

AGREEMENT
BETWEEN THE COUNTY OF CUYAHOGA, OHIO
AND
CENTER FOR GOVERNMENTAL RESEARCH, INC.

THIS AGREEMENT (the "Contract") is entered into this 24 day of December, 2012 by and between the County of Cuyahoga, Ohio ("Cuyahoga County") and the Center for Governmental Research Inc. ("CGR"), a non-profit organization organized under Section 501(c)(3) of the Internal Revenue Code and having its principal place of business located at 1 South Washington Street, Suite 400, Rochester, New York, 14614. Cuyahoga County and CGR shall individually be referred to as a "Party" and jointly be referred to hereinafter as the "Parties."

WITNESSETH THAT:

WHEREAS, the Mayors of the communities of Orange Village, the City of Pepper Pike, the Village of Moreland Hills, and Woodmere Village (collectively, "the communities") approached Cuyahoga County in 2011 to request its assistance in advancing a study of a possible merger of the four communities; and

WHEREAS, Cuyahoga County provided staff assistance through its Department of Regional Collaboration and the Cuyahoga County Planning Commission ("CPC") to advance a study of increased shared services between and a possible merger of the communities ("Merger Study"); and

WHEREAS, Cuyahoga County issued a Request for Proposals ("RFP #25067"), attached as Exhibit A, seeking an outside consultant to serve as Project Manager and lead the Merger Study; and

WHEREAS, CGR submitted a proposal, dated October, 2012 ("Proposal") and attached as Exhibit B, to serve as the Project Manager for the Merger Study and provide the requested services; and

WHEREAS, Cuyahoga County has determined to engage CGR to perform said Project Manager services for the Merger Study; and

WHEREAS, CGR desires to be retained as Project Manager for the Merger Study; and

NOW, THEREFORE, in consideration of the mutual terms, conditions, and obligations set forth herein, Cuyahoga County and CGR do hereby agree as follows:

1. Scope of Services. The Scope of Services ("Services") to be provided by CGR shall be as outlined herein and in RFP #25067, which is attached as Exhibit A and hereby incorporated into and made part of this Contract as if fully and expressly rewritten herein. These Services shall include, but not be limited to:

- a. Preparation of a Current Administration and Operations Report.** This report shall describe: how the communities are currently administered; what services each community provides and at what cost; and what differences exist in the administration, services provided, and structures of the communities. The required contents of this report are more fully described in the attached RFP #25067.
- b. Preparation of a Shared Services Opportunities Report.** This report shall identify opportunities for increased shared services among the communities, quantify the potential savings to be realized, and set forth an implementation plan. The required contents of this report are more fully set forth in the attached RFP #25067.
- c. Preparation of a Merger Report.** This report shall assess the merits of a merger of two, three, or all four of the communities and provide an implementation plan for merger. The required contents of this report are more fully set forth in the attached RFP #25067.
- d. Preparation of a Final Summation Report.** Using the findings and conclusions developed in the preceding reports, this report shall provide an overall summary and recommendation regarding the strengths and weaknesses, advantages and disadvantages, costs and benefits, and comparative merits of: (1) maintaining the status quo of four separate communities; (2) implementing additional shared services, without merger; and (3) merging two, three or all four of the communities. The requirements of this report are more fully set forth in the attached RFP #25067.
- e. Reporting Requirements.** CGR shall regularly brief Cuyahoga County and the Mayors of the communities on the progress of this project. CGR shall deliver to the County and the Mayors: a bi-weekly one-page summary report; and a detailed monthly status report outlining a work plan and schedule, detailing progress to date, describing any problems or issues encountered (and suggested solutions), and projecting the anticipated progress in the coming month. The detailed monthly status report shall be attached to the monthly billing statement submitted by CGR to Cuyahoga County pursuant to Section 6 of this Contract. Should CGR fail to meet these reporting requirements on an adequate and timely basis, Cuyahoga County may withhold payments until the necessary information is made available. CGR's continued failure to submit adequate and timely reports may result in the termination of this Contract by Cuyahoga County. The reporting requirements are more fully set forth in the attached RFP #25067.

