

GENERAL AGREEMENT GOVERNMENTAL SUBRECIPIENT

PART I

THIS AGREEMENT is made and entered into this 9th day of October, 2013 by and between Cuyahoga County, Ohio (the "County"), and the Department of Development, and the City of Cleveland Heights, a Political Subdivision, with principal offices located at 40 Severance Circle, Cleveland Heights, Ohio 44118.

WITNESSETH:

WHEREAS, the County has entered into various Agreements with the United States of America providing for financial assistance to said County under the Cranston-Gonzalez Affordable Housing Act (the "Act"); and

WHEREAS, pursuant to the Act, the County is undertaking by and through its Department of Development certain activities; and

WHEREAS, such activities to be performed include HOME qualified activities and administration by participating jurisdictions; and

WHEREAS, the U.S. Department of Housing and Urban Development ("HUD"), subsequently issued regulations set forth in 24 CFR Part 92, allowing units of general local government to enter into mutual cooperation agreements to form consortiums for the purpose of obtaining funding from the affordable housing development program created by the Act (the "HOME Program"); and

WHEREAS, the Act contemplates and encourages the joining together by agreement of contiguous communities into a consortium for the purpose of carrying out the objectives of the Act; and,

WHEREAS, the County, and the Communities of Cleveland Heights, Euclid, Lakewood, and Parma, Ohio (collectively, the "Member Jurisdictions") have formed the Cuyahoga Housing Consortium (the "Consortium") pursuant to the Act, and,

WHEREAS, for the purposes of the Consortium, Cuyahoga County is authorized by the Member Jurisdictions to act in a representative capacity for all member units of general local government (in such capacity the "Lead Entity") and assumes overall responsibility for the Consortium's HOME Program compliance with the requirements of the Act; and,

WHEREAS, certain costs will be incurred to operate this program; and

NOW, THEREFORE, for the consideration of mutual promises hereinafter set forth, the County and the Community agree as follows:

ITEM I - SCOPE OF SERVICES:

For detailed description of Scope of Services, refer to Schedule A, attached.

ITEM II - TIME OF PERFORMANCE:

A. HOME funds will be committed by entering into a legally binding agreement to use the specified HOME allocation to produce affordable housing through homeowner rehabilitation activities, homebuyer activities, rental housing construction or rehabilitation and tenant based rental assistance.

All HOME funds not committed or expended within the agreement period shall convert to the Consortium pool of funds maintained by the County (the "Consortium Pool"). These funds will be reallocated to other consortium members for immediate commitment.

Additional allocations will not be committed if prior year funds have not been expended as evidenced by approved requests for reimbursement of those funds. These funds will remain uncommitted until all funds in or approaching four (4 years) are expended.

The scope of services are to commence October 9, 2013, and shall be undertaken and completed in such sequence as to assure their expeditious completion in accordance with this Agreement. All of the services required herein shall be completed by no later than December 31, 2015.

B. In accordance with the 2013 Final HOME rule Home funds must be allocated to a specific project, address(s) or through entering into a legally binding agreement to perform an eligible activity to meet the definition of committed. Cuyahoga County HOME Consortium members evidence of compliance with this section shall be included in the attached Scope of Services.

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 \$393,765 consisting of Fiscal Year 2009, 2010 and 2012 HOME funds. 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. Any budget line item revisions exceeding ten percent (10%) or changes to scope of service must have prior approval of the HOME Consortium, at a regularly scheduled meeting. 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 Community for actual expenditures involved in performing the necessary work as set forth in the Scope of Services and Budget. The Community shall submit a report itemizing both actual time expended and costs incurred in performance of said Scope of Services and in accordance with the Scope of Services and the Budget.

ITEM IV – REPORTING

The Sub-grantee shall submit to the County on a monthly basis a progress report and request for reimbursement. The report must include the current status of the project and milestones articulated in Sub-grantee's schedule.

