

**CONTRACT
FOR CONSULTING SERVICES
BETWEEN
THE COUNTY OF CUYAHOGA
AND
THE CUYAHOGA COUNTY PLANNING COMMISSION**

This CONTRACT (hereinafter "Contract") made this ____ day of ____, 2013 ("Effective Date"), by and between the County of Cuyahoga, Ohio ("County"), on behalf of the Department of Development ("DOD") and the Cuyahoga County Planning Commission, located at 2429 Superior Viaduct, Cleveland, Ohio 44113 ("Consultant").

WITNESSETH:

WHEREAS, DOD is in need of consulting services to assist in identifying eligible areas throughout the County to receive U.S. Department of Housing and Urban Development ("HUD") Community Development Block Grant ("CDBG") funding for the prevention or elimination of slums and blight pursuant to a Request for Qualifications RFQ # DV13-27542 (hereinafter "RFQ # DV13-27542"); and

WHEREAS, DOD, has requested the employment, by County, of Consultant, which, pursuant to a review process, was determined to be the most suitable for this RFQ # DV13-27542; and

WHEREAS, County has determined to engage Consultant to perform said consulting services; and

WHEREAS, Consultant has agreed to the terms and conditions indicated herein and did submit a certain "Improvement Target Area (ITA) Identification and Redetermination Study" proposal dated July 12, 2013 in response to RFQ # DV13-27542 ("Proposal"), which Proposal is also incorporated herein by reference.

NOW THEREFORE, in consideration of the mutual promises and obligations herein to be observed and performed by the parties hereto, County and Consultant hereby agree as follows:

ARTICLE 1. TERM AND SCOPE OF AGREEMENT

I. Term

The term of this Contract ("Term") shall commence on September 10, 2013 and end on May 31, 2014 unless earlier terminated according to the provisions herein.

II. Scope of Services:

The Scope of Services to be performed under this Contract shall be as outlined in RFQ # DV13-27542 which is hereby incorporated into and made part of this Contract as though expressly rewritten herein ("Services") and in attached Exhibit A.

The Scope of Services shall include Consultant's review of different data sources to identify eligible areas in the County for investment of CDBG funds in accordance with HUD regulations.

It is understood and agreed that the Articles of this Contract shall govern should there be any variance between the language of the aforementioned RFQ and the Articles of this Contract.

ARTICLE 2. FEES AND FEE PAYMENTS

I. Fees:

Consultant shall perform all Services under this Contract for the maximum fee not to exceed ONE HUNDRED AND FIFTY THOUSAND DOLLARS (\$150,000.00). Consultant hereby acknowledges that Consultant shall assume the risk of performing all Services under this Contract the fee for which would exceed the maximum amount stated above.

In the event the total fee for Consultant's Services under this Contract are lower than the maximum fee amount stated above, Consultant shall not be entitled to receive the maximum fee amount and shall only receive those fees actually earned for Services rendered under this Contract.

Project related expenses incurred by Consultant or any of its subcontractors as part of its Services hereunder (e.g. exceptional printing costs (such as large format drawings), overnight mail, etc.) will be covered under Consultant's Services and will not be billed to County.

II. Fee Payment:

The fees for the Services to be performed under this Contract shall be paid as follows:

- A.) Partial payments of fees shall be made as the work progresses and as outlined in this Contract . Consultant shall only invoice for Services rendered under this Contract. Invoices will be prepared and submitted to County for payment based on the work performed since the previous invoice, all of which are subject to audit by County and possible revision. Each invoice shall include a written progress report that minimally contains a narrative describing what work has been completed since the last invoice and the percentage completion of the major tasks.
- B.) Consultant shall be required to submit invoices in a format that is recommended and acceptable to County. A sample copy of this invoicing format will be provided to Consultant by County.
- C.) Invoices for any portion of the Services to be provided under this Contract shall not be submitted more frequently than monthly and acceptable invoices shall be paid within sixty (60) days following County's receipt of the applicable invoice; and
- D.) Invoices for those Services paid on the basis of costs incurred shall show the name and classification of employee, dates and hours worked.

