

American Recovery & Reinvestment Act Funded Project

Funding for this contract has been provided through the American Recovery and Reinvestment Act of 2009 (ARRA), and is subject to the reporting and operational requirements of ARRA. Grantee and all of its contractors and subcontractors are subject to audit by appropriate federal and state entities. The Cuyahoga County Planning Commission has the right to cancel, terminate, or suspend the contract if Grantee or any contractor or subcontractor fails to comply with the reporting and operational requirements of this contract.

**ENERGY EFFICIENCY AND CONSERVATION BLOCK GRANT PROGRAM
MUNICIPAL ENERGY PROGRAM
GRANT AGREEMENT
(American Recovery & Reinvestment Act of 2009 Funds)**

Grantee:	City of Berea	Grant Control No.:	AUD_BER_001		
Address:	11 Berea Commons, Berea, Ohio 44017				
Contact:	Rebecca Corrigan	E-mail:	Rebecca@bereacdc.org	Phone:	(440) 826-4727
Program Activity:	4. Financial Incentive Municipal Grant Program	Effective Date:	January 30, 2011		
Project Site:	City of Berea	Project Completion Date:	June 30, 2011		
Required Registration Information					
DUNS No.:	085230712	Legal Name of Applicant	City of Berea		
Fed.ID No.:		CCR Expiration Date:	12/13/2012		
Job Commitment and Investment					
Jobs to be Created:	N/A	Jobs to be Retained:	N/A	Investment:	
NEPA Status					
Categorical Exclusion Applies		Project Subject to NEPA Review			
SHPO Status					
Exempt from SHPO		Project Subject to SHPO Review			
Grant Funds					
Source:		CFDA No.:	Fed. Award No.:	Total Grant Award:	
U.S. Department of Energy – ARRA Funds		81.128	DE-EE0000708	\$5,783,000.00	

THIS GRANT AGREEMENT (“Agreement”) is entered into by and between the **CUYAHOGA COUNTY PLANNING COMMISSION**, a governmental agency established pursuant to §713.22 of the Ohio Revised Code (the **“Revised Code”**) located at 323 Lakeside Avenue West, Suite 400, Cleveland, Ohio 44113 (**“Grantor”**) and the **City of Berea**, a political subdivision of the State of Ohio whose address is **11 Berea Commons, Berea, Ohio 44017** (hereinafter referred to as (**“Grantee”**)).

W I T N E S S E T H

WHEREAS, the County of Cuyahoga, Ohio (**“Recipient”**), pursuant to that certain Assistance Agreement (**“Assistance Agreement”**) by and between Recipient and the U.S. Department of Energy (**“USDOE”**), was awarded funding in the form of an Energy Efficiency and Conservation Block Grant (the **“EECBG”**) by the USDOE under the Energy Efficiency and Conservation Block Grant Program (the **“Program”**) to develop and implement Recipient’s Energy Efficiency & Conservation Strategy (**“EEC&S”**) in order to create jobs, reduce fossil fuel emissions; reduce total energy use of eligible entities; and improve energy efficiency in the building, transportation and other appropriate sectors;

WHEREAS, The EECBG was awarded to Recipient under Catalog of Federal Domestic Assistance Number DE-EE0000708;

WHEREAS, Recipient desired to obtain Grantor’s assistance to develop and implement, in part, Recipient’s EEC&S through utilization of a portion of the EECBG;

WHEREAS, Grantor is authorized and empowered by Chapter 713 of the Revised Code to accept, receive, and expend funds, grants, and services from any political subdivision of the State of Ohio and contract with respect thereto, either separately or jointly or cooperatively, and provide such information and reports as may be necessary to secure such financial aid;

WHEREAS, Grantor and Recipient entered into that certain Interagency Agreement (**“Interagency Agreement”**) making available to Grantor a portion of the EECBG for purposes of developing and implementing, in part, Recipient’s EEC&S through the undertaking by Grantor of certain activities, including, but not limited to, administering a competitive municipal grant program (referred to herein as the **“Municipal Energy Program”** or the **“MEP”**);

WHEREAS, the purpose of the MEP is to develop projects at the local level to retrofit municipal-owned buildings and facilities; and

WHEREAS, this Agreement is made under the MEP.

NOW, THEREFORE, in consideration of the mutual representations, warranties, covenants and agreements herein contained, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

1. **General.**

(a) **Grantor’s Authority.** A portion of the EECBG has been made available to Grantor, pursuant to the Interagency Agreement, for Grantor’s use in administering the MEP. Grantor is authorized and empowered by Chapter 713 of the Revised Code to enter into this Agreement.

(b) **Supplemental Terms.** This Agreement incorporates by reference the terms set forth in Appendix A, Supplemental Terms and Conditions. In the event of any conflict or inconsistency between any provision in the body of this Agreement and any provision in Appendix A, the provisions in Appendix A

shall control. Further, this Agreement shall be subject to any additional rules, requirements, modifications or clarifications the federal government may institute regarding ARRA funds.

2. **Project.**

Grantee shall use the financial assistance to be provided by Grantor pursuant to this Agreement to undertake the energy project further described in the Program Application or Project Proposal (the “**Application**”) submitted by Grantee and summarized in the Scope of Work (the “**Project**”). The Scope of Work and Project Budget are attached to this Agreement as **Exhibit I** and incorporated by this reference herein as if fully rewritten. The Application is not attached but is also incorporated by this reference into this Agreement as if fully rewritten herein.

3. **Grant of Funds.**

(a) **ARRA Funds.** Grantor hereby awards and grants to Grantee funds in the aggregate amount of **Forty-Five Thousand Dollars and no cents (\$45,000.00)** (the “**Grant Funds**”) to be used for the sole and express purpose of undertaking and completing the Project substantially as described in the Application. Grantee may not use the Grant Funds for any purpose other than completion of the Project. Grantee may not pledge the Grant Funds as security for any loan or other obligation or indebtedness.

