

GENERAL AGREEMENT COMPETITIVE MUNICIPAL GRANT PROGRAM

PART I

THIS AGREEMENT entered into this 12th day of October, 2012, by and between the County of Cuyahoga, Ohio (hereinafter referred to as the "County") and the **City of Garfield Heights**, a political subdivision with principal offices located at **5407 Turney Road, Garfield Heights, Ohio 44125**, (the "Sub-grantee").

WITNESSETH

WHEREAS, the County of Cuyahoga, Ohio has entered into various Agreements with the United States of America providing for financial assistance to said County under Title I of the Housing and Community Development Act of 1974; and

WHEREAS, pursuant to such Agreements, said County is undertaking by and through its Department of Development certain activities; and

WHEREAS, such activities to be performed include the **McCracken Road Multi-purpose Trail**.

WHEREAS, the County desires to engage the Sub-grantee to render certain services and assistance in connection with said services

NOW, THEREFORE, for the consideration of mutual promises hereinafter set forth, the County and the Sub-grantee agree as follows.

ITEM I - SCOPE OF SERVICES

For detailed description of Scope of Services, refer to Schedule A, attached. Amendment to the Scope of Services shall be subject to the provisions of Part II, Section 14, Paragraph A, hereof.

ITEM II - TIME OF PERFORMANCE

- A. The services of the Sub-grantee are to commence as of the date of this Agreement and shall be undertaken and completed in such sequence as to assure their expeditious completion in light of the purposes of this Agreement, but in any event, all of the services required herein shall be completed by **December 31, 2013**.
- B. Amendment to the time of performance shall be subject to the provisions of Part II, Section 14, Paragraph C, hereof.
- C. If the activities covered in the Agreement are not competitively bid by **January 31, 2013** the County reserves the right to terminate this Agreement.
- D. If this Agreement is not executed by the Sub-grantee by **November 30, 2012**, the County may withdraw this grant award and de-obligate the funds for this project.

ITEM III - COMPENSATION AND METHOD OF PAYMENT

- A. It is expressly understood and agreed that in no event will the total compensation and reimbursement to be paid hereunder exceed the maximum sum of **\$150,000** for all of the services required. It is further expressly understood and agreed that in no event will the Agreement exceed any budget line item of the latest approved budget by greater than ten percent (10%) prior to receiving, in writing, a budget revision from the County authorizing the excess. In no case shall any approved budget line item excess cause the total agreed compensation and reimbursement to be exceeded.
- B. The total compensation referred to in paragraph (A) above shall be paid on a month-to-month basis reimbursing the Sub-grantee for actual expenditures involved in performing the necessary work as set forth in the Scope of Services and Budget.

ITEM IV - REPORTING

The Sub-grantee shall submit to the County on a semi-annual basis a progress report. The report must include the current status of the project and milestones articulated in your schedule.

ITEM V - EQUAL EMPLOYMENT OPPORTUNITY

The Sub-grantee agrees to comply with:

- A. Title VI of the Civil Rights Act of 1964, (P.L. 88-352) and the HUD regulations under 24 CFR. Part 1, which provides that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance by way of grant, loan, or Agreement and will immediately take any measures necessary to effectuate this Agreement. If any real property or structure thereof is provided or improved with the aid of Federal financial assistance extended to the Sub-grantee, this assurance shall obligate the Sub-grantee, or in the case of any transfer of such property or structure is used for a purpose of which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.
- B. Title VIII of the Civil Rights Act of 1968 (P.L. 90-284), as amended by the Fair Housing Amendments Act of 1988 (P.L. 100-430), and will administer all programs and activities relating to housing and community development in a manner to affirmatively further fair housing within Constitutional limitations throughout the United States.
- C. Section 109 of the Housing and Community Development Act of 1974 and 1977, as amended, and in conformance with all requirements imposed pursuant to the regulations of the Department of HUD (24 CFR Part 570.602) issued pursuant to that Section; and in accordance with Equal Opportunity obligations of that Section, no person in the States shall, on the grounds of race, color, national origin, or sex, be excluded from participating in, be denied the benefits of, be subjected to discrimination under, any program or activity funded in whole or in part with Community Development Block Grant funds.
- D. Section 109 of the Act further provides that any prohibition against discrimination on the basis of age, under the Age Discrimination Act of 1975 (24 CFR Part 146), or with respect to any otherwise qualified handicapped person, as provided in Section 504 of the Rehabilitation Act of 1973 (24 CFR Part 8), shall also apply to any program or activity funded in whole or in part with funds made available pursuant to the Act.

