



State of Oregon

Housing and Community Services Department

Multiple Grant Award Opportunity

Request for Proposal #1539

Pre-Mediation Foreclosure Counseling

RFP Issued Date: **June 8, 2012**

RFP Due Date: **June 18, 2012**

Due Time: **5:00 PM PST**

Agreement Begin Date: **July 1, 2012**

Agreement End Date: **June 30, 2013**

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1.0 INTRODUCTION

The State of Oregon acting by and through its Housing and Community Services Department (“Agency”) is issuing a multiple award Request for Proposals (“RFP”) from not-for-profit U.S. Department of Housing and Urban Development (“HUD”) approved counseling center organizations for the implementation and delivery of a Pre-Mediation Foreclosure Counseling program (“Program”) throughout the State as established in SB 1552. All organizations submitting proposals are referred to as Proposers in this document; after negotiations, the awarded Proposer(s) will be designated as Grantee.

1.1 Background.

Agency is Oregon's housing finance agency, providing financial and program support to create and preserve opportunities for quality, affordable housing for Oregonians of lower and moderate income. Agency administers federal and state antipoverty, homeless and energy assistance, and community service programs. Agency also assists in the financing of single-family homes, the new construction or rehabilitation of multifamily affordable housing developments, as well as grants and tax credits to promote affordable housing.

Senate Bill 1552 was passed in the 2012 Oregon Legislative session which required the Oregon Department of Justice Attorney General (DOJ) to coordinate a mediation program and appoint a mediation service provider to mediate between homeowners and lenders to avoid foreclosures where possible. The bill also requires with exception the homeowner to consult a housing counselor prior to the mediation in which the Agency has been charged with coordinating such activities. The Program’s objective is to establish responsive and effective counseling services before mediation for homeowners who have received a Notice of Default or who are or may be at risk but have not received a Notice of Default and are entering into mediation with their lender.

Based on past filings of Notices of Default, state agencies involved in the Senate Bill 1552 planning are estimating 18,000 homeowners per year will be eligible for mediation services based on a Notice of Default filing. This provides a rough idea of the volume of cases in the Program but the actual number may be less (some financial institutions with small foreclosure volumes can opt out under the bill) and may be higher (homeowners "at risk" of foreclosure may voluntarily opt into the program).

2.0 PROPOSAL REQUIREMENTS

2.1 Proposal Submission

Proposals must be received no later than:

DUE DATE:
June 18, 2012, by 5:00 P.M. PST

to:

DELIVERY ADDRESS:
Oregon Housing and Community Services
Attn: Camber Schlag
725 Summer Street NE, Suite B, Salem, OR 97301
Phone: 503-986-2074
Fax: 503-986-2125
Email: camber.schlag@hcs.state.or.us

Proposal must be delivered in a sealed envelope, which clearly identifies the RFP number, the proposal name, the contact person name, agency name and address, and the proposal closing time and date. Electronic (e-mail) and Facsimile Proposal's shall not be accepted. Mis-deliveries and late submittals shall not be accepted or considered.

One (1) original signed proposal by an authorized signer and three (3) copies must be submitted. The proposal must not exceed ten (10) double-sided pages; 12 pt font; 1" margins, **excluding** Cover Sheet, HUD Approval as a Housing Counseling Agency Certificate, and Staffing Model Structure and Locations.

All costs associated with Proposer's submission of the proposal are the sole responsibility of the proposer and shall not be borne by the State of Oregon. All proposals submitted will be public record.

Agency will not be held responsible for any error or omissions from downloading the RFP. The official solicitation document is the one held at the Agency.

Those proposals which are incomplete or which do not meet all requirements of the RFP, Agency will be deemed as "non-responsive" and will be rejected. Proposals considered complete, or "responsive," will be evaluated to determine if they comply with the administrative, contractual, and technical requirements of the RFP. If the proposal is unclear, the proposer may be asked to provide written clarification to assist Agency in determining the issue of the proposal's responsiveness.

2.1.1 Proposal Requirements

Proposer must be a HUD-approved counseling agency with office located in and registered to do business in the state of Oregon.

In addition, Proposer may use this section of minimum requirements as a checklist to ensure the proposal is complete:

Proposal Cover Sheet: (Not counted in the page limitation)

The Proposal must include a completed, signed Proposal Cover Sheet (refer to Attachment A).

[] Proposal: (not to exceed ten (10) double-sided pages, excluding Cover Sheet, HUD Approval as a Housing Counseling Agency Certificate, and Staffing Model Structure and Locations)

The Proposal must be organized in accordance with the list of scored criteria and proposal content in this section.

Submit one (1) original signed proposal and three (3) copies.

2.3 RFP Questions

All inquiries relating to the RFP process, administration, deadline or award, or to the substantive technical portions of the RFP, should be directed to the individual listed above in section 2.1.

All questions regarding the intent of the Program must be submitted in writing (mail, fax, or e-mail). When appropriate, revisions, substitutions, or clarifications shall be issued as addenda to this RFP. Changes/modifications to the RFP requirements shall **ONLY** be recognized if in the form of written addenda issued by Agency. Agency shall provide copies of any addenda to all known RFP recipients and advertise the response on Agency's website, www.ohcs.oregon.gov. Anyone who has received a copy of this RFP from somewhere else will only be alerted to the existence of any addenda by checking Agency's website.

3. PROPOSAL CONTENT

Agency shall employ, but is not limited to, the following selection criteria upon which to base their selection:

- a) Outstanding ability or capacity to meet particular requirements of contract, including the quality, variety and creativity of the Proposer's previous work;
- b) Demonstrated excellent prior experience of Proposer and organizational staff;
- c) Superior quality, efficiency and fitness of past work;
- d) Demonstrated excellent skill and reputation, including timeliness and demonstrable results;
- e) Lower cost;
- f) Administrative and operational efficiency;
- g) Anticipated long-term effectiveness;
- h) Superior capacity to incorporate expected deliverables from other participating agencies, specifically the Oregon Department of Justice Mediation program;
- i) Proposer capacity - Staffing qualifications (e.g., staff prior experience, education, licenses, professional achievements, equipment); Technical, administrative, financial capacity; and, specific licensure requirements; and
- j) Shared commitment with Agency to achieving the objectives of SB 1552 and Mediation Rule Making from Oregon Department of Justice, and Oregon Legislative intents.

Proposer must describe how they intend to meet the criteria below as well as any other requirements that may be specified elsewhere this RFP. A total of 100 maximum points are possible. Proposer must carefully respond to multiple-part questions and sections. If the proposal is unclear, Proposer may be asked to provide written clarification.