(b) **Availability of Funds to Complete the Project.** It is a condition to the award of Grant Funds that Grantee provides funds from other sources to pay Project costs in excess of the Grant Funds. Grantee represents and warrants to Grantor that Grantee has obtained such additional funds or that Grantee has a binding commitment for such additional funds and, with the exercise of reasonable diligence, will have obtained such additional funds no later than the time such funds will be required to pay Project costs as and when such costs are incurred and payable.

4. **Payment of Grant Funds.**

(a) **Invoices.** Grantor shall disburse the Grant Funds on a reimbursement basis for eligible costs of the Project incurred on or after the Effective Date. Grantee shall require delivery before payment is made for purchased goods, equipment, and services unless Grantee obtains satisfactory security from the Grantor for the payment and performance of the underlying purchase agreement. Grantee shall submit to Grantor for review and approval requests for reimbursement detailing expenditures which have then been incurred by Grantee in accordance with the Project budget included in the Application, subject to the allowance for budget alterations provided in paragraph (b) of this Section 4. Requests for reimbursement must be accompanied by any Financial Report (as further described in Section 8 below) then due. Grantee shall submit reimbursement requests on forms provided by Grantor from time to time. Copies of Grantor’s current financial reporting forms are attached for reference as **Exhibit II**. All expenses to be reimbursed with Grant Funds shall be supported by contracts, invoices, vouchers, paid receipts and other documentation as appropriate to evidence the costs incurred by Grantee to perform the work described in the Application. Grantor shall be the sole judge of the adequacy of reimbursement requests. Grantor may request, and Grantee shall submit to Grantor, such additional forms and documentation as may be necessary or useful to substantiate a reimbursement request. If the reimbursement request has been completed to the Grantor’s satisfaction, all supporting documentation is in order, and the Grantor has performed any inspections as it has so desired, then Grantor shall process as promptly as possible such reimbursement request subject to the other provisions of this Section 4.

(b) Budget Alterations.

(i) Subject to paragraph (ii) below, Grantee shall have discretion to reallocate an amount not greater than ten percent (10%) of the Grant Funds, in the aggregate, among budget line items otherwise funded in whole or in part with Grant Funds, and any such reallocation shall be considered by Grantor to be consistent with the Project budget. In the event Grantee makes a budget alteration as permitted by this paragraph, Grantee shall submit with its request for reimbursement a revised Project budget reflecting the alteration. Any changes to the Project budget beyond the scope of this paragraph, including, without limitation, alterations that add budget line items or total, cumulatively with prior alterations, more than ten percent (10%) of the Grant Funds may be effected only by amendment of this Agreement as provided in Section 15(e).

(ii) If actual allowable indirect costs are less than those budgeted and funded under this Agreement, Grantee may use the difference to pay additional allowable direct costs incurred prior to the Project Completion Date. If at the completion of the Project the Grantee's share of total allowable costs (*i.e.*, direct and indirect), is less than the total costs reimbursed, Grantee must refund the difference. Grantee is expected to manage its indirect costs. USDOE will not amend an award to Grantor solely to provide additional funds for changes in indirect cost rates, and Grantor will not amend an award to Grantee solely to provide additional funds for changes in indirect cost rates. USDOE and Grantor recognize that the inability to obtain full reimbursement for indirect costs means Grantee must absorb any underrecovery. Such underrecovery may be allocated as part of Grantee's required cost sharing, if any.

(c) Retainage. Grantor may withhold payment of an amount equal to ten percent (10%) of the Grant Funds until Grantor receives and approves Grantee's Project Completion Report (as defined in Section 8(c) of this Agreement).

(d) Special Condition to Disbursement. Subject to any applicable notice or cure periods, Grantor shall not be obligated to make payments to Grantee under this Agreement at any point during the Term in which Grantee fails to comply in part or in whole with any of the terms and conditions set forth in this Agreement.

(e) Staged Disbursement. Grantor shall not be obligated to make all or any portion of a payment to Grantee to the extent such payment amount exceeds that portion of the EECBG that has been released by USDOE to Grantor and is available for disbursement.

(f) Time Restrictions. Under the Program, all funds awarded to Grantor under the EECBG must be expended within thirty-six (36) months of September 28, 2009 (*i.e.*, the effective date of the EECBG). Accordingly, Grantor shall not be obligated to make any payments to Grantee following the expiration of the thirty-six (36) month term set forth in the preceding sentence.

(g) Decontamination and/or Decommissioning Costs. Notwithstanding any other provisions of this Agreement, neither the federal government nor the Grantor shall be responsible for, or have any obligation to, Grantee for (i) Decontamination and/or Decommissioning (D&D) of any of Grantee's facilities, or (ii) any costs which may be incurred by Grantee in connection with the D&D of any of its facilities due to the performance of the work under this Agreement, whether the D&D work was performed prior to or subsequent to the effective date of this Agreement.

5. Grant Funds Not Expended. If the Grant Funds are not expended by Grantee in accordance with the terms and conditions of this Agreement or within the time period set forth in this Agreement, the award of the Grant Funds shall cease and Grantor shall have no further obligation to disburse the Grant Funds. Grantor shall also have no obligation to disburse any amount of the Grant Funds that exceeds the

eligible costs of the Project actually incurred by Grantee. If Grant Funds have been paid to Grantee and Grantor determines that Grantee has not performed in accordance with the terms and conditions of this Agreement, Grantee shall return such improperly expended Grant Funds within thirty (30) days after demand by Grantor. In the event that the Project does not become operational by the Project Completion Date (as such date may be extended as provided in Section 6(a)) and/or is affirmatively abandoned by Grantee, all Grant Funds paid by Grantor to Grantee under this Agreement shall be refunded to Grantor by Grantee within thirty (30) days after the Project Completion Date or abandonment has occurred.