- E. Executive Order 11063 on equal opportunity in housing and related facilities owned or operated by the Federal government or provided with Federal financial assistance.
- F. Executive Order 11246, as amended, requiring nondiscrimination and affirmative action to ensure nondiscrimination in employment by government and Sub-grantees and under federally assisted construction contracts.
- G. County of Cuyahoga, Ohio's Resolution Number 1895 dated July 4, 1975 et seq. adopting an expanded program for Equal Opportunity in all activities funded by or through the County of Cuyahoga, Ohio.
- H. The National Affordable Housing Act of 1990 (P.L. 101-625) adds religion as a basis on which Sub-grantees may not discriminate in the programs and activities funded under CDBG.
- I. U.S. Department of Housing and Urban Development Federal Labor Standards Provision, as set forth in HUD Form 4010, copy attached here.

ITEM VI - PERSONNEL ASSIGNED

Communication and details concerning this Agreement shall be directed to the following representatives:

Cuyahoga County

Name: Harry Conard, Jr.

Title: Development Administrator, Regulations

Department of Development
Reserve Square, 1st floor
1701 East 12th Street
Cleveland, Ohio 44114

Telephone: (216) 443-7531

Fax: (216) 443-7528

City of Garfield Heights

Name: Noreen Kuban

Title: Economic Development Director

Tax ID _____

DUNS # _____

Telephone: (216) 475-5484

Fax: (216) 475-1124

ITEM VII - DISPUTE RESOLUTION

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, the parties shall initiate a resolution of the dispute by binding arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, and judgment on the award rendered may be entered in any court having jurisdiction thereof.

ITEM VIII - PUBLIC RECORDS

Sub-grantee acknowledges and agrees that as a political subdivision, the County is subject to the requirements of the Ohio Public Records Law. When Sub-grantee submits documents and/or information that properly and legally qualifies as a trade secret under Ohio law, Sub-grantee must segregate all protected information and/or documents submitted to County and conspicuously mark each page as "CONFIDENTIAL – TRADE SECRET." This Item shall survive the completion of the performance of the work hereunder and the termination of this Agreement.

ITEM IX - TRADE SECRETS/CONFIDENTIALITY

Sub-grantee shall take all steps necessary to protect the County's trade secrets.

Sub-grantee shall also treat as proprietary and confidential any and all information belonging to the County which is disclosed to Sub-grantee in the course of performance of services under this Agreement (the "Confidential Information"). Sub-grantee shall only use Confidential Information for the purposes of this Agreement. Sub-grantee agrees not to disclose or reveal to any outside party or use for its own benefit, either directly or indirectly, any 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 County without prior written permission of the County. The County will abide by law in granting or denying any permission for disclosure.

If Sub-grantee fails to meet its obligations to protect the Confidential Information, the County may seek equitable relief.

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

This entire Item shall survive the completion of the performance of the work hereunder and the termination of this Agreement unless the County releases Sub-Grantee of its obligations through a written signed communication from County's Director of Law at an earlier date.

ITEM X - INTENTIONALLY DELETED

ITEM XI - MISCELLANEOUS

- A. **Governing law and Jurisdiction.** This Agreement 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 Agreement, and each party consents to the exclusive jurisdiction of such courts. Sub-Grantee 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.

B. Intentionally Deleted

- C. Findings for Recovery.** Sub-Grantee 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 false, this Agreement is void ab initio, and Sub-grantee must immediately repay to County any funds paid under this Agreement and must make County whole for any damages sustained by County.
- D. Declaration of Material Assistance.** Sub-Grantee represents and warrants that it has not provided any material assistance as that term is defined in Ohio Revised Code Section 2909.33(c), to any organization identified by and included on the United States Department of State Terrorist Exclusion list. Sub-Grantee further represents and warrants that either (1) it does not meet the monetary threshold under Ohio law to be required to complete and submit a Declaration of Material Assistance ("DMA") form in connection with this transaction; (2) it is not required to submit a DMA form under Ohio law because it is certified with the State of Ohio's Office of Budget and Management and its certification is current and up-to-date; or (3) it has completed a current DMA form with an answer of "no" to all questions and submitted it to County in connection with this Agreement. If any of these representations and warranties is found to be false, this Agreement is void ab initio, and Sub-Grantee shall immediately repay to the County any funds paid under this Agreement.

It is Sub-Grantee's responsibility to ensure compliance with the DMA requirements, including monitoring the threshold of its business with the County and filing all required forms with the County as required by law. Information regarding these forms and requirements may be found on the Ohio Homeland Security website at: http://homelandsecurity/ohio.gov/dma/dma_forms.asp.

- E. Agreement to Remain in Compliance with Certifications, Representations, and Warranties as Continuing Commitments/Verification.** Sub-grantee shall ensure that all of its certifications, representations, and warranties under this Agreement shall remain true throughout the duration of the Agreement as if they are continuing commitments. At its sole discretion, the County has the unequivocal right to review and audit Sub-grantee's continuing certifications, representations, and warranties.

Sub-grantee warrants and represents that it has not employed or retained any company, firm or person, other than a bonafide employee working for the Sub-grantee, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company, firm or person, other than a bonafide employee working for Sub-grantee, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the County shall have the right to annul this Agreement 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.