3.1 Service Delivery (30 points maximum)

3.1.1 Describe Proposer's experience providing foreclosure counseling, including triage and intake procedures, service delivery model and methods of delivery (in-person, phone, internet, etc.). Please include the organization's typical response time to each homeowner's request to initiate counseling. Describe any improvements that your organization has made to its processes over time and how long the current process/system has been in place.

3.1.2 Describe Proposer's experience with data collection, consolidation, and reporting as related to foreclosure counseling services. Describe Proposer's experience incorporating new databases and reporting requirements into new or existing programs.

3.2 Capacity / History (20 points maximum)

3.2.1 Describe Proposer's experience/capacity working with large grant programs, particularly the implementation of new programs on a tight timeline.

3.2.2 Describe Proposer's current volume of foreclosure counseling services, by county or region. Describe Proposer's current service area or region.

3.2.3 Describe Proposer's experience providing foreclosure counseling services to diverse populations, including seniors, people with disabilities, and rural populations. Include how the Proposer addresses the needs of non-English speaking homeowners.

3.2.4 Describe the Proposer's current and/or planned office location(s). Are these planned offices, if any, located outside of your current service area? Please describe the building(s) physical location, pedestrian accessibility and compliance with the American with Disabilities Act standards. Include hours of operation. Are the Proposer's current or planned offices accessible by public transportation? Please describe the nearest mass-transit stops. Please describe availability of confidential space for individual counseling sessions, and group/classroom space for workshops.

3.2.5 Describe Proposer's current connections to your local community. How does your experience in the community provide you a greater understanding of the unique needs of homeowners in your region? How does Proposer's organization leverage resources, relationships and connections in Proposer's community to achieve better results for homeowners. What other services may Proposer offer to homeowners to comprehensively address their needs?

3.3 Project Implementation Plan – (50 points maximum)

Staffing/FTE

3.3.1 Describe Proposer's request for additional FTE and funding through this grant, at a rate of \$90,000/FTE (see Exhibit A for regional allocations). Describe the impact of Proposer's request, including changes in the number of foreclosure housing counselors and foreclosure staff, by county/region. Include detail of staffing for each current and proposed office location (Attachment 2), to illustrate Proposer's current and proposed staffing plan and net gain of new FTE. Attach a proposed budget for Proposer's FTE Model.

3.3.2 Describe Proposer's staffing model and staff roles in the foreclosure counseling process. Describe any relevant training and certifications held by your staff.

Locations (optional)

3.3.3 If you are applying to provide Program Services in an underserved area for example with non HUD-approved counseling agency (Exhibit A), describe any additional funding (above and beyond FTE funding) required to expand into that region. Please describe why Proposer is well-positioned to serve the needs of this community, and any current or planned partnerships that will help solidify Proposer's presence in the region. Please attach a proposed budget for Proposer's regional expansion.

Technology

3.3.4 Describe the Proposer's current and planned technological capacity related to housing counseling services. Describe any additional funding (above and beyond FTE funding) requested that are necessary to expand Proposer's technological capacity to implement more efficient provision of Program Services. Please attach a proposed budget for Proposer's technological capacity expansion.

Service Delivery

3.3.5 Describe Proposer's proposed service delivery model and capacity, should you receive funding through this grant, including: anticipated changes to Proposer's current service delivery model; Proposer's ability to make changes to your model during the early phases of implementation; frequency and capacity of group informational workshops; monthly capacity for individual counseling sessions; improvements to methods and strategies for serving clients in dispersed and large service areas and/or clients with limited English proficiency.

3.3.6 Describe Proposer's planned capacity for outreach related to Program Services. How would Proposer utilize outreach materials provided by Agency and DOJ as well as leveraging local networks to raise awareness in Proposer's region about the availability of foreclosure mediation and Program Services?

3.4 Financial Capacity (not included in page limit)

3.4.1 Please attach a copy of Proposer's most recent audit.

4.0 PROPOSAL EVALUATIONS

4.1 Evaluation Process

Proposals meeting the proposal requirements will be forwarded to an evaluation committee for scoring against the Proposal Content in Section 3. The outcome of the evaluations may, at the Agency's sole discretion, result in (a) a notice to a Proposer(s) of selection for tentative Agreement negotiation and possible award; (b) a notice of non-award.

4.2 Pass/Fail Criteria

Each Proposal must comply with the following Pass/Fail criteria. Proposals not meeting ALL Pass/Fail criteria will be rejected, unless such failure is deemed immaterial at the sole discretion of the Agency.

- Cover Sheet (refer to Attachment 1).
- HUD Approval as a Housing Counseling Agency Certificate
- Staffing Model Structure and Locations (refer to Attachment 2)
- Attach applicable Budgets
- Attach most recent audit
- One (1) original signed Proposal
- Three (3) copies of the Proposal
- Proposal deadline met
- Meets minimum requirements
- Terms and Conditions do not include conditional language

5.0 GENERAL SOLICITATION TERMS

5.1 Agency may require clarification to understand any of the selected Proposer's scored criteria. Any necessary clarifications or modifications will be made before executing the Agreement and may become part of the final Agreement.

5.2 Agency reserves the sole right and option to amend the Agreement, which results from this RFP. Agreement amendments may include increase in time, consideration or changes within the scope of services, and shall occur only upon mutual consent and signature by all parties to the Agreement. All amendments shall be in writing and shall conform to the amendment process.

5.3 By submitting a proposal to this RFP, proposer shall accept all terms and conditions of this RFP and the attached draft Agreement.

- 5.4 Successful proposers will be required to maintain appropriate levels of Workers Compensation, General Liability, and Automobile Liability insurance.
- 5.5 ORS 60.701 requires that foreign corporations be registered by the State of Oregon, Office of the Secretary of State, before conducting business in the state. A foreign corporation (ORS 60.001) means a corporation-for-profit incorporated under a law other than the law of the State of Oregon. If a firm is selected for the Agreement as a result of this solicitation they must register to do business in Oregon.
- 5.6 Agency reserves the right, at its sole discretion: (1) to amend the RFP prior to the closing date (2) to amend the deadline for submitting proposals; (3) to determine whether a proposal does or does not substantially comply with the requirements of this RFP; (4) to waive any minor irregularity, informality, or nonconformance with this RFP; (5) to obtain from and/or provide to other public agencies, upon request, references, regarding the Proposer's Agreement performance; (6) at any time prior to Agreement execution (including after announcement of the apparent awardee): (a) to reject any proposal that fails to substantially comply with all prescribed RFP procedures and requirements; and (b) to reject all proposals received and cancel this RFP upon a finding by Agency that there is good cause and that such cancellation would be in the best interests of the State; (7) seek clarification on any or all proposals; and (8) negotiate the Statement of Work within the scope of the work described in this Request for Proposal.
- 5.7 This RFP and one copy of each original response received, together with copies of all documents pertaining to the award of an Agreement, shall be kept by Agency and made a part of a file or records, which shall be open to public inspection. If a proposal contains any information that is considered a trade secret under ORS 192.501 (2), each sheet of such information must be marked with the following legend:

“This Proposal constitutes a trade secret under ORS 192.501 (2), and shall not be disclosed except in accordance with the Oregon Public Records Law, ORS Chapter 192.”