ARTICLE 3. GENERAL CONDITIONS

I. General Conditions, County's Responsibilities:

County shall:

- A.) Provide written approvals, as specified herein, or as mutually agreed to by County and Consultant, in a timely manner. Data, reports and studies shall be approved by County as to scope, form, content and method of presentation prior to final acceptance by County; and
- B.) Make available to the Consultant access to all County data sources and any other pertinent information on file in the office of County which are applicable to the Services covered in this Contract.

II. General Conditions, the Consultant's Responsibilities and Representations:

Consultant shall:

- A). Perform all Services hereunder in a fiduciary, professional and efficient manner in accordance with the highest industry standards and practices applicable to the performance of such Services; and
- B). Provide at its own expense, all technical and professional services, labor equipment and materials required for the execution of this Contract, except as enumerated otherwise and elsewhere in this Contract. In addition, Consultant shall employ all necessary personnel responsible for the gathering of data, compiling data and reviewing all work covered by this Contract.
- C). Comply with all Federal, County, State and municipal laws, ordinances, resolutions and policies applicable to the Services to be performed under this Contract. Consultant shall obtain Federal, State, County and/or local licenses; permits and/or clearances necessary to fulfill their obligations of this Contract; and
- D). Monitor the qualifications, capabilities and capacities of its sub-consultants to perform those Services which have been delegated to them. Should Consultant be required to change or add sub-consultants through the course of this Contract, Consultant must receive written approval from County Director of Development. Consultant will be required to notify County why a change or addition is required, how the change, addition or deletion will affect their original Proposal and how this change, addition or deletion will affect Consultant's ability to meet any other requirements of County before receiving written approval; and
- E). Not engage the services of any person or persons in the employment of County or any other public body in the State of Ohio for any of the work covered by the terms of this Contract, without the specific written permission of County. This provision is not intended to prohibit any employees of Consultant from performing any Services under this Contract.
- F). Have been duly organized and is a validly existing county planning commission under the laws of the State of Ohio, 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.

ARTICLE 4. 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 County:	Attn: Cuyahoga County Director of Development Cuyahoga County Department of Development 1701 East 12th Street, 1st Floor Cleveland, Ohio 44114
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With a copy to: Attn: Cuyahoga County Director of Law
Cuyahoga County Department of Law
1219 Ontario Street, 4th Floor
Cleveland, Ohio 44113

To Consultant: Attn: Director
Cuyahoga County Planning Commission
2429 Superior Viaduct
Cleveland, Ohio 44113

ARTICLE 5. – DISPUTE RESOLUTION

A. The parties agree to utilize good-faith efforts to amicably resolve any dispute, controversy, claim, or breach arising out of or relating to this AGREEMENT. In the event that an amicable resolution is not reached, any controversy, claim, or breach arising out of or relating to this Contract, or the breach thereof, shall be exclusively settled by final and binding arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules.

B. Dispute resolution shall be initiated with the American Arbitration Association (AAA) within Thirty (30) days of the date the parties determined they could not resolve the dispute independent of this process.

ARTICLE 6. TERMINATION

This Contract may be terminated in accordance with this Article.

A. Termination by County

This Contract may be terminated by County for convenience at its sole discretion upon written notice to Consultant. In case of such termination, the compensation to be paid Consultant by County shall be determined by County on the basis of work completed and usable data available to County.

B. Termination by Consultant

Consultant may terminate this Contract upon written notice to County if 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 Consultant. In case of such termination, the compensation to be paid Consultant by County shall be determined by County on the basis of work completed and usable data available to County.

C. Survival of Article

The provisions of this Article shall survive the termination or expiration of this Contract.