- F. Entire Agreement.** This Agreement constitutes the entire agreement between the parties, either express or implied, with respect to the subject matter hereof. No modification of this Agreement shall be binding upon the parties unless set forth in writing and signed by both parties, or their respective successors or assigns.

- G. **No Apparent Authority.** Sub-grantee recognizes and agrees that no public official or employee of the County be deemed to have apparent authority to bind the County to any contractual obligations not properly authorized pursuant to the County's Contracting and Purchasing Procedures.
- H. **Parties Bound and Benefitted.** This Agreement shall bind and benefit the parties hereto and, as applicable, their respective owners, members, directors, officers, representatives, successors, and assigns.
- I. **Non-waiver.** Either party's failure to require performance of any Item of this Agreement, 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 Agreement shall not constitute a waiver of any subsequent breach or default or a waiver of the provision itself or any other provision.
- J. **Contract Interpretation and Construction.** In the event an ambiguity or question of intent or interpretation arises, this Agreement 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 items of this Agreement.
- K. **Counterparts.** This Agreement 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 Agreement (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.
- L. **Severability.** If any Item of this Agreement is invalid or unenforceable for any reason, this Agreement shall be divisible as to such item and the remainder of this Agreement shall be and remain valid and binding as though such item was not included herein.
- M. **Authority.** This Agreement has been properly authorized pursuant to the required provisions of any and all charter provisions, ordinances, resolutions and regulations of the County and Sub-grantee. The individuals signing on behalf of the parties to this Agreement are authorized to execute this Agreement on behalf of the County and the Sub-grantee.

ITEM XII - CONDITIONS & ATTACHMENTS

It is expressly understood and agreed that Attachment I-Budget Details and Schedule "A" Scope of Services, Part II, "Terms and Conditions", and Part III, "Accounting and Financial Management" attached hereto are made a part hereof as if fully rewritten herein.

All County Contracts/Agreements and amendments 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 Board of Control, Contracting and Purchasing Ordinance, and the successful bidder shall comply with all such ordinances as an integral part of all County contracts.

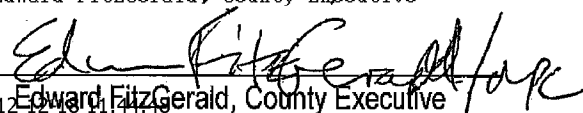
By entering into this contract I agree on behalf of the contracting entity, its officers, employees, subcontractors, sub-grantee, agents or assigns, to conduct this transaction by electronic means by agreeing that all documents requiring the county signatures may be executed by electronic means, and that the electronic signatures affixed by the county to said documents shall have the same legal effects as if that signature was manually affixed to a paper version of the document. I also agree on behalf of the aforementioned entities and persons, to be bound by the provisions of chapter 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 hereto have affixed their signatures on the day and date first above written.

THE CITY OF GARFIELD HEIGHTS, OHIO

By: 
Mayor

COUNTY OF CUYAHOGA, OHIO

By: 
Edward Fitzgerald, County Executive

**ATTACHMENT I
COMPETITIVE MUNICIPAL GRANT**

Community Name: City of Garfield Heights

Project Title: McCracken Road Multi-purpose Trail

BUDGET

USE OF FUNDS		SOURCE OF FUNDS				
Line Item:	COUNTY CDBG	VILLAGE	STATE	PRIVATE	IN-KIND	TOTAL COST
Construction	\$140,000					\$140,000
Contingency						
Architectural/ Engineering	\$10,000					
Administration (i.e. Advertising)						
Total Project Cost	\$150,000					\$150,000

**SCHEDULE A
COMPETITIVE MUNICIPAL GRANT**

Project Activity Description

Community Name:	City of Garfield Heights
Project Title:	McCracken Road Multi-purpose Trail
Total Project Cost:	\$ 150,000
CDBG Project Cost:	\$ 150,000
CDBG Project Reimbursement Rate:	100%
Project Description:	Construction of a bike/pedestrian multi-purpose trail of 4,100 lineal feet between Broadway Avenue on the west to Lee Road on the east in those areas in the City of Garfield Heights
Project Location:	Citywide (All Census Tracts in the City of Garfield Heights)
Project Start Date:	September 1, 2012
Project Completion Date:	December 31, 2013
National Objective:	Low to Moderate Income Area Benefit Citation §570.208 (a) (1)
Eligible Activity:	Public Facilities and Improvements Citation §570.201 (c)
Fiscal Year:	2012
Special Conditions:	None

SCHEDULE A - Page 2

City Name: City of Garfield Heights

Project Title: McCracken Road Multi-purpose Trail

MILESTONES

Individual Work Activity	9/12 - 10/12	10/12 - 11/12	11/12 - 01/13	3/13 - 5/13	5/13 - 8/13	8/13 - 12/13
County awards contracts	X					
Design/Review Process	X	X				
Bid Process			X			
Project Start				X		
Project 50% complete					X	
Project Completion						X
Audit						X

Contract Schedule: September 1, 2012 thru December 31, 2013

PART II
TERMS AND CONDITIONS OF THE COMPETITIVE MUNICIPAL GRANT PROGRAM

SECTION 1 - UNIFORM ADMINISTRATIVE REQUIREMENTS

During the performance of this Agreement, the Sub-grantee agrees to comply with the requirements and standards of OMB Circular A-87, "Cost Principles for State, Local, and Indian Tribe Government;" OMB Circular No. A-123, "Audits of State and Local Governments" (implemented at 24 CFR part ii); and with the following sections of 24 CFR part 85 "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments", as specified below. A copy of these Circulars is available upon request by the Sub-grantee.