The Oregon Public Records Law exempts from disclosure only bona fide trade secrets, and the exemption from disclosure applies only “unless the public interest requires disclosure in the particular instance” ORS 192.501 (2). Therefore, non-disclosure of documents or any portion of a document submitted as part of a proposal may depend upon official or judicial determination made pursuant to the Public Records Law.

If a Proposal contains any information that may be considered exempt from disclosure under the various grounds specified in Oregon Public Records Law, ORS 192.430 through 192.505, Proposers must clearly designate any portion of its Proposal as exempt, along with a citation to the authority relied upon. Application of the Oregon Public Records Law shall determine whether any information is actually exempt from disclosure. Identifying a Proposal in whole as exempt from disclosure is not acceptable. Failure to identify a portion of the Proposal as exempt from disclosure, and the authority used, shall be deemed a waiver of any future claim of non-disclosure of that information.

- 5.8 In accordance with the 2003 Oregon Sustainability Executive Order, Proposer must use recyclable products to the maximum extent economically feasible in the performance of the Agreement work set forth in this document and ORS 279A.125.

**ATTACHMENT 1
COVER SHEET**

Proposal for Pre-Mediation Foreclosure Counseling Program

Legal Proposer name used to pay taxes: _____

Mailing Address: _____

Business Designation (check one):

- Corporation Professional Corporation Partnership Limited Partnership
 Limited Liability Company Limited Liability Partnership Sole Proprietorship
 Other _____

Secretary of State, Corporations Division, Registration No.: _____

DUNS # (if applicable): _____

Contact Person _____ Title _____
Telephone # _____ Fax# _____
Email address _____

Affirmative Action Program. The State of Oregon is an equal employment opportunity employer and values diversity in its work force. It also requires its recipients and Contractors to have an operating policy as an equal employment opportunity employer.

(insert proposer name)

- accepts all the terms and conditions contained in Request for Proposal # 1539 and Attachment 2 (sample Grant Agreement);
- certifies to having a formal statement of nondiscrimination in employment policy;
- is a legal entity and is authorized to enter into an Agreement.
- is currently or will be authorized to do business in the State of Oregon at the time of Agreement award;
- has authority to represent the firm and answer questions or provide clarification concerning the proposal.

Signature of authorized representative Date

Print name of authorized representative

Print name of person(s) authorized to negotiate Agreement

Print name of person(s) authorized to sign Agreement

Program Manager

**Exhibit A
Statewide Assessment**

Regional Counselor Allocations

| County | FTE | County | FTE | County | FTE | County | FTE |
|-----------|-----|-----------|------|------------|-----|------------|-----|
| Benton | 0.3 | Jackson | 2 | Tillamook | 0.2 | Wallowa | 0.1 |
| Clackamas | 2.5 | Jefferson | 0.25 | Washington | 3 | Grant | |
| Clatsop | 0.3 | Josephine | 0.5 | Yamhill | 0.5 | Baker | |
| Columbia | 0.5 | Lane | 1.5 | Klamath | 0.5 | Union | |
| Coos | 0.3 | Lincoln | 0.3 | Lake | | Hood River | |
| Crook | 0.3 | Linn | 0.75 | Gilliam | 0.2 | Wasco | 0.1 |
| Curry | 0.3 | Marion | 2.5 | Wheeler | | Sherman | |
| Deschutes | 2.5 | Multnomah | 4.5 | Morrow | | Harney | 0.1 |
| Douglas | 0.5 | Polk | 0.5 | Umatilla | | Malheur | |

Designation as an Under-Served Area or without HUD Approved Counseling Agencies

| County | Regions |
|------------|------------------------------------|
| Multnomah | Wallowa, Grant, Baker, Union |
| Clackamas | Hood River, Wasco, Sherman |
| Washington | Harney, Malheur |
| Polk | Gilliam, Wheeler, Morrow, Umatilla |
| Yamhill | |

**ATTACHMENT 2
Staffing Model and Locations**

Current Staff and Location

| | Staff Name | Location | Program | Role | FTE |
|-----|-------------------|-----------------|---|--|------------|
| eg. | <i>John Doe</i> | <i>Medford</i> | <i>Indicate if NFMC, MPA, or 1552</i> | <i>Counselor, Manager, Coordinator, etc.</i> | <i>0.5</i> |
| 1 | | | | | |
| 2 | | | | | |
| 3 | | | | | |
| 4 | | | | | |
| 5 | | | | | |
| 6 | | | | | |
| 7 | | | | | |
| 8 | | | | | |
| 9 | | | | | |
| 10 | | | | | |

Projected Staff and Location

| | Staff Name* | Location | Program | Role | Role |
|-----|--------------------|-----------------|---|--|--|
| eg. | <i>John Doe</i> | <i>Medford</i> | <i>Indicate if NFMC, MPA, or 1552</i> | <i>Counselor, Manager, Coordinator, etc.</i> | <i>Counselor, Manager, Coordinator, etc.</i> |
| 1 | | | | | |
| 2 | | | | | |
| 3 | | | | | |
| 4 | | | | | |
| 5 | | | | | |
| 6 | | | | | |
| 7 | | | | | |
| 8 | | | | | |
| 9 | | | | | |
| 10 | | | | | |
| 11 | | | | | |
| 12 | | | | | |
| 13 | | | | | |
| 14 | | | | | |
| 15 | | | | | |

*Please enter "TBD" for employees that are not yet hired

**ATTACHMENT 3
STATE OF OREGON
OREGON HOUSING AND COMMUNITY SERVICES**

SAMPLE GRANT AGREEMENT #

title

Introduction

This Grant Agreement (this "Agreement") is entered into by and between the State of Oregon, acting by and through its Housing and Community Services Department, hereinafter referred to as "Agency," and _____, hereinafter referred to as "Grantee".

Recitals

A. Senate Bill 1552 was passed in the 2012 Oregon Legislative session which required the Oregon Department of Justice Attorney General (DOJ) to coordinate a mediation program and appoint a mediation service provider to mediate between homeowners and lenders to avoid foreclosures where possible. The bill also requires with exception the homeowner to consult a housing counselor prior to the mediation in which the Agency has been charged with coordinating such activities. The Pre-Mediation Foreclosure Counseling program's ("Program") objective is to establish responsive and effective counseling services before mediation for homeowners who have received a Notice of Default or who are or may be at risk but have not received a Notice of Default and are entering into mediation with their lender.