6. **Agreement Deadlines and Term.**

(a) **Project Completion.** Grantee shall complete the Project not later than the Project Completion Date set forth on the first page of this Agreement. If Grantee anticipates that the Project will not be completed by the Project Completion Date, Grantee must request an extension of time to complete the Project at least sixty (60) days before the scheduled Project Completion Date. It will be within the sole discretion of Grantor to grant or deny such extension of time.

(b) **Term of Agreement.** This Agreement shall be in effect from the Effective Date set forth on the first page of this Agreement through the date which is three (3) years after the Project Completion Date (the “**Expiration Date**”), unless it is terminated earlier as provided in Section 12 (the “**Term**”). Grantee acknowledges that the Term extends beyond the Project Completion Date for purposes of reporting by Grantee and monitoring by Grantor of the results of the award of Grant Funds, and that Grantee’s obligation to file any delinquent reports survive the expiration or earlier termination of this Agreement.

7. **Project Performance.**

(a) **Completion According to Application and Scope of Work.** Grantor has approved an award of financial assistance to Grantee to induce Grantee to undertake and complete the Project with the goal of achieving the Program objectives described by Grantor in its Energy Efficiency and Conservation Block Grant application submitted to USDOE and to develop and implement Grantor’s EEC&S. Grantor selected Grantee’s Project through a competitive process based on Grantor’s assessment of Grantee’s Application against the applicable Program goals and objectives. Therefore, Grantee’s completion of the Project and performance of other obligations as set forth in the Application and the Scope of Work are essential terms of this Agreement. (While the Scope of Work is intended to be consistent with the Application, in the event of any conflict or inconsistency between the Scope of Work and the Application, the terms of the Scope of Work will prevail over the conflicting or inconsistent terms of the Application.)

(b) **ARRA Performance Metrics.** The Project will be subject to assessment by Grantor according to the performance metrics applied by USDOE to the Program. The Program metrics include (i) jobs created, (ii) energy saved (kwh/therms/gallons/BTUs/etc.), (iii) renewable energy installed capacity and generated, (iv) GHG emissions reduced (CO² equivalents), (v) energy cost savings, and (vi) funds leveraged. Grantee shall timely and accurately report to Grantor from time to time at Grantor’s request information relevant to assessment of the Project against the Program performance metrics. In addition, Grantee shall ensure the safety and structural integrity of any repair, replacement, installation, construction, and or alteration performed undertaken as part of the Project.

(c) **Compliance with Federal Requirements.** Grantee shall comply with all USDOE requirements for the Program, as USDOE may clarify or change those requirements from time to time, whether such requirements are set forth in Appendix A attached hereto, or elsewhere. Without limiting the foregoing, Grantee shall submit the Project for review under the National Environmental Policy Act (“NEPA”) of 1969 unless a categorical exclusion applies, comply with Section 106 of the National Historic Preservation Act of 1966 and implementing regulations prior to receiving any Grant Funds, comply with federal prevailing wage laws (Davis-Bacon and related acts) with respect to any construction activities on the Project, respond in a timely manner to all reporting requirements associated with ARRA funding,

review and adhere to all applicable National Policy Assurances and Certifications applicable to the Grant Funds in effect on the date of this Agreement, and comply with the USDOE Financial Assistance Rules, 10 C.F.R. part 600, as applicable to recipients of subgrants or subawards. National Policy assurances and Certifications information is available at http://management.energy.gov/business_doe/1374.htm.

8. **Reporting.** The federal award providing funds for this Agreement imposes certain reporting requirements on Grantor. Grantee must provide information necessary and sufficient for Grantor to comply with such reporting requirements. Failure to comply with the reporting requirements concerning the Grant Funds and the Project is considered a material noncompliance with the terms of the award. Noncompliance may result in withholding of future payments, suspension, or termination of the current award, and withholding of future awards. A willful failure to perform, a history of failure to perform, or unsatisfactory performance of this and/or other financial assistance awards, may also result in a debarment action to preclude future awards by federal agencies.

(a) **Monthly Progress Reports.** Grantee shall deliver to Grantor by the fifth (5th) day of each month during the Term of this Agreement a progress report covering Grantee's activities on the Project during the immediately preceding month, including the goals accomplished, milestones met and any performance deficiencies or delays. **Exhibit III** contains guidelines for formatting monthly reports.

(b) **Monthly Financial Reports.** Grantee shall deliver to Grantor by the fifth (5th) day of each month during the Term of this Agreement a financial statement of its sources and uses of all Project funds, including Grant Funds, for the immediately preceding month and for the Project to date.

(c) **Project Completion Report.** Grantee shall notify Grantor promptly in writing when the Project is completed (the "**Project Completion Report**"). In no event shall the Project Completion Report be submitted later than thirty (30) days after the Project is completed in accordance with the Application and Scope of Work. The Project Completion Report may be submitted in substantially the same format as a monthly progress report unless otherwise directed by Grantor. Following receipt of the Project Completion Report, Grantor will review the completed Project. Notice of Project completion and Grantor review shall be conditions to final disbursement of the Grant Funds and release of any retainage held by Grantor pursuant to Section 4(c) of this Agreement.

(d) **Signature and Costs.** Grantee (if Grantee is an individual) or the chief executive officer, chief financial officer, or other officer of Grantee authorized to sign tax returns on behalf of Grantee (if Grantee is an entity), shall certify by his or her signature of each report required by this Section 8 that the information reported by Grantee is true, complete and correct. All costs incurred by Grantee to comply with the reporting requirements of this Agreement shall be borne by Grantee and shall not be an allowable expense reimbursable from Grant Funds.