- f. Post-Delivery Consultations.** CGR agrees to provide at least forty (40) hours of consultation services to Cuyahoga County and the Mayors of the communities following its delivery of the required reports. CGR shall provide these post-delivery consultation services as part of the fixed-fee compensation arrangement set forth below and shall not be entitled to any additional compensation beyond that fixed fee for these Services.
 - g. Participation of CPC Staff.** CGR shall make use of CPC staff to assist in the completion of the study.
- 2. Term.** The term of this Contract ("Term") shall commence as of 12/14, 2012 and, unless the Term date is extended by the mutual agreement of Cuyahoga County and CGR, and except as otherwise noted herein, CGR shall complete the Services described herein and in RFP #25067, including the delivery of the four reports referenced in Section 1, by June 1, 2013.
- 3. Responsibilities.** CGR shall perform its responsibilities hereunder in a good, professional, and workmanlike manner and in conformity with the standards, requirements, responsibilities, demands, and ethics of its profession. Without in any way altering the Scope of Services set forth above and in RFP # 25067, CGR further shall undertake its responsibilities hereunder, deliver the Services, and advance the Merger Study in a manner consistent with the outline and representations set forth in its Proposal.
- 4. Foreign Corporation.** CGR has been duly organized and is a validly existing non-profit organization under the laws of the State of New York, is in good standing and qualified to do business in the State of Ohio as a foreign corporation, has the full legal authority to enter into this Contract and perform its obligations hereunder, and has all requisite power, corporate or otherwise, to conduct its business, as presently conducted and will remain so qualified and in good standing during the term of this Contract.
- 5. Compensation.** CGR agrees to complete this Merger Study and provide all of the Services set forth herein and in RFP #25067 for an all-inclusive fixed fee of ONE HUNDRED TEN THOUSAND DOLLARS (\$110,000.00). This all-inclusive fee covers all consultant fees, subcontractor fees, travel, lodging, and miscellaneous expenses related to CGR's performance of the Services hereunder. This fixed fee will not include costs for legal advertisements and public notices and all mailing and/or duplication or publication costs for any public information releases the CPC chooses to send out during the Merger Study. Cuyahoga County shall not be responsible for any payment to CGR beyond the all-inclusive fixed fee of ONE HUNDRED TEN THOUSAND DOLLARS (\$110,000.00). CGR understands and acknowledges that Cuyahoga County is exempt from Federal excise tax and from all state and local taxes. CGR also acknowledges that it shall assume the risk of performing any Services hereunder that exceed the all-inclusive fixed fee stated above.
- 6. Billing and Payment.** CGR will bill Cuyahoga County an initial upfront fee of 10% (\$11,000.00) of the all-inclusive fixed fee (\$110,000.00). Thereafter, for each of the ensuing

months one through six (January through June, 2013), CGR will submit billing statements detailing actual work performed and bill Cuyahoga County once per month equal installments of 15% (\$16,500.00) of the remaining amount of the fixed fee (\$99,000.00). Cuyahoga County will pay CGR the initial upfront fee (\$11,000.00) within thirty (30) days of the execution of the Contract by both Parties. Cuyahoga County will pay CGR each of the ensuing monthly payments within thirty (30) days of its receipt and approval of the monthly billing statement, except that (1) if the monthly status report does not contain a sufficient amount of detail that is satisfactory to Cuyahoga County or there is inadequate progress toward the required deliverables under this Contract as determined by Cuyahoga County in its sole discretion, Cuyahoga County reserves the right to withhold all or a portion of the payment due to CGR; and (2) Cuyahoga County shall hold the final monthly payment due CGR under this Contract in the amount of \$16,500.00 and shall not release this retainage until CGR submits its final reports and those reports are accepted by Cuyahoga County as compliant with the requirements of this Contract.

In the event that Cuyahoga County disputes the billing statement for any period, Cuyahoga County shall provide written notice explaining the disputed amount to CGR within thirty (30) days of receiving the billing statement (a "Payment Dispute Notice"). Each Payment Dispute Notice shall be resolved in the manner set forth in Section 11 (Dispute Resolution).

7. **Work Product.** All work product, including but not limited to memoranda, reports, plans, and final products shall become the property of Cuyahoga County and shall be surrendered to Cuyahoga County or its designee upon completion of the Merger Study and termination of the Contract. CGR shall not copy or use such records except to perform the Services associated with this Contract. In addition, CGR shall not transfer any such records to any other party not involved with this Contract without the prior written consent of Cuyahoga County.