B. Agency has reviewed the Grantee's proposal (the "Proposal") and determined the activities, as hereinafter defined, are feasible and merit funding. The Application, as approved by Agency is incorporated herein by reference.

Agreement

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

1. Incorporation of Recitals; Agreement Purpose

a. Incorporation of Recitals.

The foregoing Recitals are incorporated herein by reference.

b. Agreement Purpose.

The general purpose of this Agreement is to establish the terms for providing Grant funding as described herein by Agency to Grantee with respect to the Program and to describe the purposes for and manner in which Grantee shall use the Grant funds for Program Services

Grant funds may derive from federal, state, and private sources, are subject to the terms under which they are received and shall be provided by Agency only for reimbursement of allowable costs incurred by Grantee within the terms and conditions of this Agreement, specific program requirements (including Agency directives), and applicable law.

2. Term of Agreement

Unless terminated or extended, this Agreement covers the period **July 1, 2012 through June 30, 2013**. This

Agreement shall become effective on the date this Agreement has been signed by every party and, when required, approved by the Oregon State Department of Justice. The expiration of the term of this Agreement, including if this Agreement is terminated prior to the end of the above-described term, shall not terminate remedies available to Agency or to Grantee hereunder.

3. Scope of Services

Grantee shall perform the Services described in this Scope of Services in accordance with the terms and conditions of this Agreement. Any requests or changes to grant fund use or the Scope of Services from the original intended purpose must be approved in writing by Agency in order for Grantee to retain use of the Grant funds.

Homeowner may seek a Foreclosure Counseling Agency (Grantee) housing counselor (“Counselor”) for Program Services prior to entering into mediation with the servicer for the purpose of negotiating a foreclosure avoidance measure.

Deliverables:

- A. **Prioritization of Pre-Mediation Counseling Services.** Grantee shall ensure Counselors who are funded by this Grant Agreement to give first priority foreclosure counseling services to Homeowners who have received a Notice of Mediation from lender or the lender’s agent, or have requested mediation from their lender or the lender’s agent. Grantee shall make every effort to schedule an individual counseling session within 30 days of Homeowners’ receipt of the Notice of Mediation. Homeowners contacting Grantee’s office directly and seeking counseling and pre-mediation counseling services should receive necessary and accurate information to enter into the Mediation Service Provider System. If all Program clients are able to be served within 30 days, and additional Counselor time is available, second priority should be given to performance of additional foreclosure counseling activities that support positive outcomes for distressed Homeowners as related to Senate Bill 1552.
- B. **Pre-Mediation Counseling Information Session**
1. This basic counseling or information session shall consist minimally of the following information:
 - (a) Role of Counselor and Homeowner;
 - (b) Foreclosure process and timeline;
 - (c) Key players and communication in the foreclosure process;
 - (d) Potential workout options;
 - (e) Overview of mediation process, including timelines, homeowner obligations, the Mediation Service Provider website, costs associated with mediation, etc.
 2. This basic Program Services may be offered individually or in a group setting, and may be conducted in person, by phone, or online. There are no pre-requisite steps for a Homeowner to access this basic level of service.
- C. **Pre-Mediation Counseling and Mediation Preparation.**
1. **Counseling Standard of Service.** Counselor shall provide a minimum one hour of Program Services as part of the pre-mediation counseling. Agency shall consult with and rely upon (as a model for evaluating Grantee’s performance) HUD Handbook 7610.1. At a minimum, Grantee’s Counselors shall provide the following standards of service:
 - (a) Interview the Homeowner in a private space and in a confidential manner to obtain basic information about the Homeowner and the Homeowner’s housing problem. Counseling may take place in the office of the Grantee, in an appropriate community space, at an alternate location or through an alternative format, as long as the alternative format or location is mutually acceptable to the staff and Homeowner. Alternative formats may include phone counseling or remote counseling systems using voice-over-Internet Protocol service and software application technology, video cameras and the internet or other appropriate means;
 - (b) Provide translation assistance to Homeowners who are non-English speaking or have limited English proficiency;

- (c) Provide counseling offices and services that is accessible to persons with a wide range of disabilities; and
- (d) Discuss budgeting, credit review, restructuring debt, and affordability analysis.

2. **Pre-Mediation Preparation.**

- (a) Counselor shall assist Homeowner with preparing a financial worksheet to develop a workout solution to present to Servicer.
- (b) Counselor shall assist Homeowner with uploading required documentation into Mediation Service Provider database prior to scheduled mediation session.
- (c) Counselor shall complete and upload the Counselor Recommendation Statement in a form and manner satisfactory to Agency.

If Homeowner declines mediation session after Program Services, Counselor shall inform Homeowner to notify Mediation Service Provider.

- D. **No Legal Advice or Representation.** Unless Counselor is an attorney licensed in the State of Oregon or a law firm with attorneys so licensed, or has on its staff such a licensed attorney, or such a licensed attorney or law firm otherwise directly supervises and monitors the giving of specific advice by all non-attorney Counselors of Grantee covered under this Agreement, Counselor shall refrain from the giving of any specific legal advice to Homeowner in connection with addressing a Homeowner's housing need or attempting to legally resolve a Homeowner's housing problem. Notwithstanding any limited exception set forth above, the giving of specific legal advice, under any circumstances, is not within the scope of services of this Agreement; and Counselor shall bear sole responsibility for the giving of such legal advice.
- E. **Mediation Service Provider Software System.** Grantee must utilize the Mediation Service Provider web-based software for uploading Homeowner documents, reviewing documents related to Homeowner's mediation session, and enter all necessary homeowner information for reporting purposes.
- F. **Outreach.** Grantee shall provide outreach to assigned region of the state. Outreach efforts shall be completed through method indicated in original application and using Agency provided posters, flyers and marketing materials. Upon request by the Agency the Grantee shall establish and maintain a named web link from the Grantee's web site to Agency's new foreclosure web site once it has been launched. Grantee is responsible for conducting at least two contact attempts to unresponsive Homeowners, who have received a Notice of Mediation, based on data delivered by the Mediation Service Provider. Contact attempts are to be notated in Mediation Service Provider system.
- G. **Reporting.** At a minimum, Grantee shall provide a monthly report to Agency in a form and manner satisfactory to Agency that includes but may not be limited to:
 - 1. Number of Homeowners assisted and received individual Program Services:
 - (a) Number of Homeowners went to mediation.
 - (b) Type of foreclosure avoidance measure recommended.
 - (c) Number of Homeowners opted not to go through mediation and possible reasons why not.
 - 2. Demographic information of Homeowners.
 - 3. Description of outreach activities.
 - 4. Any other activities accomplished by Grant funds.