- A. Section 85.3: "Definitions"
- B. Section 85.6: "Exceptions"
- C. Section 85.12: "Special grant or sub-grant conditions for 'high-risk' grantees"
- D. Section 85.20: "Standards for financial management systems," except paragraph (a)

- E. Section 85.21: "Payment," except as modified by section 570.513
- F. Section 85.22: "Allowable costs"
- G. Section 85.26: "Non-federal audits"
- H. Section 85.32: "Equipment, except in all cases in which the equipment is sold, the proceeds shall be program income"
- I. Section 85.33: "Supplies"
- J. Section 85.34: "Copyrights"
- K. Section 85.35: "Sub-awards to debarred and suspended parties"
- L. Section 85.36: "Procurement," except paragraph (a)
- M. Section 85.37 : "Sub-grants"
- N. Section 85.40: "Monitoring and reporting program performance", except paragraphs (b) through (d) and paragraph (f)
- O. Section 85.41: "Financial reporting," except paragraphs (a), (b), and (e)
- P. Section 85.42: "Retention and access requirements for records"
- Q. Section 85.43: "Enforcement"
- R. Section 85.44: "Termination for convenience"
- S. Section 85.51: "Later disallowances and adjustments"
- T. Section 85.52: "Collection of amounts due"

SECTION 2 - ALLOWABLE COSTS

The total cost of an Agreement is comprised of the allowable direct cost incident to its performance, plus its allocable portion of allowable indirect costs.

Direct costs are those that can be identified specifically with a particular cost objective. Typical direct costs chargeable to contracts include:

- A. Compensation of employees for the time and effort devoted specifically to the execution of the Agreement.

- B. Cost of materials acquired, consumed, or expended specifically for the purpose of the Agreement.
- C. Equipment and other approved capital expenditures.
- D. Other items of expense incurred specifically to carry out the Agreement.
- E. Services provided specifically for the Agreement by other agencies.

Indirect costs are those (a) incurred for a common or joint purpose benefiting more than one cost objective (b) not readily assignable to the cost objective specifically benefited, without effort disproportionate to the results achieved.

SECTION 3 - RECORDS

- A. Establishment and Maintenance of Records - Records shall be maintained with respect to all matters covered by this Agreement. Except as otherwise authorized, such records shall be maintained for a period of four years after receipt of the final payment under this Agreement.
- B. Documentation of Costs - All costs shall be supported by properly executed payrolls, time records, invoices, Agreements, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, Agreements, voucher orders, or other accounting documents pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible. The Sub-grantee shall submit copies of all independent audits performed on the Sub-grantee during the term of this Agreement to the County. All records must be kept according to standard accounting practices.

The Sub-grantee assumes all responsibility for any and all Worker's Compensation premiums, unemployment compensation premiums, and federal, state and local taxes due on the compensation paid to all their employees. The Sub-grantee agrees to follow federal, state and local regulations pertaining to any employees the Sub-grantee may use to provide services under this Agreement.

The Sub-grantee shall document the marketing of services to the Community. Newspaper stories, posters, mailings, speaking engagements or other techniques employed shall be recorded by the Sub-grantee.

Client Data - The Sub-grantee shall maintain client data demonstrating client eligibility for services provided, if applicable. Such data shall include, but not be limited to; client name, address, income level or other basis for determining eligibility, and description of services provided.

SECTION 4 - REPORTS

At such times and in such forms as the Department of Housing and Urban Development ("HUD") or the County may require, there shall be furnished to HUD or to the County statements, records, data and information, as HUD or the County may request pertaining to matters covered by this Agreement.

SECTION 5- AUDITS AND INSPECTIONS

At any time during normal business hours and as often as the County, HUD and/or the Comptroller General of the United States may deem necessary, there shall be made available to the County, HUD and/or representatives of the Comptroller General for examination all records of the Sub-grantee with respect to all matters and the Sub-

grantee shall permit the County, HUD and/or representatives of the Comptroller General to audit, examine and make excerpts or transcripts from such records, and to make audits of all Agreements, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters.

In addition to the above-described inspections, the County may perform inspections of the program facilities and/or records at any time it deems desirable.