(e) **Additional Information.** Grantor reserves the right to require any other documentation that may report Grantee's activities related to the Project and the expenditure of Grant Funds as may be required to satisfy any federal reporting requirement. Grantee shall respond within a reasonable time to any such supplemental request.

(f) **Remedy.** Reporting is essential for Grantor's effective administration of this grant and its financial incentive programs, generally. If Grantee fails to submit any required performance report or additional information and such breach continues uncured for more than thirty (30) days, Grantor may recover, and Grantee shall pay, as liquidated damages for the breach, an amount equal to \$500 for each month or part of a month the performance report is past due.

(g) **Dissemination of Scientific and Technical Reports.** If this Agreement requires submission of scientific and technical reports, such reports will be disseminated on the Internet via the USDOE Information Bridge (www.osti.gov/bridge), unless the report contains patentable material, protected data,

or SBIR/STTR data. Citations for journal articles produced under the award will appear on the USDOE Energy Citations Database (www.osti.gov/energycitations). Reports submitted to the USDOE Information Bridge must not contain any Protected Personal Identifiable Information (PII), limited rights data (proprietary data), classified information, information subject to export control classification, or other information not subject to release.

9. **Audit Standards; Records Maintenance and Access.**

(a) **Audit Standards.** Grantee acknowledges that this Agreement involves the use of federal funds and as such is subject to audit by the agency of the United States government granting funds to Grantor for purposes of performing the Project. As directed by Grantor, the Project will be subject to fiscal and compliance audits in accordance with Generally Accepted Auditing Standards as promulgated by OMB Circulars A-87, A-102, A-110, A-122, or A-133 (whichever is applicable), and United States Government Accountability Office Guidelines for Financial and Compliance Audits of Federally Assisted Programs. Grantee agrees to comply with information requests by Grantor to the extent necessary for Grantor to achieve compliance with the audit standards of this Agreement.

(b) **Maintenance of Records.** Grantee shall establish and maintain for at least three (3) years after the Expiration Date or any earlier termination date its records regarding this Agreement, the Grant Funds and the Project, including, but not limited to, financial reports, documentation of expenditures of Grant Funds, job creation and retention statistics, and all other information pertaining to Grantee's performance of its obligations under this Agreement. Notwithstanding the foregoing, the following record types shall be subject to the retention periods indicated for each: (i) real property and equipment records shall be retained for three (3) years from the date of the disposition or replacement or transfer of the real property or equipment; (ii) if Grantee is required to report program income after the period of grant support, records concerning such income shall be retained for three (3) years after the end of Grantee's fiscal year in which the income is earned; and (iii) indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable shall be retained for three (3) years after (A) the date of submission to the federal government for negotiation if the computation or proposal is negotiated or (B) the end of the fiscal year (or other accounting period) covered by the computation or proposal if not submitted to the federal government for negotiation. If any audit, dispute, litigation, or negotiation is pending when the applicable retention period would otherwise expire, Grantee shall maintain such records as may be relevant to such matter until it is finally resolved.

(c) **Inspection and Copying.** At any time during normal business hours and upon not less than twenty-four (24) hours prior written notice, Grantee shall make available to Grantor, its agents and other appropriate State and federal agencies or officials (including, without limitation, the Comptroller General of the United States, USDOE, the Cuyahoga County Department of Development, or any of their authorized representatives) all books and records containing information regarding this Agreement, the Grant Funds and the Project which are in the possession or control of Grantee. Grantor, its agents and other appropriate State and federal agencies and officials may review, audit and make excerpts, copies, or transcripts of such books and records. Grantee shall also make available for interview by Grantor, its agents and other appropriate State and federal agencies or officials those directors, officers, employees and agents of Grantee who may have information regarding the Grant Funds and any transaction involving the Grant Funds. Grantor shall use reasonable efforts to conduct any such inspection of books and records in such a manner as not to interfere unreasonably with the normal business operations of Grantee. Grantee shall, at its own cost and expense, segregate records to be made available for inspection pursuant to this Section 9(c) from Grantee's other records of operation. Grantee shall also cause each of its contractors and any subcontractors of such contractors paid with Grant Funds to make their respective books and records available for inspection and copying to the same extent and in the same manner as described in this paragraph for Grantee. The obligations of Grantee and rights of Grantor and other state

and federal officials to access records shall continue as long as pertinent records are retained.

(d) Site Visits. Authorized representatives of Grantor, the Cuyahoga County Department of Development, and USDOE have the right to make site visits at reasonable times to review Project accomplishments and management control systems and to provide technical assistance, if required. Grantee shall provide reasonable access to facilities, office space, resources, and assistance for the safety and convenience of government representatives in the performance of their duties. All site visits and evaluations shall be performed in a manner that does not unduly interfere with or delay Project work or evaluation.

(e) Federal Stewardship. USDOE will exercise normal federal stewardship in overseeing the project activities performed under the award that provides funding for this grant. Stewardship activities include, but are not limited to, conducting site visits; reviewing performance and financial reports; providing technical assistance and/or temporary intervention in unusual circumstances to correct deficiencies which develop during the Project; assuring compliance with terms and conditions of the federal award (which, in turn, includes compliance by Grantee with the terms and conditions of this Agreement); and reviewing technical performance after Project completion to ensure that the federal award objectives have been accomplished.

10. Property Rights; Publications.

(a) Intellectual Property. Nonprofit organizations are subject to the intellectual property requirements at 10 C.F.R. 600.136(a), (c) and (d). All other organizations are subject to the intellectual property requirements at 10 C.F.R. 600.136(a) and (c).