Agency reserves the right to amend monthly reports based on changing needs and performance measures.

H. **Special Considerations.**

- 1. Counselor shall adopt the National Industry Standards for Homeownership Education and Counseling (NCHCEC). Counselors shall be NCHCEC certified in Foreclosure Intervention and Default Counseling, or must become certified within 9 months of hire.
- 2. This Agreement awarded is to cover the total cost of Program Services and may not be used for general operating expenses. Grantee shall furnish the necessary personnel, materials, services and facilities

(except as otherwise specified in this Agreement), and otherwise do all things necessary for or incidental to the performance of the Services set forth in this Agreement.

3. Grantee shall notify Agency in writing within 15 days of a change in the management, staff or Counselors responsible for Grantee's housing counseling program.

4. Consideration; Reporting

- (a) Agency has agreed to make a conditional award of funds to the Grantee in the amount not-to-exceed of **XXXXXXXXXX THOUSAND DOLLARS (\$XXXXXX)**. Distributions will be made in increments upon approval of Agency on a cost incurred basis unless otherwise stated herein.
 1. **New Foreclosure Housing Counselor Fee Structure.** The compensation for Services accomplished under this Agreement shall not exceed \$_____ all related expenses, including travel.
 2. **Technological Capacity Expansion.** The compensation for Services accomplished under this Agreement shall not exceed \$_____ all related expenses.
 3. **Regional Expansion.** The compensation for Services accomplished under this Agreement shall not exceed \$_____ all related expenses.
- (b) Grantee will be paid 25% of total award amount at the beginning of each quarter. Grantee will submit timesheets and certifications for grant-funded FTE, as well as a year-to-date expense report, at the end of each quarter (as well as having completed monthly progress reports for that quarter).
- (c) All funds directed to Grantee through this Agreement are to be expressly utilized for Program Services that results in a foreclosure avoidance measure determination as provided in SB 1552 and any related rule making.
- (d) Agency reserves the right to withhold payment or require Grantee to payback payment until all required information is received.
- (e) Compensation for Program Services will require Grantee to upload all required documentation in designated Mediation Service Provider database software for Agency's verification.
- (f) Upon expiration or termination of this Agreement, Grantee shall return all unexpended grant fund monies to Agency within 60 days.

5. Funding Appropriation

Funds specified in the Consideration section of this Agreement may include moneys that have not yet been appropriated to Agency, but which Agency anticipates receiving for use in funding this Agreement. All disbursements of funds by Agency to Grantee are contingent upon them being lawfully appropriated, allocated, and available to Agency.

7. Requests for Funds

Grantee shall request Grant funds in such form and manner as is satisfactory to or required by Agency. Further, in accordance with U.S. Department of Treasury Regulations, 31 CFR Part 205, implementing the Cash Management Improvement Act, Grantee shall limit any request for funds to the minimum amount needed to accomplish its described purposes and to time the request in accordance with the actual, immediate requirements in carrying out grant programs to be funded through the request for funds.

8. Remedies Related to Requests for Funds

a. Withholding of Grant Funds from Request

Agency may withhold any and all requested funds from Grantee under this Agreement if Agency, in its sole discretion, determines that Grantee has failed to timely satisfy any material obligation arising under this Agreement or otherwise. Grantee obligations include, but are not limited to providing complete, accurate and timely reports satisfactory to Agency about its performance under this Agreement as well as timely satisfying all Agreement obligations, including federal requirements relating to any awarded grant funds. Agency also may withhold any and all requested funds from Grantee if Agency, in its sole discretion, determines that the rate of requests for funds in any expenditure category is substantially different from approved budget submissions.

b. Redistribution or Retention of Funds

If Grant funds are not obligated for reimbursement by Grantee in a timely manner as determined by Agency at its sole discretion, Agency may at its sole discretion, reduce Grantee funding and redistribute such funds to other Grantees or retain such Grant funds for other Agency use. Agency may implement adjustments pursuant to this subsection by modifying the applicable. This remedy is in addition to any other remedies available to Agency under this Agreement or otherwise.

9. Termination

- a. Agency may immediately terminate this Agreement in whole or in part upon written notice to the Grantee for cause related to any material misrepresentation, malfeasance, gross negligence, abandonment of performance or loss of authority to perform any of its obligations hereunder by Grantee, whether directly by Grantee or through one or more of its subrecipients, agents, subcontractors, successors or assigns, as determined by Agency in its sole discretion.
- b. Agency may, upon 30 days written notice, terminate this Agreement in whole or in part for cause including, but not limited to events described above in subsection 9.a. Cause may include any event, including an event of default, as determined by Agency in its sole discretion that renders inappropriate the continuation of this Agreement. An event of default constitutes an act or omission by Grantee. Grantee, its subrecipients, agents, representatives, contractors, or assigns by which Grantee, as determined by Agency at its sole discretion, fails to timely and appropriately perform one or more material obligations, or otherwise breaches a duty, owed to Agency under this Agreement. Such events and events of default may include, but are not limited to an occurrence of any of the following:
 - 1) Grantee fails to fulfill timely any of its obligations under this Agreement;
 - 2) Grantee fails to comply timely with directives received from Agency or from an agency that is the original source of the Grant funds;
 - 3) Funds provided under this Agreement are used improperly or illegally by Grantee or any of its subrecipients;
 - 4) Funding for grant programs are denied, suspended, reduced or eliminated;
 - 5) Federal or state laws, regulations or guidelines are modified or interpreted in such a way that Agency is prohibited from paying for or lacks authority to pay for any Statement of Work performance under this Agreement or to pay for any such performance from the planned funding source(s);
 - 6) Funding, appropriations, limitations or expenditure authorization to expend funds is denied, suspended, reduced or eliminated;
 - 7) Any certification, license or certificate required by law to be held by Grantee or others to provide the services required by this Agreement is for any reason denied, revoked, suspended, limited or not

renewed;