The Sub-grantee shall maintain documentation that demonstrates compliance with hour and wage requirements of 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. 1341 et seq.; 40 USC 3701 et seq. and 40 USC 3145 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. Such documentation shall be made available to the County when requesting reimbursement

ITEM V - EQUAL EMPLOYMENT OPPORTUNITY; DAVIS-BACON ACT

The Sub-grantee agrees to comply with:

- A. Title VI of the Civil Rights Act of 1964, (P.L. 88-352) and the United States Department of Housing and Urban Development ("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. 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 the HUD Community Development Block Grant ("CDBG") program.
- H. U.S. Department of Housing and Urban Development Federal Labor Standards Provision, as set forth in HUD Form 4010, copy attached hereto.
- I. 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. 1341 et seq.; 40 USC 3701 et seq. and 40 USC 3145) 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.

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ITEM VI - PERSONNEL ASSIGNED

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

Cuyahoga County

Angela Henderson

Development Specialist

Email: ahenderson1@cuyahogacounty.us

Reserve Square, 1st floor

1701 East 12th Street

Cleveland, Ohio 44114

Telephone: (216) 443-8162

City of Cleveland Heights

Name: Karen Knittel

Title: City Planner

Email: kknittel@clvhts.com

Address: Dept. of Planning & Development

40 Severance Circle

Cleveland Heights, Ohio 44118

(216) 291-4855

ITEM VII - DISPUTE RESOLUTION

In the event of any dispute or disagreement between Sub-grantee and the County, either with respect to the interpretation of any provision of this Agreement or with respect to the performance by Sub-grantee or the County hereunder, which cannot be resolved in the normal course of business, then upon written notice of either Party, each Party will appoint a designated officer whose task it will be to meet for the purpose of endeavoring in good faith to resolve such dispute or to negotiate for an adjustment to such section or provision of this Agreement. During the course of such negotiation, all reasonable requests made by one Party to the other for information will be honored in order that each of the Parties may be fully advised in the negotiations. The specific format for such discussions will be left to the discretion of the designated officers but may include the preparation of agreed upon statements of fact or written statements of position furnished to the other Party. No formal proceedings for such dispute may be commenced until (i) resolution as contemplated in this clause has been unsuccessful and (ii) either of the Parties concludes in good faith that amicable resolution through continued negotiation of the matter in issue does not appear likely and so notifies the other Party.

The rights and obligations of the Parties under this provision shall not limit either party's right to terminate this Contract as may be otherwise permitted hereunder.

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. Sub-grantee may not take advantage of this process to mark information/documents that it wishes to keep confidential, but doesn't qualify legally as a trade secret under Ohio law. By taking advantage of this process,

Sub-grantee certifies that it only marked information/documents that legally qualify as a trade secret under Ohio law as "CONFIDENTIAL – TRADE SECRET."

This Article shall survive the completion of the Project Activity hereunder and the termination of this Agreement.

ITEM IX - INSURANCE

The sub-grantee shall procure, maintain and pay premiums for the insurance coverage and limits of liability indicated below with respect to products, services, work and/or operations performed in connection with this Contract.

1. Mandatory Insurance Requirements

The following three items (Worker's Compensation Insurance, Commercial General Liability Insurance, and Business Automobile Liability Insurance) are all mandatory requirements unless otherwise specified.

(a) **Worker's Compensation Insurance** as required by the State of Ohio. Such insurance requirement may be met by either purchasing coverage from the Ohio State Insurance Fund or by maintaining Qualified Self-Insurer status as granted by the Ohio Bureau of Workers Compensation (BWC).

Such insurance shall be written on the National Council on Compensation Insurance (NCCI) form or its equivalent.

(b) **Commercial General Liability Insurance** with limits of liability not less than: \$1,000,000 each occurrence bodily injury & property damage; \$1,000,000 personal & advertising injury; \$2,000,000 general aggregate; \$2,000,000 products/completed operations aggregate. Such insurance shall be written on an occurrence basis on the Insurance Services Office (ISO) form or its equivalent.

(c) **Business Automobile Liability Insurance** covering all owned, non-owned, hired, and leased vehicles. Such insurance shall provide a limit of not less than \$1,000,000 combined single limit (bodily injury & property damage) each accident;

Such insurance shall be written on an occurrence basis on the Insurance Services Office (ISO) form or its equivalent.

Note: If the services required under this Contract include the repairing, servicing, parking or storing of vehicles, then the following insurance coverage shall also be required:

Garage keepers Legal Liability Insurance with a limit of not less than \$1,000,000 combined single limit (bodily injury & property damage) each accident.