ARTICLE 7. CONFIDENTIALITY

The parties agree to respect and abide by all Federal and State laws, rules, and regulations, including those pertaining to the Health Insurance Portability and Accountability Act (HIPPA), confidentiality, and

disclosure with regard to all information and records obtained or reviewed in the course of providing services under this Contract.

ARTICLE 8. MISCELLANEOUS

- A). **County Agent and Liaison.** For the purpose of this Contract, the agent for County and liaison officer on the matter contained herein shall be County Director of Development and/or such members of her/his staff as designated; and
- B). **Intellectual Property Rights.** Consultant hereby agrees that there will be no charge to County for any patent, copyright, or any other intellectual property rights which it controls and which may be involved in the work under this Contract unless such charges have been specified and included in the fees enumerated in Article 2 of this Contract. Consultant shall advise County, in writing, of any process or patent rights which are not held or controlled by Consultant, but which in Consultant's opinion may be involved in the work contemplated herein.
- C). **Reports.** All reports and any other records developed by Consultant in the performance of this Contract shall remain the sole property of County. Consultant shall not copy or use such records except in connection with the Services to be performed under this Contract. In addition, Consultant shall not transfer any such records to any other party not involved with this Contract. All of the above shall be delivered to County upon completion of this Contract.
- D). **Agreement to Remain in Compliance with Certifications, Representations, and Warranties as Continuing Commitments/Verification.** Consultant 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 County in writing in the event that any of the certifications, representations, and warranties ceases to be true. At its sole discretion, County has the unequivocal right to review and audit Consultant's continuing certifications, representations, and warranties.

During the performance of this Contract, Consultant agrees to itself, its assignees, sub consultants, and successors in interest to comply with all applicable laws, resolutions, regulations and/or policies of 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.

Consultant warrants and represents that it has not employed or retained any company, firm or person, other than a bonafide employee working for the Consultant, 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 Consultant, 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, 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.

- E). **Independent Contractor.** Consultant, its employees and subcontractors shall perform all Services pursuant to this Contract as independent contractors and not as employees of County or the County Director of Development.

- F). **Prohibition on Assignment.** Consultant may not assign, directly or indirectly, all or part of its rights or obligations under this Contract without the prior written consent of County.
- G). **Governing Law and Jurisdiction.** This Contract shall be governed by and construed under the laws of the State of Ohio without regard to conflicts of law provisions. The parties agree that the State and federal courts sitting in Ohio will have exclusive jurisdiction over any claim arising out of this Contract, and each party consents to the exclusive jurisdiction of such courts. Consultant hereby agrees not to challenge this Governing Law and Jurisdiction provision, and not to attempt to remove any legal action outside of County for any reason.
- H). **Findings for Recovery.** Consultant 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 Consultant must immediately repay to County any funds paid under this Contract and must make County whole for any damages sustained by County.
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- I). **Entire Agreement.** This Contract constitutes the entire agreement between the parties, either express or implied, with respect to the subject matter hereof. No modification of this Contract shall be binding upon the parties unless set forth in writing and signed by both parties, or their respective successors or assigns.
- J). **No Apparent Authority.** Consultant recognizes and agrees that no public official or employee of County may be deemed to have apparent authority to bind County to any contractual obligations not properly authorized pursuant to County’s Contracting and Purchasing Procedures.
- K). **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.
- L). **Non-waiver.** Either party’s failure to require performance of any Article 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 provision itself or any other provision.
- M). **Contract Interpretation and Construction.** In the event an ambiguity or question of intent or interpretation arises, 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 any of the Articles of this Contract.
- N). **Counterparts.** This Contract may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which, taken together, shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page of this Contract (and each amendment, modification and waiver in respect of it) by facsimile or other electronic transmission, including email, shall be as effective as delivery of a manually executed original counterpart of each such instrument.
- O). **Severability.** If any Article of this Contract is invalid or unenforceable for any reason, this Contract shall be divisible as to such Article and the remainder of this Contract shall be and remain valid and binding as though such Article was not included herein.