- 8) Grantee (a) applies for or consents to the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or its property, (b) admits in writing its inability, or is generally unable, to pay its debts as they become due, (c) makes a general assignment for the benefit of its creditors, (d) commences a voluntary case under the federal Bankruptcy Code (as now or hereafter in effect), (e) is adjudicated as bankrupt or insolvent, or (f) fails to controvert in a timely or appropriate manner, or agrees in writing to, an involuntary petition for bankruptcy;
 - 9) Grantee is suspended, debarred, proposed for debarment, declared ineligible or voluntarily excluded from participating in agreements or contracts with any federal department or agency.
- c. Grantee may, upon 30 days written notice, terminate this Agreement in whole or in part, if:
- 1) Agency unreasonably fails to provide timely funding hereunder and does not correct such failure within the 30-day notice period.
 - 2) Agency provides one or more material directives which are contrary to federal or state laws, rules, regulations, guidelines, or original funding source requirements and does not correct such directives within the 30-day notice period.
- d. Either party may terminate this Agreement in whole or in part immediately upon written notice to the other party if Oregon statutes or federal laws, regulations or guidelines are modified, changed or interpreted by the Oregon Legislative Assembly, the federal government or a competent court (in a final determination) in such a way that one or both parties no longer has the authority to meet its obligations under this Agreement.
- e. Upon issuance of any notice to terminate this Agreement and prior to the effective date of the termination, Agency may, in its sole and absolute discretion, require that Grantee obtain prior Agency approval from it for any additional expenditures that would obligate Agency to reimburse it from Agreement grant funds or otherwise.
- f. Notwithstanding the above, or any termination thereunder, neither Grantee nor Agency shall be relieved of its liability to the other party for damages sustained by virtue of its breach of this Agreement. Agency may withhold any reimbursement to Grantee in the amount of compensation for damages due Agency from Grantee (as estimated by Agency in its sole discretion) until such time as the exact amount of damages has been agreed upon or otherwise finally determined.
- g. In the event of termination of this Agreement by either party, all unexpended money, property, finished or unfinished documents, data, financial reports, audit reports, program reports, studies and reports purchased or prepared by Grantee under this Agreement shall be delivered to Agency within sixty (60) days of the date of termination or upon such date as requested by Agency.
- h. Termination of this Agreement shall not impair or invalidate any remedy available to Agency or to Grantee hereunder, at law, or otherwise.

10. Agreement Documents in Order of Precedence

This Agreement consists of the following documents, which are listed in descending order of precedence: this Agreement less all exhibits, attached Exhibit A (_____), and Exhibit B (_____) which are attached hereto and incorporated herein by this reference.

11. Governing Law; Venue; Consent to Jurisdiction

This Agreement shall be governed by the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between Department and Subgrantee related to

this Agreement shall be conducted exclusively within the Circuit Court of Marion County, Oregon (unless Oregon law requires that it be brought and conducted where the real property is located) or, if necessary, the United States District Court for the District of Oregon. In no event shall this provision be construed as a waiver by the State of Oregon of any form of defense or immunity, whether it is sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. SUBGRANTEE, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

12. Distribution of Funds Properly Supported

- a. Grantee shall document in a manner satisfactory to Agency all expenditures made with grant funds received under this Agreement. Expenditure documentation shall be supported either invoices, contracts, vouchers, orders, canceled checks and/or by any other appropriate accounting documents pertaining in whole or in part to the Agreement in accordance with generally accepted accounting principles (GAAP), Oregon Administrative Rules and applicable requirements as specified herein.
- b. Agency reserves the right to and may request full itemization, receipts, and any other information at anytime. Agency also may request financial records in order to review costs associated with Grantee's provision of services and other performance under this Agreement, at its discretion.

14. Compliance with Applicable Law

Grantee shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Agreement. Without limiting the generality of the foregoing, Grantee expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable to the Contract: (i) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990, as amended; (iv) Executive Order 11246, as amended; (v) the Health Insurance Portability and Accountability Act of 1996; (vi) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vii) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (viii) ORS Chapter 659, as amended; (ix) all regulations and administrative rules established pursuant to the foregoing laws; and (x) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Agreement and required by law to be so incorporated. Agency's performance under the Agreement is conditioned upon Grantee's compliance with the provisions of ORS 279B.220, 279B.225, 279B.230, 279B.235, and 279B.270. which are incorporated by reference herein. Grantee shall, to the maximum extent economically feasible in the performance of this Agreement, use recycled paper (as defined in ORS 279A.010(ee)), recycled PETE products (as defined in ORS 279A.010(ff)), and other recycled products (as "recycled product" is defined in ORS 279A.010(gg)).

16. No Third-Party Beneficiaries

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

17. Notices

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

notice by personal delivery shall be deemed to be given when actually delivered.

18. Confidentiality

Grantee shall, and shall require and cause its subrecipients to protect the confidentiality of all information concerning applicants for and recipients of services funded by this Agreement. It shall not release or disclose any such information except as necessary for the administration of the program(s), as authorized in writing by the applicant or recipient or as required by law. All records and files shall be appropriately secured to prevent access by unauthorized persons.

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

19. Dual Payment

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

20. Monitoring Required

a. Agency Authorized to Monitor Each Grantee

Agency may monitor the activities of each Grantee and its subrecipients as it deems necessary or appropriate, among other things, to ensure Grantee and its subrecipients comply with the terms of this Agreement and that Grant fund awards are used properly for authorized purposes hereunder Agency also may ensure that performance goals are achieved as specified in the Statement of Work. Monitoring activities may include any action deemed necessary or appropriate by Agency including, but not limited to the following: (1) the review (including copying) from time to time of any and all Grantee and subrecipient(s) files, records and other information of every type arising from or related to performance under this Agreement; (2) arranging for, performing, and evaluating general and limited scope audits; (3) conducting or arranging for on-site and field visits and inspections; (4) review of Grantee fiscal and program reports prior approval documentation; and (5) evaluating, training, providing technical assistance and enforcing compliance of Grantee, subrecipient(s), and their officers, employees, agents, contractors and other staff. Agency may utilize third parties in its monitoring and enforcement activities, including monitoring by peer agencies. Agency monitoring and enforcement activities may be conducted in person, by telephone and by other means deemed appropriate by Agency and may be effected through contractors, agents or other authorized representatives. Grantee consents to such monitoring and enforcement by Agency and agrees to cooperate fully with same, including requiring by agreement and causing that its subrecipients so cooperate.

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

b. Grantee Shall Fully Cooperate

Grantee shall fully and timely cooperate with Agency in the performance of any and all monitoring and enforcement activities. Failure by Grantee or any of its subrecipients to comply with this requirement is sufficient cause for Agency to require special conditions and may be deemed by Agency as a failure by the Grantee to perform its obligations under this Agreement.

c. Grantee Shall Monitor Its Subrecipients

Grantee shall perform onsite visits to monitor the activities of its subrecipients as specified by applicable grant program requirements or otherwise directed by Agency, but in no case less than at least once during the

term of this Agreement, and not later than the third quarter of the term of this Agreement (unless otherwise approved in writing by Agency) to ensure that grant funds are used for authorized purposes in compliance with this Agreement, including but not limited to specific program requirements, and that performance goals are achieved as specified in the Scope of Work.