SECTION 6 - CONFLICT OF INTEREST

No employee, agent, consultant, officer or elected or appointed official of the County or Sub-grantee who exercises or has exercised any functions or responsibilities with respect to the Scope of Services or any of the activities that are in any way connected with this Agreement or who is in a position to participate in a decision-making process or gain inside information with regard to such activities or Scope of Services, may obtain a personal or financial interest or benefit from any such activity or Scope of Services, or have a financial interest with respect thereto, or the proceeds there under, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter, and the Sub-grantee shall take appropriate steps to assure compliance.

SECTION 7 - PROCUREMENT STANDARDS AND METHODS

The Sub-grantee shall use its own procurement procedures, which reflect applicable state and local laws and regulations, provided that the procedures conform to 24 CFR Part 85, Section 85.36, "Procurement". A copy of these procedures is available upon request by the Sub-grantee.

SECTION 8 - EMPLOYMENT DISCRIMINATION PROHIBITED

During the performance of this Agreement, the Sub-grantee agrees as follows:

- A. The Sub-grantee shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, handicap, ancestry or Vietnam era or disabled veteran status. The Sub-grantee shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to race, religion, color, sex, national origin, age, handicap, ancestry or Vietnam era or disabled veteran status. As used herein, "treated" means and includes without limitation the following: recruited, whether by advertising or other means; compensated, whether in the form of rates of pay or other forms of compensation; selected for training, including apprenticeship, promoted, upgraded, demoted, downgraded, transferred, laid off and terminated. The Sub-grantee agrees to and shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the hiring representatives of the Sub-grantee setting forth the provisions of this nondiscrimination clause.
- B. The Sub-grantee will, in all solicitations or advertisements for employees placed by or on behalf of the Sub-grantee, state that the Sub-grantee is an Equal Opportunity Employer.

SECTION 9 - HISTORIC PRESERVATION AND ENVIRONMENTAL REVIEW

The Sub-grantee is responsible to know that historic preservation rules may apply to federally funded exterior maintenance, repairs, and renovations. The Sub-grantee is expected to determine which structures may require

historic preservation review due to age, location and scope of work. Before allowing work to be done on any such structure, the Sub-grantee is expected to notify the County and cooperate in obtaining any documentation required for review by the Ohio Historic Preservation Office. The Sub-grantee does not assume the County's Environmental responsibilities described in 570.604, and the Sub-grantee does not assume the County's responsibility to initiate the review process.

SECTION 10 - COPYRIGHTS

If this Agreement results in a book or other copyrighted material, the author is free to copyright the work, but HUD reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use all material, which can be copyrighted.

SECTION 11 - PATENTS

Any discovery or invention arising out of or developed in the course of work aided by this Agreement shall be promptly and fully reported to HUD for determination by HUD as to whether patent protection for such invention or discovery shall be sought and how the rights under any patent issued thereon, shall be disposed of and administered, in order to protect the public interest.

SECTION 12 - POLITICAL ACTIVITY PROHIBITED

None of the funds, materials, property or services provided directly or indirectly under this Agreement shall be used for any partisan political activity, or to further the election or defeat of any candidate for public office.

SECTION 13 - LOBBYING PROHIBITED

None of the funds provided under this Agreement shall be used for publicity or propaganda purposes designated to support or defeat legislation pending before the Congress.

SECTION 14 - CHANGES

- A. The County may, from time to time, permit changes in the Scope of Services of the Agreement to be performed hereunder. Any such changes shall be incorporated in written amendments to this Agreement signed by the parties.
- B. The County may from time to time cause changes in the expressed maximum sum of this Agreement provided such changes in compensation are authorized by resolution of the County of Cuyahoga, Ohio and are pursuant to the provisions of Part I, Item III, hereof. Any such changes shall be incorporated in written amendments to this Agreement signed by the parties.
- C. The County may upon its own initiative or upon that of the Sub-grantee, authorize changes in the time of performance as established in Part I, Item II hereof. As a condition precedent to the authorization of such change, the County shall have determined that the Sub-grantee has exhibited the utmost in good faith in the performance of the Agreement and that there is just cause based upon the intervention of a circumstance unforeseeable at the execution of this Agreement document. The Sub-grantee and the County in writing shall agree to any change in the time of performance, and said writing shall be incorporated in written amendments to this Agreement signed by the parties.

SECTION 15 - PERSONNEL

- A. The Sub-grantee represents that it has or will secure at its own expense, all personnel required in performing the services under this Agreement. Such personnel shall not be employees of or have any Contractual relationship with the County.
- B. All of the services required hereunder will be performed by the Sub-grantee or under its supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under state and local law to perform such services.

SECTION 16 - ASSIGNABILITY

The Sub-grantee shall not assign any interest in this Agreement and shall not transfer any interest in the same (whether by assignment or notation), without the prior written consent of the County thereto.