8. **Indemnification.**

- a. **Indemnification by CGR.** CGR agrees to protect, defend, indemnify, and hold Cuyahoga County and its officials, officers, employees, agents, representatives, departments, agencies, boards, commissions, and other authorities free, clear, and harmless from and against any and all losses, penalties, damages, settlements, costs and liabilities of every kind and character arising out of, or in connection with, any acts or omissions, negligent or otherwise, of CGR and/or its employees, officers, agents, subcontractors or independent contractors. CGR agrees to pay all damages, costs, and expenses of Cuyahoga County, officials, officers, employees, agents, representatives, departments, agencies, boards, commissions, and other authorities and Cuyahoga County itself in defending any action arising out of the aforementioned acts or omissions.
- b. **No Indemnity by Cuyahoga County.** CGR acknowledges that as an Ohio political subdivision, Cuyahoga County is prohibited by law from agreeing to indemnify any

person or entity, and agrees that no Section of this Contract or any other contract or agreement between CGR and Cuyahoga County may be interpreted to obligate Cuyahoga County to indemnify or defend CGR or any other party.

- 9. Insurance.** CGR shall have in effect during the term of this Contract comprehensive automobile and general liability insurance wherein Cuyahoga County and its employees are named as co-insured or additional insured. This insurance shall meet the requirements set forth in RFP #25067. This insurance shall protect CGR, Cuyahoga County and its officials, officers, employees, agents, representatives, departments, agencies, boards, commissions, and other authorities and any subcontractors performing work covered by this Contract against claims for damage for personal injury, including accidental death, as well as for property damages which may arise from operations under this Contract whether such operations be by CGR or by any subcontractor or by anyone directly or indirectly employed by either of them. An exact copy of such insurance policy or policies shall be made available by CGR to Cuyahoga County upon request. A Certificate of Insurance with the following minimum levels of such insurance shall be submitted as follows: (a) Bodily Injury Liability: \$250,000 per person, \$500,000 per accident; (b) Property damage Liability: \$50,000 per accident, \$100,000 per aggregate; and (c) Comprehensive Automobile Liability: \$250,000 per person, \$500,000 per accident.

- 10. Subcontractor's Public Liability and Property Damage Insurance and Vehicle Liability Insurance.** CGR shall either: (1) require each of its subcontractors to procure and maintain, during the life of the subcontract, Subcontractor's Public Liability, Property Damage, and Vehicle Liability Insurance of the type and in the amounts specified above, or (2) CGR shall insure the activities of the subcontractor in its own policy as specified above. The policy or policies shall contain the following, special provisions: "The Company agrees that ten (10) days prior to cancellation or reduction of the insurance afforded by this policy with respect to the Contract involved, written notice shall be mailed to the Cuyahoga County Office of Procurement and Diversity."

11. Dispute Resolution.

- a. In the event of any dispute or disagreement between CGR and Cuyahoga County, either with respect to the interpretation of any provision of this Contract or with respect to the performance by CGR or Cuyahoga County hereunder, which cannot be resolved in the normal course of business, then upon written notice of either Party, each Party will appoint a designated officer whose task it will be to meet for the purpose of endeavoring in good faith to resolve such dispute or to negotiate for an adjustment to such section or provision of this Contract. The designated officers shall meet as often as the Parties reasonably deem necessary in order to gather and furnish to the other all information with respect to the matter in issue, which the parties believe to be appropriate and germane in connection with its resolution. Such officers will discuss the problem and/or negotiate the applicable Section or provision without the necessity of any formal proceedings relating thereto. During the course of such negotiation, all reasonable requests made by one Party to the other for information will

be honored in order that each of the Parties may be fully advised in the negotiations. The specific format for such discussions will be left to the discretion of the designated officers but may include the preparation of agreed upon statements of fact or written statements of position furnished to the other Party. No formal court action for such dispute may be commenced by the Parties until (i) resolution as contemplated in this Section has been unsuccessful and (ii) either of the Parties concludes in good faith that amicable resolution through continued negotiation of the matter in issue does not appear likely and so notifies the other Party.