- P.) **Applicable County Ordinances.** All County contracts, including this Contract, are subject to all applicable County ordinances, including, but not limited to, the Cuyahoga County Ethics Ordinance, Cuyahoga County Inspector General Ordinance, and Cuyahoga County Contracting and Purchasing Procedures Ordinance. Copies of all County ordinances are available on the County Council's web site at <http://council.cuyahogacounty.us/>.

ARTICLE 9. ELECTRONIC SIGNATURE

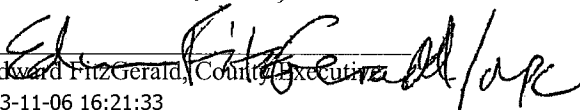
BY ENTERING INTO THIS CONTRACT CONSULTANT AGREES ON BEHALF OF THE CONTRACTING OR SUBMITTING BUSINESS ENTITY, ITS OFFICERS, EMPLOYEES, SUBCONTRACTORS, SUBGRANTEES, AGENTS OR ASSIGNS, TO CONDUCT THIS TRANSACTION BY ELECTRONIC MEANS BY AGREEING THAT ALL DOCUMENTS REQUIRING COUNTY SIGNATURES MAY BE EXECUTED 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. CONSULTANT 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 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.

CONSULTANT:
CUYAHOGA COUNTY PLANNING COMMISSION

By: 
Name, Title EXECUTIVE DIRECTOR

COUNTY OF CUYAHOGA, OHIO
Edward Fitzgerald, County Executive

By: 
Edward Fitzgerald, County Executive
2013-11-06 16:21:33

The legal form and correctness
of this Agreement is hereby approved.
Cuyahoga County Law Department
Majeed G. Mahklouf
By: _____

Date: _____

EXHIBIT A
Scope of Services

Project/Contract Methodology

Consultant shall:

- Design communication for dissemination to the 51 Urban County Communities in Cuyahoga County requesting input as to specific problem areas in these communities;
 - Determine vacant and abandoned areas;
 - Determine areas with environmental concerns;
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- Determine physical deterioration of areas that are not vacant, abandoned or have environmental concerns; and
 - Determine commercial industrial vacancies.

Consultant shall use all available resources to obtain data including but not limited to:

Colleges and Universities
County and Municipal Land banks
U. S. Postal Service
Federal Reserve Bank

Criteria and Scoring Review

Prior to the start of each study to be conducted in 51 Urban County Communities, Consultant and the County will review the existing **survey criteria** and **rating scale** previously used in the area to be surveyed.

The **survey criteria** represent various exterior components of a property, such as roof, windows, parking lot, or signage, along with definitions of varying levels of repair need. At present in the Cuyahoga County Urban County, one- to three-family residential properties are evaluated against eleven property elements; multi-family residential properties are evaluated against thirteen property elements; mobile homes are evaluated against nine property elements; and commercial storefronts/ office buildings/industrial buildings are evaluated against eight property elements.

The **rating scale** assigns a point value to each level of repair need, with higher point values assigned to larger or more severe repair needs. For example, a house with all exterior walls in need of repainting will have a higher point value compared to a house where only the trim is in need of repainting. Consultant and the County also confirm the point threshold score for a property, meaning the minimum number of points needed to consider the property "substandard." At present in the Cuyahoga County Urban County, the maximum repair need score of a one- to three-family property is eighteen points, and a property must score a minimum of three points to be considered substandard.

Adjustments to the scoring system can be made, as long as the ratio of the maximum score to the substandard threshold score does not change significantly.

Consultant will work cooperatively with the Cuyahoga County Department of Development to carefully review the existing survey criteria and rating scale, make any adjustments and updates that are mutually agreed upon, and verify the final criteria and scale prior to advancing to the next phase of the project.

