final rule.

SUMMARY: The Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009 (HEARTH Act), enacted into law on May 20, 2009, consolidates three of the separate homeless assistance programs administered by HUD under the McKinney-Vento Homeless Assistance Act into a single grant program, revises the Emergency Shelter Grants program and renames the program the Emergency Solutions Grants program,