2. **Additional Insurance Coverage**

Each of the following eight items may be required “in addition to” the mandatory County insurance requirements set forth above. Although these coverages may not be listed as mandatory County insurance requirements, it is at the County’s discretion to mandate these coverages where deemed necessary based on the nature of the contracted services/products.

(a) **Umbrella/Excess Liability Insurance** with limits of liability not less than:

\$5,000,000 each occurrence
\$5,000,000 general aggregate
\$5,000,000 products/completed operations aggregate

Such insurance shall be written on an occurrence basis and shall sit in excess of the limits and terms set forth in the preceding items (a)-(c).

(b) **All Risk Equipment Insurance** covering all risk of physical damage to equipment provided for use by Contractor.

(c) **Professional Liability Insurance/Errors & Omissions Liability Insurance** providing coverage for claims arising out of the provision of design, architectural, engineering and/or other professional services with a limit of liability not less than:

\$5,000,000 per claim;
\$5,000,000 aggregate.

Such insurance may be written on either an occurrence or claims-made basis. However, if written on a claims-made basis, the claims-made retroactive date on the policy shall be prior to the commencement of any design, architectural, engineering or other professional activity related to this Contract.

(d) **Pollution Legal Liability Insurance** (including Contractors Pollution Liability Insurance, if applicable) with a limit of liability not less than:

\$1,000,000 per claim;
\$1,000,000 aggregate.

Such insurance may be written on either an occurrence or claims-made basis, however, if written on a claims made-basis, the claims-made retroactive date on the policy shall be prior to the commencement of any work related to this Contract.

(e) **Liquor Liability Insurance** with a limit of liability not less than:

\$1,000,000 per occurrence;
\$1,000,000 aggregate.

(f) **Aviation Liability Insurance** covering the use and maintenance of all owned and non-owned aircraft of any type with a limit of liability not less than:

\$10,000,000 per occurrence;
\$10,000,000 aggregate.

(g) **Marine Liability Insurance** covering the use and maintenance of all owned and non-owned watercraft with a limit of liability not less than:

\$5,000,000 per occurrence;
\$5,000,000 aggregate.

(h) **Builders Risk Insurance** on an All Risks Property Coverage Form covering damage to buildings or other structures while under construction or renovation including materials and fixtures whether or not yet incorporated into the buildings or other structures.

Insurance Coverage Terms and Conditions

The insurance policies of the Political Subdivision required for this contract shall contain the following provisions:

- I. Thirty (30) days prior notice of cancellation or material change;
 - II. A waiver of subrogation wherein the insurer(s) waives all rights of recovery against the County.
1. The insurance required for this contract shall be provided by insurance carrier(s) licensed to transact business and write insurance in the state(s) where operations are performed and shall carry a minimum A.M. Best's rating of A- VII or above.
 2. These insurance provisions shall not affect or limit the liability of the Contractor stated elsewhere in this Contract or as provided by law.
 3. The Sub-grantee shall require any and all of its subcontractors to procure, maintain, and pay premiums for the insurance coverages and limits of liability outlined above with respect to products, services, work and/or operations performed in connection with this Contract.
 4. The County reserves the right to require insurance coverage in various amounts or to modify or waive insurance requirements on a case-by-case basis whenever it is determined to be in the best interest of the County.
 5. The Sub-grantee shall furnish a Worker's Compensation Certificate and Certificate of Insurance evidencing the insurance coverages required herein is in full force and effect. Acceptance of a non-conforming certificate of insurance by the County shall not constitute a waiver of any rights of the parties under this Contract.

6. Political subdivisions as Sub-grantees shall have the right to provide the insurance required hereunder by participating in a self-insurance program with sufficient limits. Confirmation of the entities' self-insured status is required.

ITEM X – 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 Cuyahoga County, 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. **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.
- E. **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.

- F. **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.
- G. **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.
- H. **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.
- I. **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.
- J. **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.
- K. **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.
- L. **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 XI – COUNTY CONTRACTS; ATTACHMENTS

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

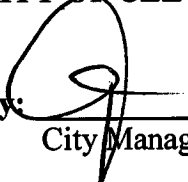
It is expressly understood and agreed that the Scope of Services, Attachment I "Budgetary Details", Part II "Terms and Conditions", and Part III, "Accounting and Financial Management Procedures", attached hereto are made a part hereof as if fully rewritten herein.