21. Monitoring

- a. Agency generally will advise the Grantee as to its observations and findings generated by any on-site visit; usually through an exit interview. Within 60 days after an on-site inspection, Agency will endeavor to provide Grantee with a written report as to its findings from that inspection. Agency may advise the Grantee of any corrective action that it deems appropriate based upon its monitoring activities or otherwise. Grantee shall timely satisfy such corrective actions required by Agency.
- b. Agency may review (including copying) from time to time any and all Grantee files, records, and other information of every type arising from or related to performance under this Agreement. Within 60 days after a review, Agency will endeavor to communicate in writing to the Grantee. Agency may advise the Grantee of any corrective action that it deems appropriate based upon its monitoring activities or otherwise. Grantee shall timely satisfy such corrective actions as reasonably required by Agency.

22. Monitoring: Major Findings Resolution

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

23. Remedies

- a. If Agency determines, in its sole discretion, that Grantee has failed to comply timely with any material obligation under this Agreement, including but not limited to any Agency directive or term of a corrective action plan, Agency may, exercise any remedy available to it under this Agreement, applicable law, or otherwise. Such remedies may include, but are not limited to: (a) terminating any part or all of this Agreement; (b) withholding and/or reducing grant funds; (c) disallowing costs; (d) suspending and/or recouping payments; (e) appointing a receiver for the receipt and administration of grant funds under this Agreement; (f) requiring corrective action as it may determine to be appropriate; (g) bringing suit or action in an appropriate forum for the enforcement of this Agreement and any remedy, as well as the recovery of damages, including by temporary restraining order, injunction, specific performance or otherwise; (h) debarring or otherwise limiting Grantee's eligibility for other funding from Agency; (i) instituting criminal action for misstatements or fraud; and (j) requesting investigation, audit and/or sanction by other governmental bodies.
- b. The rights and remedies of Agency provided in this Section shall not be exclusive and are in addition to any other rights and remedies provided under this Agreement, by law, or otherwise. This Section does not limit Grantee's remedies provided under this Agreement, by law, or otherwise.

24. Return of Unexpended Grant Funds at Program Final Expenditure Period End

All unexpended cash or program income from such Grant funds remaining at the end of any program final period for any program(s) covered by this Agreement must be returned by Grantee to Agency no later than sixty days following the expiration of the program's final expenditure period or the termination of this Agreement, whichever is earlier. This Section shall not be construed as permitting an extension of the time allowed for using funds requested under a grant program that is not consistent with Department of Treasury Regulations or other controlling law.

25. Expenditures Properly Supported

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

26. Unallowable Costs and Lobbying Activities

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

27. Disallowance of Costs

Agency neither is responsible for nor shall it pay for any costs disallowed either upon request for reimbursement or as a result of any audit, review, or site visit or other disallowance action by Agency except for costs incurred by Grantee solely due to the negligence of Agency, its employees, officers or agents. If a cost is disallowed by Agency after reimbursement has occurred, Grantee shall, within thirty (30) days of notice of disallowance or such other date as may be required by Agency, either demonstrate to the satisfaction of Agency that such disallowance is in error or make repayment of such cost.

If Grantee is a county, such disallowed costs may be recovered by Agency only through repayment or withholding to the extent permitted by the Oregon Constitution, and particularly Article XI, Section 10. If Grantee is other than a county, Agency may recover such disallowed costs through repayment, withholding, offset or other means permitted under this Agreement, by law or otherwise.

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

28. Records Maintenance

Grantee shall, and shall require and cause its subrecipients to, prepare and maintain such records as necessary for performance of and compliance with the terms of this Agreement.

The Grantee and its subrecipients shall retain all records pertinent to expenditures incurred under this Agreement and otherwise in a manner consistent with the requirements of state and federal law, including but not limited to those requirements listed in Agency' Record Retention Schedule, as may be modified from time to time and is available upon request. Notwithstanding the above, if there is litigation, claims, audits, negotiations or other action that involves any of the records cited, then such records must be retained until final completion of such matters.

29. Records Access

Agency, the Oregon Secretary of State's Office, the federal government and the duly authorized representatives of such entities shall have free access to and the right to copy all or any part of the books, documents, papers, audits and records of Grantee and its subrecipients which are related to this Agreement as they deem appropriate, including without limitation, for the purpose of making audit, examination, excerpts, and transcripts. These records are the property of Agency who may take possession of them at any time after three (3) business days' notice to Grantee or subrecipient, as the case may be. Grantee or subrecipient may retain copies of all records taken by Agency under this Section.

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

30. Audits

Unless exempt by OMB Circular A-133, Grantee will obtain and submit the final fiscal year audit of its performance hereunder to Agency as soon as possible after completion of the fiscal year. Grantee will provide the audit to Agency not later than ten (10) days after such audit is received by the Grantee.

Grantee shall and shall require and cause its subrecipients to submit to Agency satisfactory financial and compliance audits for the periods covered by the grants in accordance with the provisions of OMB Circular No. A-133 "Audits of States, Local Governments, and Non-Profit Organizations."

Agency may withhold any or all requested funds from Grantee if Grantee violates this provision and Agency may deem such failure as a material default and exercise any available remedy under this Agreement, including without limitation, termination of this Agreement.

31. Subrecipient Agreements

Grantee shall not enter into any agreement or renewal with subrecipients without prior written approval of Agency. Agency' approval of any subrecipient shall not relieve Grantee of any of its duties or obligations under this Agreement.

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

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

Grantee shall have a written agreement with each subrecipient that is listed in and consistent with the Grantee's Statement of Work that identifies:

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

33. Fixed Assets

Grantee shall, and shall cause its subrecipients to, maintain policies and procedures for property management that comply with all requirements of the applicable OMB Circulars and specific requirements of the source of funds.

34. Insurance and Workers Compensation

Grantee will provide all necessary General Liability and Automotive insurance required by Oregon Law to perform services under this Grant Agreement, and provide proof of coverage upon request of Agency.

Grantee and all employers providing work, labor, or materials under this Agreement are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage that satisfies Oregon law for all of their subject workers. Out-of-state employers must provide Oregon worker's compensation coverage for their workers who work at a single location within Oregon for more than 30 days in a calendar year or who otherwise constitute "subject workers" under Oregon law.