(b) Property and Equipment Purchases. This Agreement is subject to any applicable property recapture requirement that may be imposed by federal law, regulation or program guideline. If Grantee defaults in the performance of the terms and conditions of this Agreement and/or this Agreement is terminated for default or non-performance, property and equipment acquired with Grant Funds may be subject to recapture and Grantee may be required to transfer all Grantee's right, title and interest in such property and equipment to Grantor. Grantee shall provide for the security and safekeeping of all property and equipment obtained with Grant Funds (directly or by reimbursement of costs).

(c) Publications. Grantees of USDOE funding are encouraged to publish or otherwise make publicly available the results of the work conducted under the award. An acknowledgment of federal support and a disclaimer must appear in the publication of any material, whether copyrighted or not, based on or developed under this Project, as follows:

Acknowledgment: "This material is based upon work supported by the Department of Energy under Award Number DE-EE0000---." (Complete the award number as shown on the first page of this Agreement.)

Disclaimer: "This report was prepared as an account of work sponsored by an agency of the United States Government. Neither the United States Government nor any agency thereof, nor any of their employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights. Reference herein to any specific commercial product, process, or service by trade name, trademark, manufacturer, or otherwise does not necessarily constitute or imply its endorsement, recommendation, or favoring by the United States Government or any agency thereof. The views and opinions of authors expressed herein do not necessarily state or reflect those of the United States Government or any agency thereof."

11. **Adherence to Federal, State and Local Laws and Regulations.**

- (a) **General.** Grantee shall comply with all applicable federal, state, and local laws in the performance of Grantee's obligations under this Agreement, the completion of the Project and the operation of the Project as long as Grantee has any obligation to Grantor under this Agreement. Without limiting the generality of such obligation, Grantee shall pay or cause to be paid all unemployment compensation, insurance premiums, workers' compensation premiums, income tax withholding, social security withhold, and any and all other taxes or payroll deductions required for all employees engaged by Grantee in connection with the Project, and Grantee shall comply with all applicable environmental, zoning, planning and building laws, and regulations, and all permit requirements applicable to the Project. In the event of any conflict or inconsistency between federal statutes and regulations and the terms and conditions of this Agreement or the underlying federal award to Grantor, Grantor will seek guidance from USDOE.
- (b) **Ethics.** In accordance with Executive Order 2007-01S, Grantee, by its signature on this document, certifies: (1) it has reviewed and understands the Ohio ethics and conflict of interest laws including, without limitation, Ohio Revised Code §§ 102.01 *et seq.*, §§ 2921.01, 2921.42, 2921.421 and 2921.43, and §§ 3517.13(I) and (J), and (2) will take no action inconsistent with those laws and the order, as any of them may be amended or supplemented from time to time.
- (c) **Conflict of Interest.** No personnel of Grantee, contractor of Grantee or personnel of any such contractor, and no public official who exercises any functions or responsibilities in connection with the review or approval of any work completed under this Agreement, shall, prior to the completion of such work, voluntarily or involuntarily acquire any personal interest, direct or indirect, which is incompatible or in conflict with the discharge or fulfillment of his or her functions or responsibilities with respect to the completion of the work contemplated under this Agreement. Any such person who, prior to or after the execution of this Agreement, acquires any personal interest, involuntarily or voluntarily, shall immediately disclose his interest to Grantor in writing. Thereafter, such person shall not participate in any action affecting the work under this Agreement unless Grantor determines that, in light of the personal interest disclosed, his or her participation in any such action would not be contrary to the public interest.
- (d) **No Contingency Fees.** Grantee represents and warrants to Grantor that Grantee has not employed or retained any person or entity to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee. If such representation proves to be false, Grantor shall have the right to rescind this Agreement without liability or, in its discretion, to deduct from the Grant Funds or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee, or to seek such other remedies as may be legally available for the breach.
- (e) **Outstanding Liabilities.** Grantee represents and warrants to Grantor that Grantee does not owe: (1) any delinquent taxes to the State of Ohio or a political subdivision of the State of Ohio; (2) any moneys to the State of Ohio or a state agency for the administration or enforcement of any environmental laws of the State of Ohio; and (3) any other moneys to the State of Ohio, a state agency or a political subdivision of the State of Ohio that are past due, whether or not the amounts owed are being contested in a court of law.
- (f) **Falsification of Information.** Grantee represents and warrants to Grantor that Grantee has made no false statements to Grantor or any of its employees or agents in the process of obtaining the award of Grant Funds. Grantee acknowledges that any person who knowingly makes a false statement to obtain an award of financial assistance may be required under Ohio Revised Code § 9.66(C) to repay such financial assistance and shall be ineligible for any future economic development assistance from the State of Ohio, any state agency or a political subdivision. In addition, any person who provides a false statement to secure economic development assistance may be guilty of falsification, a misdemeanor of the first degree,

pursuant to Ohio Revised Code § 2921.13(F)(1).

(g) Declaration Regarding Material Assistance/Non-assistance to a Terrorist Organization. If applicable, Grantee must certify compliance with Ohio Revised Code § 2909.33.

(h) Equal Employment Opportunity. Grantee shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, disability, age, military status or ancestry. Grantee shall ensure that applicants for employment are considered for employment, and that employees are treated during employment, without regard to their race, religion, color, sex, national origin, disability, age, military status or ancestry. Grantee shall incorporate the requirements of this paragraph in all of its contracts for any work to be performed as part of the Project (other than subcontracts for standard commercial supplies or raw materials), and Grantee shall require all of its contractors to incorporate such requirements in all subcontracts for such work. Grantee agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination provision. Grantee will, in all solicitations or advertisements for employment positions, expressly indicate that applications placed for consideration of employment will be reviewed without regard to the race, religion, color, sex, national origin, disability, age, military status or ancestry of the applicant. Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 or with respect to an otherwise qualified disabled individual as provided in Section 504 of the Rehabilitation Act of 1973 shall also apply to any program or activity funded in whole or in part with the Grant Funds.