ITEM XII - ELECTRONIC SIGNATURE POLICY

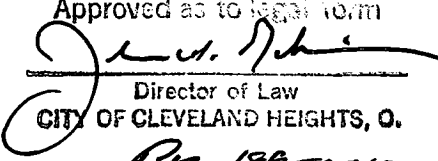
BY ENTERING INTO THIS CONTRACT I AGREE ON BEHALF OF THE CONTRACTING ENTITY, ITS OFFICERS, EMPLOYEES, SUBCONTRACTORS, SUB-GRANTEE, AGENTS OR ASSIGNS, TO CONDUCT THIS TRANSACTION BY ELECTRONIC MEANS BY AGREEING THAT ALL DOCUMENTS REQUIRING THE COUNTY SIGNATURES MAY BE EXECUTED BY ELECTRONIC MEANS, AND 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.

CITY OF CLEVELAND HEIGHTS, OHIO

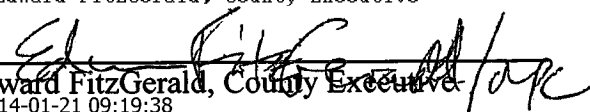
By: 

City Manager

Approved as to legal form


Director of Law
CITY OF CLEVELAND HEIGHTS, O.
P.R. 189-2013

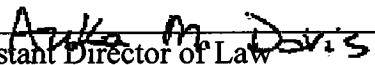
COUNTY OF CUYAHOGA, OHIO

Edward FitzGerald, County Executive
By: 

Edward FitzGerald, County Executive
2014-01-21 09:19:38

The legal form and correctness
of this Contract is hereby approved:
Law Department, County of Cuyahoga, Ohio
Majeed G. Makhoulf, Director of Law

ANKA M DAVIS, ASSISTANT LAW DIRECTOR

By: 

Assistant Director of Law
2014-01-21 16:29:15

Date: _____

Scope of Services

Community Name: City of Cleveland Heights

Program Funding: HOME

Year Award: 2012

Areas Served: City of Cleveland Heights

Eligible Activity: **HOME Activities – \$393,765**
Rehab – 24 CFR 92.205 - \$187,757.00
Home Buyer Assistance - 92.205(a) (1) – \$200,000.00
New Construction – 92.205 (a)(1) - \$0
Administration - 92.207 - \$6,008.00

Project Description:

Cleveland Heights will have all HOME funds covered by the Agreement "committed" under written agreements with homeowners or a nonprofit sub-recipient by August 31, 2014. The City of Cleveland Heights will use 2009, 2010 and 2012 HOME funds for eligible costs for program delivery and administration of the following activities:

Homeowner Rehab: Funding will be used to bring homes into compliance with local code and support the City's Low Interest Home Improvement Loan program. Participants must meet HUD's low and moderate income requirements, own and occupy the property to be rehabbed and complete eligible repairs. Loans will be secured by a lien on the property.

Home buyer assistance: Participants receive down payment and closing cost assistance to purchase affordable homes located within the City of Cleveland Heights. Financing is a zero (0) percent interest rate, deferred payment loan. Loan is due and payable at such time as the home ceases to be owner occupied.

New Construction: Funding will support new construction of single family homes for low-moderate income households.

Admin: These funds will be utilized in support the HOME eligible activities including but not limited to salaries and benefits, training, misc. fees, construction drawings and plans, and other as applicable.

Location of the Project: Cleveland Heights, Ohio (city-wide)

Program Income: All repayments of HOME-funded loans are considered Program Income. Under Federal regulations, all HOME Program Income received and legally available for use by the Community must be promptly reported to the County and will be deducted from the next reimbursement paid to the Community for any HOME-funded program or project.