Field Work

Field work is conducted as a "windshield survey" from within a slow moving vehicle. Consultant's survey team consists of two persons, enabling both sides of a street to be reviewed in one pass, which improves efficiency and lowers total mileage. In retail districts with numerous small storefront businesses and heavy pedestrian traffic, the field work is conducted on foot.

Properties with a total point score below the substandard threshold score are not recorded in the inventory. Properties with a total point score at or above the substandard threshold score have the following specific information recorded in an Excel spreadsheet on a laptop computer in the vehicle: community name, street name, street number, the score for each property element, and total score.

Substandard Property Mapping

Once the field work is completed, work shifts to the Consultants's offices where the address information in the Excel spreadsheet is electronically matched to the Permanent Parcel Number database of the Cuyahoga County Fiscal Office. The parcel numbers are then used to electronically map the substandard properties on a parcel base map, using a different symbol for each property type (one- to three-family, multifamily, mobile home, or commercial/office/industrial). The data and map are adjusted to accurately reflect multiple substandard storefronts or buildings on the same parcel.

Improvement Target Area Identification

After mapping, Improvement Target Areas (ITAs) are identified, meaning concentrations of substandard structures or storefronts. To ensure consistency in the identification of ITAs over time, the statistical standards approved by HUD in 1984 have continued to be used, along with several refinements approved by HUD to address specific land use situations.

The statistical standards involve both a minimum number of substandard structures or storefronts related to the size of the geographic area in which they occur. Utilizing both quantity and area standards permits the flexibility of creating ITAs of varying sizes and shapes in order to accurately illustrate the problem of deteriorated properties. The acreage measure also prevents the designation of ITAs characterized by an unreasonably small number of substandard properties.

For example, one- to three-family residential neighborhoods with lots of roughly consistent size and/or configuration, or large commercial corridors, are evaluated on the standard of "20 or more substandard properties or storefronts within 50 acres or less."

A second standard, addressing areas of low density development characterized by large lots with inconsistent acreage and/or configurations, substitutes a standard of a minimum percentage of street-fronting parcels with substandard structures instead of a numerical total.

A third standard, utilized in areas with concentrations of low- or mid- rise multi-family properties,

substitutes a standard of a minimum number of substandard multi-family units per acre distributed over an acreage threshold.

Finally, a fourth standard, used only in smaller commercial districts, utilizes a dual approach: a minimum percentage of substandard storefronts over the entire commercial district; or a minimum percentage of the total foot frontage of the entire commercial area.

Several other guidelines in effect for many years improve the usefulness of the ITA delineation process for program development and provide continuity over time. For example, an ITA is delineated using only one of the statistical standards outlined above; multiple standards are not combined within one ITA. Boundary line placement guidelines include avoiding splitting a block with a boundary line; including both sides of a street whenever possible to avoid using the street centerline as a boundary; following rear property lines as a boundary whenever possible; and evaluating a commercial corridor that crosses community boundaries as a continuous unit.

Other Data Sources to Identify Improvement Target Areas

In addition to a survey of exterior building conditions, CCPC will work with the Cuyahoga County Department of Development to identify and utilize other relevant data sources to distinguish areas that meet HUD's requirements for blighted or deteriorating areas.

Data Analysis

In addition to mapping substandard properties and delineating ITAs, CCPC will provide a written statistical analysis of the substandard properties. Data presented will include total substandard properties by type, substandard properties as a percentage of all properties in the community, severity of condition, and frequency with which specific property elements have become repair needs, both within ITAs and in the community as a whole.

Final Report

CCPC will prepare a written report for the Cuyahoga County Department of Development, including information on slum and blight standards discussed in the Codified Federal Regulations and the Ohio Revised Code, field survey methodology, ITA identification methodology, data analysis, and ITA boundary maps at the community level and parcel level. The report will also include a spreadsheet for each ITA providing individually-listed substandard properties by address and Permanent Parcel Number, detailed scoring information and other property characteristics, as well as photos of sample properties for each ITA.