(i) Failure by Grantee to comply with the following laws and regulations shall constitute a breach of a material obligation of Grantee and may result in termination of the Agreement:

- (1) *Implementation Plan for Small and Disadvantaged Businesses.* Grantee shall demonstrate to the Grantor that when Grantee is hiring subcontractors, Grantee shall, in accordance with 10 CFR 600.236(e), take the necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible to work on the Project. Affirmative steps include: (i) placing qualified small and minority businesses and women's business enterprises on solicitation lists; (ii) assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources; (iii) dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises; (iv) establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises; and (v) using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce. Grantee shall provide to Grantor, for Grantor's review and approval, information about Grantee's outreach to minority firms, women's business enterprises, and labor surplus area firms. Until such information is reviewed and approved by Grantor, Grantee shall not permit any subcontractor to commence work on the Project.
- (2) *Implementation Plan for Small Business Enterprises.* The Board of Cuyahoga County Commissioners enacted the Small Business Enterprise (SBE) Program to ameliorate the effects of past and present arbitrary barriers that Small Business Enterprises have had in contracting within Cuyahoga County. Grantee agrees that, whenever it makes purchases or enters into a contract that uses funds set forth in the Budget attached to this Agreement as Exhibit I, it will make its best

efforts to meet the following goal in the utilization of small business enterprises (SBE) in the total contract award for the Project: **[zero percent (0%)]**. Evidence of the Grantee's good faith effort must be submitted if the goal of **[zero percent (0 %)]** is not met. Compliance with the SBE goal is encouraged pursuant to Board of Cuyahoga County Commissioners' Resolution Number 000981 dated February 29, 2000. The County Office of Procurement and Diversity must certify SBE's in order to be eligible for meeting the SBE participation goal. Contact (216) 443-7230 for application for certification or to obtain a list of certified SBE's.

(i) Prevailing Wage and Labor Standards. All laborers and mechanics employed by Grantee, its contractors or subcontractors on any such construction work (as defined in 29 C.F.R. part 5) that is part of the Project shall be paid in accordance with the Davis-Bacon Act and related laws, 40 U.S.C. 276a to 276a-5, as amended, the wages that have been determined by the U.S. Secretary of Labor to be the wages prevailing for the corresponding classes of laborers and mechanics employed on project(s) of a character similar to the contract work in the civil subdivision of the state wherein the work is to be performed. In addition, all laborers and mechanics employed by Grantee, its contractors or subcontractors on such construction work shall be paid overtime compensation in accordance with the provisions of the Contract Work Hours and Safety Standards Act, 40 U.S.C. 327 to 333. Grantee shall require that all of its contractors and their respective subcontractors shall comply with all regulations issued pursuant to these acts and with other applicable federal and state laws and regulations, each of which are more fully described in Appendix A to this Agreement. In the event that construction work to be undertaken on the Project is not subject to the application of the Davis-Bacon Act and related laws, and neither the federal government nor any of its agencies prescribes predetermined minimum wages to be paid to mechanics and laborers to be employed in such construction work, Grantee shall comply with the provisions of Ohio Revised Code Sections 4115.03 to 4115.16, inclusive, as applicable, with respect to the payment of all mechanics and laborers employed in such construction work.

(j) Procurement. When procuring property and services to be paid for in whole or part with Grant Funds, Grantee shall comply with the applicable federal procurement standards: if Grantee is a unit of state or local government, the requirements for procurement set forth in 10 C.F.R. § 600.236(b) through (i); if Grantee is institution of higher education, hospital or other non-profit organization, the requirements set forth in 10 C.F.R. §§ 143-146; and if Grantee is a for-profit organization, the requirements set forth in 10 C.F. R. § 600.331. Without limiting the foregoing, Grantee acknowledges all of its contracts for the procurement of property and services will contain such contract provisions as may be required by the applicable procurement rules. It is the sense of the Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available under this Agreement should be American-made. The foregoing "Buy American" requirement is more fully described in Appendix A to this Agreement.

(k) NEPA; Waste Stream Plan.

- (i) No Grant Funds may be expended on the Project until a NEPA clearance or a final NEPA decision has been obtained from USDOE. If the Project is subject to a categorical exclusion as indicated on the front page of this Agreement, no further NEPA review is required. *If Grantee moves forward with Project activities that are not authorized for federal funding by USDOE in advance of a final NEPA decision, Grantee does so at its own risk of not receiving federal funding and any such costs incurred may not be recognized as allowable cost share.*
- (ii) Prior to commencement of the Project, Grantee shall provide to Grantor a waste management plan addressing waste to be generated by the Project. Grantee's waste

management plan shall describe Grantee's plan to dispose of any sanitary or hazardous waste, e.g., construction and demolition debris, old light bulbs, lead paint, lead ballasts, piping, roofing material, discarded equipment, debris, and asbestos, generated as a result of the Project. Grantee shall not modify the waste management plan submitted to Grantor without Grantor's prior review and approval of such modifications. In all events, Grantee shall comply with all federal, state and local regulations for waste disposal.

(l) Historic Preservation.