Licensing Requirements: The Community has and will maintain all documents required for operation of this program per Local, State and Federal regulations. These documents include, but are not limited to:

- City Charter
- City Ordinances
- City Building Code Regulations

Reporting Requirements:

1. Reimbursement for expenses incurred during the reporting period will not be processed unless the IDIS reporting forms and a financial report as described herein are properly submitted. The Community will submit to the Lead Entity, reimbursement requests as activities are completed, including the following documentation:
 - a) The Community will submit all demographic and performance information for periodic HUD reporting. Information will be submitted on properly completed IDIS setup and completion forms for each project submitted for reimbursement. All required IDIS setup and completion forms are to be submitted electronically on disk or by email.
 - b) The Community will submit all demographic and performance information for annual HUD reporting. The Community will supply any additional information requested promptly to complete the annual CAPER report or any other report required by HUD, including information on all CDBG and other HUD-funded activities of the Community.
2. A narrative report or letter to the Lead Entity should be submitted if the Community encounters any difficulty in meeting the contract requirements of the contract. The report should describe any special servicing problems that may modify the pattern of service delivery, including changes in staffing, funding or use of facilities.
3. The Community will supply information requested regarding the status of SBE and MBE contracting activity.
4. In addition to the aforementioned performance report, a financial report is to be submitted by the Community to the Lead Entity as cases are completed. The financial report will include: a) a request for payment and/or status of fund's report; b) a budgetary summary sheet; c) a budgetary detailed report; and d) a detailed account of program income received by the Community since the last report and subtracted from the reimbursement request, along with supporting documentation requested by the Lead Entity.
5. The Community shall provide the Lead Entity with a copy of the report of its annual or biannual audit, as required by Ohio Revised Code Section 117.11(A),

and of any special audit pursuant to Ohio Revised Code Section 117.11(B), by the State Auditor or his/her designee, within 30 days after the completion of the audit.

Should the Community fail to meet these reporting requirements on an adequate and timely basis, the Lead Entity will withhold payments until the necessary information is made available. Continued failure to submit adequate and timely reports will result in the termination of this Agreement.

In the event the actual service delivery falls below the levels specified in this Agreement, action will be taken by the Lead Entity to assist the Community in reaching its service goals. If the performance remains below specified levels for a period of three months, the Lead Entity will withhold payments from the agency. Continued failure to meet specified service levels will result in termination of this Agreement.

Amendments to Agreement:

Changes in Scope of Services and Attachment 1 -- Budgetary Details, by greater than ten percent (10%), shall be agreed to, in writing, by Cuyahoga County prior to the implementation of any changes. Any budget line item revisions exceeding ten percent (10%) or changes to scope of service must have prior approval of the HOME Consortium, at a regularly scheduled meeting.



November 19, 2013

Paul Herdeg
Development Administrator
Cuyahoga County Department of Development
1701 East 12th Street, 1st Floor
Cleveland, Ohio 44114

Dear Mr. Herdeg,

The City of Cleveland Heights intends to continue following all HOME regulations, including adhering to the new definition of "committing" funds. This new definition has resulted in our community redesigning how our HOME Down Payment assistance will be managed. The new definition defines the funds as being 100% committed once a contract is executed with a nonprofit organization. It is our intention to enter into a contract with Home Repair Resource Center for \$200,000 to offer down payment assistance in Cleveland Heights to eligible households.

Further, the definition of committed funds for single family rehabilitation projects requires that a rehabilitation contract at an income eligible home be executed in order for the funds to be committed. Our new HOME Contract with the County initially targets \$187,757 for single family rehabilitation. Currently our Housing Preservation staff has \$28,378 of this new budget committed. In addition, HPO staff is actively working with four income eligible households and anticipate this work will result in contracts totaling \$135,000. This leaves a balance of \$24,379 of the new HOME contract funding that is not currently being tied to a specific address. HPO staff continues to communicate the availability of this rehabilitation program to our residents and anticipate having 100% of the HOME funds under contract, and therefore committed.

Both of these activities will be closely monitored to assure expenditures occur in a timely manner. Should either activity have unexpected difficulties in expending funds, corrective action will be taken including the possibility of moving the funds to an activity capable of expending the funds in a timely manner.