- b. The rights and obligations of the parties under this Section shall not limit either Party right to terminate this Contract as may be otherwise permitted hereunder.

12. Termination.

- a. **Termination by Cuyahoga County.** This Contract may be terminated by Cuyahoga County for convenience at its sole discretion upon written notice to CGR. In case of such termination, the compensation to be paid CGR by Cuyahoga County shall be determined by the Cuyahoga County on the basis of work completed.
- b. **Termination by CGR.** CGR may terminate this Contract upon written notice to Cuyahoga County if Cuyahoga County materially defaults in the performance of any of its material covenants, agreements or obligations hereunder, and such default continues for thirty (30) days after written notice of such default or breach from CGR. In case of such termination, the compensation to be paid CGR by Cuyahoga County shall be determined by Cuyahoga County on the basis of work completed and usable data available to Cuyahoga County.
- c. **Termination for Financial Instability.** In the event that CGR becomes financially unstable to the point of (i) ceasing to conduct business in the normal course, (ii) making a general assignment for the benefit of creditors, or (iii) suffering or permitting the appointment of a receiver for its business or its assets, or there is a filing by or against CGR of a meritorious petition in bankruptcy under any bankruptcy or debtor's law, Cuyahoga County may, at its option, immediately terminate this Contract under Section 12(a), the "Termination by Cuyahoga County" Section.
- d. **Survival.** The provisions of this Section shall survive the termination or expiration of this Contract.

- 13. Notices.** Any notice to be given under this Contract by either Party to the other may be effected by personal delivery in writing or by certified mail, postage-prepaid, return receipt requested, or overnight mail. Notice delivered personally shall be deemed received upon actual receipt; notice sent by certified mail shall be deemed received on the date the return receipt is either signed or refused; and notice sent by overnight mail shall be deemed received the next business day.

Mailed notices shall be addressed to the Parties at the addresses appearing below:

To Cuyahoga County: Cuyahoga County

Department of Regional Collaboration
Cleveland, Ohio 44114
Attn: Edward Jerse

With a copy to:

Cuyahoga County Department of Law
1219 Ontario Street, 4th Floor
Cleveland, Ohio 44113
Attn: Director of Law

To CGR:

Center for Governmental Research Inc.
1 South Washington Street, Suite 400
Rochester, New York 14614
Attn: Joseph Stefko

- 14. Trade Secrets; Confidentiality.** CGR shall take all steps necessary to protect Cuyahoga County's trade secrets. CGR shall also treat as proprietary and confidential any and all information belonging to Cuyahoga County, which is disclosed to CGR in the course of performance of Services under this Contract (the "Confidential Information"). CGR shall only use Confidential Information for the purposes of this Contract. CGR agrees not to disclose or reveal to any outside party or use for its own benefit, either directly or indirectly, any Confidential Information which it may acquire or develop or, has acquired or developed concerning the technical or business affairs or other private or confidential matters, information, or data of Cuyahoga County without prior written permission of Cuyahoga County. Cuyahoga County will abide by law in granting or denying any permission for disclosure. If CGR fails to meet its obligations to protect the Confidential Information, Cuyahoga County may seek equitable relief.

Confidential Information shall not include information that is in the public domain.

This entire Section shall survive the completion of the performance of the Services hereunder and the termination of this Contract unless Cuyahoga County releases CGR of its obligations through a written signed communication from Cuyahoga County's Director of Law at an earlier date.

- 15. Accounting and Reporting Procedures.** Cuyahoga County shall have access, for purposes of audit and examination, to any books, documents, papers, and records of CGR that are pertinent to the Merger Study for three (3) years after termination of this Contract.
- 16. Anti-Discrimination.** CGR hereby agrees that in the employment of labor, skilled or unskilled, under this Contract, there shall be no discrimination exercised against any person because of race, color, age, sex, condition of handicap, or national origin, and that violation thereof shall be deemed a material breach of this Contract.
- 17. Assignments.** CGR and Cuyahoga County agree that this Contract shall not be assigned to any other entity without prior written approval of Cuyahoga County. CGR may not subcontract any of the Services agreed to in this Contract without the prior express, written

consent of Cuyahoga County. All subcontracts are subject to the same terms, conditions, and covenants contained within this Contract. CGR is responsible for making direct payments to all subcontractors for any and all services provided by such subcontractors. CGR will be responsible for all acts and work product of any its subcontractors hereunder.