SECTION 17 - TERMINATION OF AGREEMENT

If the Sub-grantee fails to fulfill in a timely and proper manner any term or condition contained in this Agreement, or if Sub-grantee shall violate any of the covenants, agreements, or stipulations in this Agreement, the County shall have the right to exercise concurrently or successively any one or more of the following rights or remedies:

- A. Terminate this Agreement and the rights of the Sub-grantee hereunder,
- B. Withhold or reduce funds not yet paid to the Sub-grantee,
- C. Recover funds previously paid to the Sub-grantee,
- D. Recover any property obtained by the Sub-grantee through its expenditure of CDBG funds granted pursuant to this Agreement; or
- E. Exercise any and all additional rights the County may have in law or equity.

Termination pursuant to clause (A) above shall be effective five (5) days after the date the County has given written notice to the Sub-grantee of such termination. In the event of termination, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports prepared by the Sub-grantee under this Agreement, at the option of the County, shall become the property of the County and Sub-grantee shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents; provided, however, that such compensation may be reduced in the event the County determines that any money owed the County by the Sub-grantee has not been paid. No action or inaction by the County at any time of any of the terms or conditions of this Agreement shall be deemed or construed as a waiver of the same or other term or condition herein or of the timely and proper performance thereof. No waiver shall be valid against the County unless reduced to writing and signed by the County of Cuyahoga, Ohio.

SECTION 18 - TERMINATION FOR NECESSITY OF THE COUNTY

The County may terminate this Agreement for necessity by giving at least thirty (30) days notice in writing from the County to the Sub-grantee. If the Agreement is terminated by the County as provided herein, the Sub-grantee will be paid an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of the Sub-grantee covered by this Agreement, less payments of compensation previously made. Provided, however, that if less than sixty percent (60%) of the services covered

by this Agreement have been performed upon the effective date of such termination, the Sub-grantee shall be reimbursed (in addition to the above payment) for that portion of the actual out-of-pocket expenses (not otherwise reimbursed under the Agreement incurred by the Sub-grantee during the Agreement period which are directly attributable to the uncompleted portion of the services covered by this Agreement. If the Agreement is terminated due to the fault of the Sub-grantee, Section 18 hereof relative to termination shall apply.

SECTION 19 - NON-EXPENDABLE PROJECT PROPERTY

All tangible property, personal or real, acquired for the purpose of carrying out this Agreement shall be owned by the Sub-grantee and subject to the provisions of 24 CFR85.32. When original or replacement real property, acquired under the terms of this contract is proposed for disposition, the provision for disposition of real property under section 85.32(e) shall be followed. When disposing of equipment acquired under this contract with a current per unit fair-market value in excess of \$5,000, the County has a right to receive its portion of the sale proceeds as discussed in 32(e).

SECTION 20 - HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1968

The work to be performed under this Agreement is on a project assisted under a program providing direct Federal assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u., Section 3 requires that to the greatest extent feasible opportunities for training and employment be given lower income residents of the project area and Agreements for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the area of the project.

The parties to this Agreement will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR 135, and all applicable rules and orders of the Department issued there under prior to the execution of this Agreement. The parties to this Agreement certify and agree that they are under no Contractual or other disability, which would prevent them from complying with these requirements.

Sub-grantee will send to each labor organization or representative of workers with which he has collective bargaining Agreement or other Agreement or understanding, if any, written notice advising the said labor organization or workers representative of this commitment under the Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

SECTION 21 - INDEMNIFICATION

Sub-grantee agrees to be responsible for all damages resulting from the actions of its officers and employees while same are engaged in the performance of this Agreement.

SECTION 22 - TAX INDEMNIFICATION

Sub-grantee shall pay all taxes, all assessments on property, and all payments in lieu of taxes when due. No lien or encumbrance against any assets purchased with CDBG funds granted pursuant to this Agreement shall be attached.

SECTION 23 - INDEPENDENT SUB-GRANTEE RELATIONSHIP

The parties to this Agreement expressly intend that an independent Sub-grantee relationship is created. The County and the Sub-grantee agree that the conduct and control of the work to be performed will lie solely with Sub-grantee. The Sub-grantee is not to be considered an agent or employee of the County for any purpose and no agency or trust or other relationship whatsoever is created by this Agreement.

SECTION 24 - DISCRIMINATION IN SERVICE DELIVERY PROHIBITED

The Sub-grantee shall not discriminate against any applicant for its services because of race, religion, color, sex, national origin, age, handicap, ancestry, or Vietnam era or disabled veteran status. The Sub-grantee shall not limit its services or give preference to persons on the basis of race, religion, color, sex, handicap, ancestry, or Vietnam era or disabled veteran status.