- (i) Prior to the expenditure of federal funds to alter any structure or site, Grantee shall comply with the requirements of Section 106 of the National Historic Preservation Act (NHPA), consistent with USDOE's 2009 letter of delegation of authority regarding the NHPA. Section 106 applies to historic properties that are listed in, or eligible for listing in, the National Register of Historic Places. In order to fulfill the requirements of Section 106, Grantee must cooperate with Grantor in contacting the State Historic Preservation Officer (SHPO) to coordinate the Section 106 review outlined in 36 C.F.R. part 800. SHPO contact information is available at the following link: <http://www.ncshpo.org/find/index.htm>.
- (ii) Section 110(k) of the NHPA applies to USDOE-funded activities. Grantee shall avoid taking any action that results in an adverse effect to historic properties pending compliance with Section 106.
- (iii) Grantee should be aware that the USDOE Contracting Officer will consider Grantor to be in compliance with Section 106 of the NHPA only after Grantor has submitted adequate background documentation to the SHPO for its review, and the SHPO has provided written concurrence to Grantor that the SHPO does not object to Grantor's Section 106 finding or determination. Grantee shall provide promptly to Grantor and/or to the SHPO such information concerning the Project and any properties that may be affected by the Project as may be necessary or useful for Grantor to make its Section 106 finding or determination and for the SHPO to evaluate a request for concurrence in the Section 106 finding or determination. Grantor shall provide a copy of the SHPO concurrence to the Contracting Officer.
- (iv) No Grant Funds may be expended on the Project until a SHPO clearance or a final SHPO decision has been obtained from the Ohio Historic Preservation Office. If the Project is exempt from SHPO as indicated on the front page of this Agreement, no further SHPO review is required. *If Grantee moves forward with Project activities that are not authorized for federal funding by the Ohio Historic Preservation Office in advance of a final SHPO decision, Grantee does so at its own risk of not receiving federal funding and any such costs incurred may not be recognized as allowable cost share.*

(m) Public Records. Grantee acknowledges that this Agreement and other records in the possession or control of Grantee regarding the Project are public records under the Revised Code and are open to public inspection unless a legal exemption applies.

(n) Lobbying Restriction. Grantee shall not expend any Grant Funds, directly or indirectly, to influence congressional action on any legislation or appropriation matters before Congress other than to communicate to Members of Congress as described in 18 U.S.C. § 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

12. **Suspension or Termination.**

(a) **Reasons for Suspension or Termination.** Grantor may withhold payment under this Agreement or suspend or terminate this Agreement in whole or in part under any of the following circumstances: (i) Grantee fails to comply with the terms and conditions of this Agreement, including any Program rules and requirements incorporated into this Agreement; (ii) Grantor determines that the governing board of Grantee cannot or will not take the necessary action to bring Grantee into compliance with applicable requirements of 10 C.F.R. part 600, with the requirements of any applicable program statute or rule, or with any other term or condition of this Agreement within the time allowed by this Agreement or otherwise approved by Grantor; (iii) Grantee ceases to exist or becomes legally incapable of performing its responsibilities under this Agreement; (iv) Grantee fails to comply with any reporting requirements including, but not limited to, the submission of reports provision of this Agreement; (v) the Interagency Agreement is terminated; or (vi) USDOE cancels its grant of funds to Recipient.

(b) **Procedure.** If Grantor has a basis to suspend or terminate the Agreement or to withhold Grant Funds as provided in paragraph (a) of this Section 12, Grantor shall notify Grantee in writing (the "Notice") sent by certified mail or commercial delivery. The Notice shall state in reasonable detail the basis for the action and sections of the statutes, rules, regulations or contractual obligations that Grantee is charged with violating and shall inform Grantee of its right to request a public hearing on the proposed adverse action by making a written request within thirty (30) days of the mailing date of the Notice. The Notice shall also inform Grantee that Grantee may be represented by an attorney or by such other representative as designated by a majority of the governing board of Grantee.

(b) **Failure of Notice Delivery.** When any notice of intent to terminate sent by certified mail is returned because of inability to deliver, the notice required shall be sent by ordinary mail evidenced by a certificate of mailing to the chairperson of Grantee.

(c) **Partial Termination.** Grantor and Grantee may agree to a partial termination of this Agreement, in which event Grantor and Grantee shall, in writing, specify the nature and extent of the partial termination.

(d) **Effect of Termination.** Within sixty (60) days after termination of this Agreement, Grantee shall provide Grantor with a Closeout Report setting forth the total expenditure of the Grant Funds by Grantee and the status of the Project at the time of termination. In addition, Grantee shall surrender all reports, documents, and other materials assembled and prepared pursuant to this Agreement, which shall become the property of Grantor. Upon review of the Closeout Report, Grantor shall determine whether or not Grantee shall be required to refund any portion of the Grant Funds. The refund decision will be within the sole discretion of Grantor. In no event shall Grantee be required to refund an amount in excess of the total Grant Funds awarded under this Agreement. Grantee shall be entitled to compensation for any unreimbursed expenses reasonably and necessarily incurred in the satisfactory performance of this Agreement. Grantee shall incur no new obligations after the date of receipt of the Notice, and shall cancel as many outstanding obligations as possible. In the case of a partial termination, Grantee shall incur no obligations other than those specifically identified in the contract governing the partial termination. Notwithstanding any of the provisions of this Section 12, Grantee shall not be relieved of its responsibility for damages sustained by Grantor by virtue of any breach of contract by Grantee, and Grantor may withhold any reimbursement to Grantee for the purpose of set-off until such time as the exact amount of damages due Grantor from Grantee is agreed upon or otherwise determined.

(e) **Termination Requested by Grantee.** Notwithstanding any of the provisions of this Section 12, if Grantee is unable or unwilling to comply with such additional conditions as may be lawfully applied by Grantor, Grantee may request to terminate this Agreement by giving reasonable written notice to Grantor, indicating the effective date of termination, the reasons for requesting the termination, and an appropriate budget revision. In such event, Grantor shall terminate the Agreement only if both parties agree to the

termination and to the conditions under which it shall occur.

13. **Indemnification.**

(a) Grantee shall indemnify and hold harmless Grantor and its elected officials, agents and employees from and against any and all liability, loss, claim, damage, cost and expense arising from or related to this Agreement, including, without limitation, any failure of any representation or warranty of Grantee to be correct in all respects and any performance or non-performance by Grantee, its directors, officers, employees, agents or affiliates of any obligations or activities under this Agreement or in furtherance of the Project. Grantee shall bear all costs associated with the defense of Grantor and its elected officials, agents and employees against any claim for which Grantee may be liable under this Section 13.