18. Governing Law and Jurisdiction; Applicable County Ordinances. This Contract and its exhibits and attachments and any modifications, amendments or alterations thereto shall be governed, construed, and enforced under the laws of the State of Ohio without regard to conflicts of law provisions. CGR and Cuyahoga County agree that the state and federal courts sitting in Ohio will have exclusive jurisdiction over any claim arising out of this Contract and CGR and Cuyahoga County consent to the exclusive jurisdiction of such courts. CGR agrees not to challenge this Governing Law and Jurisdiction provision, and agrees not to attempt to remove any legal action related to this Contract or any alleged breach of this contract outside of Cuyahoga County for any reason. All contracts in which Cuyahoga County is a party, including this Contract, are subject to all applicable Cuyahoga County Ordinances, including, but not limited to, the Cuyahoga County Ethics Ordinance, the Cuyahoga County Inspector General Ordinance, and the Cuyahoga County Contracting and Purchasing Procedures Ordinance. During the term of this Contract, including any extensions, all parties shall remain in compliance with all applicable Cuyahoga County Ordinances and may access copies of all Cuyahoga County ordinances on the Cuyahoga County Council's website at: <http://council.cuyahogacounty.us/>.

19. Entire Agreement; Integration and Modification. This Contract and all exhibits and attachments hereto embody the entire contractual agreement between all Parties, either express or implied, with respect to the subject matter hereof. There are no promises, terms, conditions, or obligations other than those contained herein. This Contract shall supersede all previous communications, representations or contracts, either written or oral, between the Parties to this Contract. Neither this Contract, nor any of the exhibits and attachments, shall be modified in any manner except by an instrument, in writing, executed by all Parties to this Contract

20. Amendments. All amendments shall be in writing and executed by all Parties to this Contract. All amendments and changes shall be dated and shall become a part of the original Contract.

21. Severability. If any term or provision of this Contract or the application thereof to any person or circumstance shall, to any extent, be held invalid or unenforceable, the remainder of this Contract or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each term and provision of this contract shall be valid and enforced to the fullest extent permitted by law.

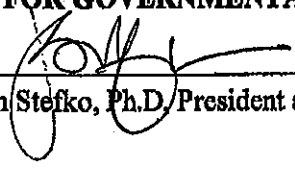
- 22. Public Records.** CGR acknowledges and agrees that as a political subdivision, Cuyahoga County is subject to the requirements of the Ohio Public Records Law. This Contract is a matter of public record under the laws of the State of Ohio. CGR agrees to make copies of this Contract promptly available to any requesting party. Upon request made pursuant to Ohio law, Cuyahoga County shall make available the Contract and all public records generated as a result of this Contract. By entering into this Contract, CGR acknowledges and understands that records maintained by CGR pursuant to this Contract may be deemed to be public records and subject to disclosure under Ohio law. CGR shall comply with the Ohio Public Records Law. This Section shall survive the completion of the performance of the Services hereunder and the termination of this Contract.
- 23. Independent Contractor.** CGR, its employees and its subcontractors shall perform all work pursuant to this Contract as independent contractors and not as employees of Cuyahoga County.
- 24. Findings for Recovery.** CGR represents and warrants that it is not subject to an "unresolved" finding for recovery under Ohio Revised Code Section 9.24. If this representation and warranty is deemed to be false, this Contract is void ab initio, and CGR must immediately repay to Cuyahoga County any funds paid under this Contract and must make Cuyahoga County whole for any damages sustained by Cuyahoga County.
- 25. No Apparent Authority.** CGR recognizes and agrees that no public official or employee of Cuyahoga County may be deemed to have apparent authority to bind Cuyahoga County to any contractual obligations not properly authorized pursuant to Cuyahoga County's Contracting and Purchasing Procedures.
- 26. Parties Bound and Benefitted.** This Contract shall bind and benefit the Parties hereto and, as applicable, their respective owners, members, directors, officers, representatives, successors, and assigns.
- 27. Non-waiver.** Either Party's failure to require performance of any clause of this Contract, or if it requires performance and does not follow through, shall not affect the non-defaulting Party's right to require performance at any time thereafter. Additionally, either Party's waiver of any breach or default of this Contract shall not constitute a waiver of any subsequent breach or default or a waiver of the Section itself or any other Section.
- 28. Contract Interpretation and Construction.** In the event of any ambiguity or question of intent or interpretation arise, this Contract shall be construed as though drafted by both parties and no presumption or burden of proof shall arise favoring or disfavoring one party by virtue of the authorship of this Contract or any part thereof.
- 29. Agreement to Remain in Compliance with Certifications, Representations, and Warranties as Continuing Commitments/Verification.**