35. Grantee Status

- a. Grantee shall perform all Services under this Agreement as an independent contractor. Grantee is not an officer, employee or agent of the State, as those terms are used in ORS 30.265, with respect to Services performed under this Agreement.
- b. Grantee agrees that insurance coverage, whether purchased or by self-insurance, for Grantee's agents, employees, officers and/or subcontractors is the sole responsibility of Grantee.
- c. Grantee certifies that it is not employed by or contracting with the federal government for the Services covered by this Agreement.
- d. Grantee certifies to the best of its knowledge and belief that neither the Grantee nor any of its principals, officers, directors or employees:
 - 1) Is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any federal department or agency;
 - 2) Has within a three-year period preceding this Agreement been convicted of or had a civil judgment rendered against it for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, State or local) transaction or contract related to a public transaction; violation of federal or State antitrust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property;
 - 3) Is presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in subsection (d)(2); and
 - 4) Has within a three-year period preceding this Agreement had one or more public transactions (federal, State or local) terminated for cause or default.

36. Captions

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

37. Severability

The parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid

38. Execution and Counterparts

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

39. Grant Funds; Indemnity

For Grant funds used in conjunction with this Agreement, Grantee shall assume sole liability for breach of the conditions of the grant (including all terms and conditions of this Agreement) by Grantee or any of its subrecipients, and hereby covenants and agrees to save, defend (consistent with ORS chapter 180), hold harmless, and indemnify the Agency, the State of Oregon and their officers, employees, agents and assigns from any claims, causes of action or other demands related in any way to this Agreement or to grant funds provided or to be provided hereunder as well as to reimburse Agency for an amount equal to the grant funds received by it under this Agreement.

40. Oregon False Claims Act

- a. Grantee acknowledges that the Oregon False Claims Act, ORS 180.750 to 180.785, applies to any action or conduct by Grantee pertaining to this Agreement that constitutes a “claim” (as defined by ORS 180.750(1)). By its execution of this Agreement, Grantee certifies the truthfulness, completeness, and accuracy of any statement or claim it has made, it makes, it may make, or causes to be made that pertains to this Agreement. In addition to other liabilities that may be applicable, Grantee further acknowledges that if it makes, or causes to be made, a false claim or performs a prohibited act under the Oregon False Claims Act, the Oregon Attorney General may enforce the liabilities and penalties provided by the Oregon False Claims Act against Grantee.
- b. Without limiting the generality of the foregoing, Grantee represents and warrants that:
 - 1) Grantee’s representations, certifications, and other undertakings in this Agreement are not False Claims Act Violations; and
 - 2) None of Grantee’s performance under this Agreement, including but not limited to any invoices, reports, or other deliverables in connection with its performance of this Agreement, will constitute False Claims Act Violations.
- c. For purposes of this Section 2.F., a “False Claims Act Violation” means a false claim as defined by ORS 180.750(2) or anything prohibited by ORS 180.755.
- d. Grantee shall immediately report in writing, to Agency, any credible evidence that a principal, employee, agent, subcontractor, subgrantee, or other person has made a false claim or committed a prohibited act under the Oregon False Claims Act, or has committed a criminal or civil violation of laws pertaining to fraud, bribery, gratuity, conflict of interest, or similar misconduct in connection with this Agreement or any moneys paid under this Agreement.
- e. Grantee understands and agrees that any remedy that may be available under the Oregon False Claims Act shall be in addition to any other remedy available to the State of Oregon or Agency under any other provision of law, or this Agreement.

40. Attorney Fees

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

41. Time is of the essence

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

42. No Limitations on Actions of Agency in Exercise of Its Governmental Powers

Nothing in this Agreement is intended, nor shall it be construed, to in any way limit the actions of Agency in the exercise of its governmental powers. The exercise of its governmental powers by Agency shall not constitute a breach of this Agreement.

43. Amendments

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

44. Merger Clause

This Agreement and attached exhibits constitute the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind all parties unless in writing and signed by both parties and all necessary State approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of Agency to enforce any provision of this Agreement shall not constitute a waiver by Agency of that or any other provision.

45. CERTIFICATIONS AND SIGNATURE OF GRANTEE'S AUTHORIZED REPRESENTATIVE

THIS AGREEMENT MUST BE SIGNED IN INK BY AN AUTHORIZED REPRESENTATIVE OF GRANTEE.

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

A. The undersigned is a duly authorized representative of Grantee, has been authorized by Grantee to make all representations, attestations, and certifications contained in this Agreement and to execute this Agreement on behalf of Grantee;

B. By signature on this Agreement for Grantee, the undersigned hereby certifies under penalty of perjury that the undersigned is authorized to act on behalf of Grantee and that Grantee is, to the best of the undersigned's knowledge, not in violation of any Oregon Tax Laws. For purposes of this certification, "Oregon Tax Laws" means a state tax imposed by ORS 320.005 to 320.150 and 403.200 to 403.250 and ORS chapters 118, 314, 316, 317, 318, 321 and 323 and the elderly rental assistance program under ORS 310.630 to 310.706 and local taxes administered by the Department of Revenue under ORS 305.620.

C. To the best of the undersigned's knowledge, Grantee has not discriminated against and will not discriminate against minority, women or emerging small business enterprises certified under ORS 200.055 in obtaining any required subcontracts.

D. Grantee and Grantee's employees and agents are not included on the list titled "Specially Designated Nationals and Blocked Persons" maintained by the Office of Foreign Assets Control of the United States Department of the Treasury and currently found at <http://www.treas.gov/offices/enforcement/ofac/sdn/t11sdn.pdf>; and

E. Grantee is bound by and will comply with all requirements, terms and conditions contained in this Agreement.

F. Grantee further certifies to having a formal statement of nondiscrimination in employment policy.

GRANTEE, BY EXECUTION OF THIS AGREEMENT, HEREBY ACKNOWLEDGES THAT GRANTEE HAS READ THIS AGREEMENT, UNDERSTANDS IT, HAS THE LEGAL AUTHORITY TO BIND, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

Grantee (print Grantee's name): _____

Authorized Signature: _____ Title: _____

By (print name): _____ Date: _____

Contact Telephone Number: _____ Contact Fax Number: _____

Contact E-Mail Address: _____

Grantee Address: _____

Contact Person (Type or Print): _____

Contact Telephone Number: _____ Contact Fax Number: _____

Contact E-Mail Address: _____

Hours of Operation: _____

Fiscal Contact Name: _____ Title: _____

Fiscal Phone #: _____

46. SIGNATURE OF STATE'S AUTHORIZED REPRESENTATIVE

State of Oregon acting by and through
Oregon Housing and Community Services Department
725 Summer Street NE Suite B, Salem, OR 97301

Authorized Signature: _____
Margaret S. Van Vliet, Director or designee Date

Agency Contact Person:
Contact Telephone Number:
Fax Number:
E-Mail Address:

DEPARTMENT OF JUSTICE

Approved by: _____, Senior Assistant Attorney General
Date _____