(b) If Grantee is an agency of the state of Ohio, a political subdivision, or agency or instrumentality of a political subdivision, the foregoing clause (a) shall not apply to the extent indemnification obligations are restricted by applicable state law. Nothing in this Agreement is intended or should be construed to relieve Grantee of any liability it may have directly to any third party arising from legal claims, whether in contract, tort or otherwise, for liability or loss in connection with the Project, and nothing in this Agreement shall be construed to impute or transfer any such liability to Grantor.

(c) Grantee shall maintain liability and property insurance to cover actionable legal claims for liability or loss which are the result of injury to or death of any person or damage to property (including property of Grantor) in connection with the Project.

14. **Notice.** Any notice or report required or permitted to be given under this Agreement shall be deemed to have been sufficiently given for all purposes if mailed by first class certified or registered mail or sent by commercial delivery to the following addresses of the parties or to such other address as either party may hereafter furnish by written notice to the other party.

If to Grantor:

Cuyahoga County Planning Commission
323 Lakeside Avenue West, Suite 400
Cleveland, Ohio 44113
Attention: Director, Cuyahoga County Planning Commission

If to Grantee:

To the attention of the Contact identified
on the first page of this Agreement.

15. **Miscellaneous.**

(a) **Governing Law.** This Agreement shall be governed by the laws of the State of Ohio as to all matters including, but not limited to, its validity, construction, effect and performance.

(b) **Forum and Venue.** Grantee irrevocably submits to the non-exclusive jurisdiction of any federal or state court sitting in Cleveland, Ohio, in any action or proceeding arising out of or related to this Agreement, Grantee agrees that all claims in respect of such action or proceeding may be heard and determined in any such court, and Grantee irrevocably waives any objection it may now or hereafter have as to the venue of any such action or proceeding brought in such court or that such court is an inconvenient forum. Nothing in this Agreement shall limit the right of Grantor to bring any action or proceedings against Grantee in the courts of any other jurisdiction. Any actions or proceedings by Grantee against Grantor involving, directly or indirectly, any matter in any way arising out of or related to this Agreement shall be brought only in a court in Cleveland, Ohio.

(c) Entire Agreement. This Agreement, including its exhibits and documents incorporated into it by reference, constitutes the entire agreement and understanding of the parties with respect to its subject matter. Any prior written or verbal agreement, understanding or representation between the parties or any of their respective officers, agents, or employees is superseded and no such prior agreement, understanding or representation shall be deemed to affect or modify any of the terms or conditions of this Agreement.

(d) Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions of this Agreement.

(e) Amendments. This Agreement may not be amended or modified except upon such terms as both parties may agree in a writing executed by authorized representatives of each party.

(f) Forbearance Not a Waiver. No act of forbearance or failure by Grantor to insist on the prompt performance by Grantee of Grantee's obligations under this Agreement, either express or implied, shall be construed as a waiver by Grantor of any of its rights under this Agreement or applicable law.

(g) Pronouns. The use of any gender pronoun shall be deemed to include the other gender, and the use of any singular noun or verb shall be deemed to include the plural, and vice versa, whenever the context so requires.

(h) Headings. Section headings contained in this Agreement are inserted for convenience only and shall not be used in construing this Agreement.

(i) Assignment. Neither this Agreement, nor any rights, duties, or obligations of Grantee pursuant to this Agreement, shall be assigned by Grantee without the prior express written consent of Grantor, which shall not be unreasonably withheld. Any purported assignment not made in accordance with this paragraph shall be void.

(j) Binding Effect. Each and all of the terms and conditions of this Agreement shall extend to and bind and inure to the benefit of Grantee, its successors and permitted assigns.

Survival. Any provision of this Agreement which, by its nature, is intended to survive the expiration or other termination of this Agreement, including, without limitation, any indemnification obligation, record retention and inspection rights shall so survive and shall benefit the parties and their respective successors and permitted assigns.

[Remainder of this page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Grant Agreement to be executed as of the dates set forth below their respective signatures effective as of the Effective Date.

BY ENTERING INTO THIS SUPPLEMENT, YOU AGREE ON BEHALF OF THE GRANTEE, ITS OFFICERS, EMPLOYEES, SUBCONTRACTORS, SUBGRANTEES, AGENTS OR ASSIGNS, TO CONDUCT THIS TRANSACTION BY ELECTRONIC MEANS BY AGREEING THAT ALL DOCUMENTS REQUIRING GRANTOR SIGNATURES MAY BE EXECUTED BY ELECTRONIC MEANS, AND THAT THE ELECTRONIC SIGNATURES AFFIXED BY THE GRANTOR TO SAID DOCUMENTS SHALL HAVE THE SAME LEGAL EFFECT AS IF THAT SIGNATURE WAS MANUALLY AFFIXED TO A PAPER VERSION OF THE DOCUMENT. YOU ALSO AGREE ON BEHALF OF THE AFOREMENTIONED ENTITIES 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 GRANTOR.

GRANTEE:

CITY OF BEREA

By: Cyril Kleem

Name: Cyril Kleem

Title: Mayor

Date: 1-25-11

GRANTOR:

**CUYAHOGA COUNTY PLANNING
COMMISSION**

By: Paul A. Alsemas

Name: Paul A. Alsemas

Title: DIRECTOR

Date: 3/11/11

Edward FitzGerald, County Executive

Ed FitzGerald/ok

2012-05-30 09:04:26

Attachments:

Appendix A: Supplemental Terms and Conditions

Exhibit I: Scope of Work and Project Budget

Exhibit II: Financial Reporting Forms

Exhibit III: Monthly Reporting Guidelines