- a. **Continuing Commitments.** CGR shall ensure that all of its certifications, representations, and warranties under this Contract shall remain true throughout the duration of the Contract as if they are continuing commitments, and it shall immediately notify Cuyahoga County in writing in the event that any of the certifications, representations, and warranties ceases to be true. At its sole discretion, Cuyahoga County has the unequivocal right to review and audit CGR's continuing certifications, representations, and warranties.
- b. **Compliance with Equal Employment Policies.** During the performance of this Contract, CGR agrees to itself, its assignees, subconsultants, and successors in interest to comply with all applicable laws, resolutions, regulations and/or policies of Cuyahoga County, relative to equal employment, affirmation action and Small/Women/Minority Business Enterprise requirements, which are herein incorporated by reference and made a part of this Contract. Failure to comply with any of the aforementioned laws, resolutions, regulations and/or policies may result in the termination of this Contract.
- c. **Bonafide Employee of CGR.** CGR warrants and represents that it has not employed or retained any company, firm or person, other than a bonafide employee working for the CGR, to solicit or secure this Contract, and that it has not paid or agreed to pay any company, firm or person, other than a bonafide employee working for CGR, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, Cuyahoga County shall have the right to annul this Contract without liability or in its discretion to deduct from the contract fee- or consideration, or otherwise recover, the full amount of such fee, commission, gift, percentage, brokerage fee, or contingent fee.

30. ELECTRONIC SIGNATURE. BY ENTERING INTO THIS AGREEMENT PROVIDER AGREES ON BEHALF OF THE CONTRACTING OR SUBMITTING BUSINESS ENTITY, ITS OFFICERS, EMPLOYEES, SUBCONTRACTORS, SUBGRANTEES, AGENTS OR ASSIGNS, TO CONDUCT THIS TRANSACTION BY ELECTRONIC MEANS BY AGREEING THAT ALL DOCUMENTS REQUIRING COUNTY SIGNATURES MAY BE EXECUTED BY ELECTRONIC MEANS, AND THAT THE ELECTRONIC SIGNATURES AFFIXED BY COUNTY TO SAID DOCUMENTS SHALL HAVE THE SAME LEGAL EFFECT AS IF THAT SIGNATURE WAS MANUALLY AFFIXED TO A PAPER VERSION OF THE DOCUMENT. PROVIDER ALSO AGREES ON BEHALF OF THE AFOREMENTIONED ENTITY AND PERSONS, TO BE BOUND BY THE PROVISIONS OF CHAPTERS 304 AND 1306 OF THE OHIO REVISED CODE AS THEY PERTAIN TO ELECTRONIC TRANSACTIONS, AND TO COMPLY WITH THE ELECTRONIC TRANSACTIONS, AND TO COMPLY WITH THE ELECTRONIC SIGNATURE POLICY OF CUYAHOGA COUNTY.

IN WITNESS WHEREOF, the parties have caused this Contract to be executed on the day and year first above mentioned.

CENTER FOR GOVERNMENTAL RESEARCH INC.

By: 
Joseph Stefko, Ph.D. President and CEO

COUNTY OF CUYAHOGA, OHIO

By: 
Edward FitzGerald, County Executive

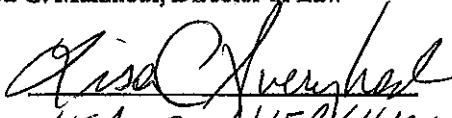
The legal form and correctness of this Contract is hereby approved:

Law Department
Cuyahoga County, Ohio
Majeed G. Makhlouf, Director of Law

By:

Name:

Date:


LISA C. AVERY
1/23/13