SECTION 25 - SECTARIAN/RELIGIOUS ACTIVITY PROHIBITED

In addition to, and not in substitution for, other provisions of this Agreement regarding the provisions of this Agreement regarding the provision of services with CDBG funds, pursuant to Title I of the Housing and Community Development Act of 1974, as amended, the Sub-grantee agrees:

- A. It will not discriminate against any employee or applicant for employment on the basis of religion and will not limit employment or give preference in employment to persons on the basis of religion.
- B. It will not discriminate against any person applying for such public services on the basis of religion and will not limit such services or give preference to persons on the basis of religion;
- C. It will provide no religious instruction or counseling, conduct no religious worship or services, engage in no religious proselytizing, and exert no other religious influence in the provision of such public services;
- D. The portion of a facility used to provide public services assisted in whole or in part under this Agreement shall contain no sectarian or religious symbols or decorations; and
- E. The funds received under this Agreement shall not be used to construct, rehabilitate, restore, or maintain any facility that is owned by the Sub-grantee and in which the public services are to be provided. However, minor repairs may be made if such repairs (1) are directly related to the public services, (2) are located in a structure used exclusively for non-religious purposes, and (3) constitute in dollar terms only a minor portion of the CDBG expenditure for the public services.

SECTION 26 - NATIONAL OBJECTIVES

The Sub-grantee hereby warrants that its projected use of CDBG funds has been developed so as to give priority to activities which will carry out one or more of the national objectives of benefiting low and moderate income families, aiding in the prevention or elimination of slums or blight, or meeting other community development needs having particular urgency because existing conditions pose a serious and immediate threat to the health and welfare of the community and other financial resources are not available to meet such needs. In determining whether an activity carries out a national objective, the criteria set forth in 24 CFR 570.208 shall be used.

SECTION 27 - PUBLIC ACCESS TO PROGRAM RECORDS

The Sub-grantee shall provide citizens with reasonable access to records regarding the past use of CDBG funds, consistent with applicable state and local laws regarding privacy and obligations of confidentiality.

SECTION 28 - GRANT CLOSEOUT PROCEDURES

This Agreement will be closed out when:

1. All costs to be paid with CDBG funds have been incurred, and
2. The work to be assisted with CDBG funds has been completed, and
3. After responsibilities of the Sub-grantee under the grant Agreement have been carried out satisfactorily.

Within 90 days of the close-out date as determined above, the Sub-grantee shall submit all requests for reimbursement to the County, with the exception of retainer fees (if applicable).

The County will cancel any unused portion of the awarded grant amount to drawn by the Sub-grantee within 90 days of the closeout date unless the County is notified in advance by the Sub-grantee of the reasons for not canceling the grant amount.

The County for use in eligible CDBG program objectives will capture any unused grant funds.

SECTION 29 - MONITORING

The County is responsible for monitoring the Sub-grantee's CDBG funded activities to assure compliance with applicable Federal requirements and to assure that performance goals are being achieved. Generally, one on-site monitor visit will be conducted during the period of this Agreement.

SECTION 30 - LABOR STANDARDS FOR CONSTRUCTION ACTIVITIES

The Sub-grantee agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act as amended, the provision of Contract Work Hours and Safety Standards Act, the Copeland "Anti-Kickback" Act (40 U.S.C. 276a-278a-5; 40 USC 327 and 40 USC 276c) and all other applicable federal, state and local laws and regulation pertaining to labor standards insofar as those acts apply to the performance of this Agreement. The Sub-grantee shall maintain documentation that demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to the County when requesting reimbursement.

The Sub-grantee agrees that, except with respect to the rehabilitation or construction of residential property containing less than eight (8) units, all contractors engaged under contracts in excess of \$2,000.00 for construction, renovation or repair work financed in whole or in part with assistance to such contracts and with the applicable requirements of the regulations of the Department of Labor under 29 CFR Parts 1, 3, 5 and 7 governing the payment of wages and ration of apprentices and trainees to journey workers; provided, that if wage rates higher than those required under the regulations are imposed by state or local law, nothing hereunder is intended to relieve the Sub-grantee of its obligation, if any, to require payment of the higher wage. The Sub-grantee shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions meeting the requirements of this paragraph.

PART III

ACCOUNTING AND FISCAL MANAGEMENT PROCEDURES FOR THE COMPETITIVE MUNICIPAL GRANT PROGRAM

SECTION 1 - GENERAL

The Sub-grantee will be required to establish and maintain a standard accounting system that will provide effective financial controls and meet the requirements of Part II, Section 2 herein.

When audits are performed in accordance with the provisions of PART II, Section 5 hereof, discovery of the failure of the Sub-grantee to use generally accepted accounting procedures may result in the disallowance of expenditures for which the Sub-grantee will be liable and for the assessment of sanctions pursuant to PART II, Section 17 hereof.

The County reserves the right to review all financial records in order to assess the financial condition of the agency. If the County determines that the Sub-grantee's financial condition or the methods and practices it uses to manage its financial systems may jeopardize CDBG funds under the Agreement, it may take all necessary actions to insure that those funds are not put at risk. This includes, but is not limited to, postponing or canceling all reimbursements, putting the agency under specific financial requirements until the problems have been corrected to the satisfaction of the County, or exercise its authority to terminate the Agreement as a result of such conditions.

The Sub-grantee is fully responsible for the management and control of its financial system. Any loss of CDBG funds as a result of the misfeasance, nonfeasance, or malfeasance of the Sub-grantee is the responsibility solely of the Sub-grantee and its officers. To insure accountability, the County reserves the right to withhold payments, put the Sub-grantee under specific financial requirements, or terminate the Agreement.

SECTION 2 - ACCOUNTING SYSTEM STANDARDS

Sub-grantee's financial management systems shall provide:

- A. Accurate, current and complete disclosure of the financial results of each Agreement including at least a monthly reconciliation of the cash balance of the program.
- B. Records that adequately identify the source and application of funds for Agreement activities. These records shall refer to subsidiary records and/or documentation which support the entry and which are readily accountable. These records shall contain information pertaining to Agreement awards and authorizations, obligations, un-obligated balances, assets, liabilities, outlays, and income.
- C. Effective control over and accountability for all funds, property and other assets. Sub-grantee shall adequately safeguard all such assets and shall assure that they are used solely for authorized purposes.
- D. Comparison of actual amounts with budgeted amounts for each Agreement. Also, the relation of information whenever appropriate and required by the County.

- E. Procedures for determining the allow ability and allocation of costs in accordance with the provisions of Part II, Section 2.
- F. Accounting records that are supported by source documentation.
- G. A systematic method to assure timely and appropriate resolution of audit findings and recommendations.

SECTION 3 - GRANT PAYMENTS

- A. Grant payments will be made on a cash reimbursement basis. Only when the Sub-grantee makes an actual cash disbursement will it be reimbursed for the expense by the County.
- B. Disbursements must be applied only to the authorized use as specified in the scope of services & budget. Failure to pay creditors for activities specified in the Agreement or to disburse funds for their authorized use constitutes a violation of the Agreement terms.
- C. At intervals determined by the County, the Sub-grantee may be required to submit copies of canceled checks or other forms of proof showing that all taxes or other payables have been paid. The County has the authority to take appropriate action, including withholding payments, if this information is not provided when requested.
- D. All requests for reimbursement must be complete and accurate in order for the County to authorize payment. Copies of canceled checks or written receipts must be provided to obtain reimbursement. Failure to submit complete and accurate information will delay or prohibit authorization of payment. Construction project reimbursements must include proper documentation of correct payment of Federal wages.

SECTION 4 - AUDIT REQUIREMENTS

Sub-grantees that receive more than \$500,000 in federal financial assistance from any source shall in any year have an audit made in accordance with Circular No. A-133.

An independent auditor in accordance with Generally Accepted Government Auditing Standards covering financial and compliance audits shall make the Audit. "Generally Accepted Government Auditing Standards" means the Standards for Audit of Government Organizations, Programs, Activities and Functions developed by the Comptroller General, dated February 27, 1981, as may be revised or amended.

The Sub-grantee is required to send the County a copy of its Audit for the time period when CDBG funds are expended.

SECTION 5 - PROGRAM INCOME

The Sub-grantee shall comply with the standards set forth in 24 CFR Part 85 to account for program income. Program income represents gross income earned by the Sub-grantee from the federally supported activities.

Such earnings exclude interest earned on advances and may include, but will not be limited to, income from service fees, sale of commodities, usage or rental fees, and royalties on patents and copyrights.

- A. Unless the Agreement provides otherwise, Sub-grantees shall have no obligation to the Federal Government with respect to royalties received as a result of copyrights or patents.
- B. All other program income earned during the project period shall be retained by the Sub-grantee and, in accordance with the grant or other Agreement shall be:
 - 1. Added to funds committed to the project by the County and be used to further eligible CDBG program objectives;
 - 2. Used to finance the Sub-grantees' share of the project when approved by the County; or
 - 3. Deducted from the total project costs in determining the net costs on which the CDBG share of costs will be based.

SECTION 6 - REVERSION OF ASSETS

Any real property under the Sub-grantee's control that was acquired or improved in whole or in part with CDBG funds in excess of \$25,000.00 must be used to meet one of the HUD National Objectives until five years after grant close-out (Part II, Section 28); and

If such property is not used in accordance with the above paragraph, the Sub-grantee shall pay the County an amount equal to the current market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for the acquisition of or improvement to, the property.

SECTION 7 - USE OF REAL PROPERTY

The Sub-grantee shall not change the use or planned use of any property (acquired in whole or in part using CDBG funds in excess of \$25,000.00) from that for which the acquisition or improvement was made unless the Sub-grantee provides affected citizens with reasonable notice of, and opportunity to comment on, any proposed change. These standards are in effect until five years after grant closeout (Part II, Section 5B).

The new use must qualify as meeting one of the HUD National Objectives. If this requirement is not met, the Sub-grantee may retain or dispose of the property and reimburse the County an amount as determined above (Part III, Section 6B). If the change of use occurs after grant closeout, the provisions governing program income (Part III, Section 5) shall apply.

In the case of property having a useful life of greater than one year purchased with CDBG funds pursuant to this Agreement, the Sub-grantee shall furnish a description of the property or equipment, including the serial number, to the County within thirty (30) days of the date of purchase.