Sincerely,



Tanisha Briley
City Manager

ATTACHMENT 1

Matching Requirements – for the entire project

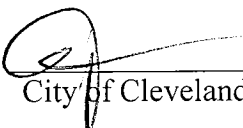
BUDGETARY DETAILS

COMMUNITY: City of Cleveland Heights

PROGRAM: 2012 HOME Allocation

COST CATEGORIES	BUDGETED AMOUNT
Eligible HOME activities and administrative cost	\$393,765.00
Total	\$393,765.00

Sara Parks Jackson, Program Officer
Prepared By


City of Cleveland Heights Acceptance

November 13, 2013
Date

11-19-13
Date

PROJECT EXPENDITURES BUDGETARY DETAILS

Community: City of Cleveland Heights:

(1) **PERSONNEL (a)**

Title	Salary	Hours Worked Per Week	% Charged to	Budgeted Amount

TOTAL PERSONNEL \$0

- (a) Monthly reports are to include: hourly rates, actual hours worked, percentage of hours actually charged to HOME and dollar amounts charged to HOME. All personnel are required to maintain time sheets which are to be approved by an appropriate supervisor.

(2) **FRINGE BENEFITS**

The following guidelines apply to charging "Fringe Benefits" to HOME

1. FICA may only be applied to the extent that the total salary does not exceed the pro-rated FICA limit.
2. Workers' Compensation may be charged monthly, provided that there is a periodic adjustment (every 6 months) to reflect the actual billing.
3. Unemployment Tax may be charged monthly, provided that there is a periodic adjustment (every 3 months) to reflect the actual billing. The actual amount charged will be the Unemployment Tax rate x the actual HOME charged salaries for the related period.

Type of Benefit	Rate or Dollar Amount	Budgeted Amount
TOTAL FRINGE BENEFITS		

(3) **TRAVEL (b)**

Description	Budgeted Amount
	0

- (b) Mileage logs are to be maintained and should include: Name, date, destination of trip, actual odometer readings and a supervisor's approval.

(4) **EQUIPMENT (c)**

Type of Equipment	Budgeted Amount
	0

- (c) Federal grant guidelines state that all non-expendable property acquired with HOME funds shall revert to the Department of Development upon termination of the funded program. Invoice should be submitted to the Department of Development when equipment is purchased.

(5) **GENERAL OVERHEAD (d)**

Type of General Overhead	Budgeted Amount
Administrative	\$10,559.25

- (d) Any costs which may be classified as indirect (i.e., costs which benefit more than one program cost objective) must be reported in total, using an approved cost allocation method. The cost allocation plan must be approved by the County prior to any reimbursement being made under the plan.

If any of the above costs require an agreement, monthly receipts are required, and a copy of the agreement must be on file in our office.

(6) **CONTRACTUAL (e)**

Description	Budgeted Amount
	0

- (e) Persons listed under Contractual are responsible for their own tax liabilities.

A copy of all Contractual agreements is to be submitted to the County for approval prior to any Contractual work.

(7) **OTHER**

Category	Budgeted Amount
Eligible HOME activities	\$393,765.00

TOTAL PROGRAM BUDGET

\$ 393,765.00

PART II
STANDARD TERMS AND CONDITIONS

HOME INVESTMENT PARTNERSHIP PROGRAM

SECTION 1 - HOME PROGRAM RULES AND REGULATIONS; UNIFORM ADMINISTRATIVE REQUIREMENTS;

During the performance of this Agreement, the Community agrees to comply with:

(I) The federal rules and regulations, as amended from time to time, governing the Home Investment Partnerships Program ("HOME Program") issued by the U.S. Department of Housing and Urban Development ("HUD") and set forth at 24 CFR Parts 91 and 92, including, but not limited to, Subpart H - "Other Federal Requirements" ("HOME Program Rules and Regulations").

(II) The requirements and standards of OMB Circular No. A-87, "Cost Principles for State, Local, and Indian Tribe Government" and OMB Circular No. A-122 "Cost Principles for Nonprofit Organizations"; and with the following sections of 24 CFR Part 85 "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments", and 24 CFR Part 84 "Grants and Agreements with Institutions of Higher Education, Hospitals and other Nonprofit Organizations" as specified below (collectively, the "UAR"). A copy of OMB Circular Nos. A-87 and A-122 shall be available upon request by the Community.

OMB Circular No. A-87 and the following provisions of 24 CFR Part 85 shall apply to governmental Subrecipients:

- a. Section 85.6, Exceptions.
- b. Section 85.12, Special grant or sub-grant conditions for "high-risk" grantees.
- c. Section 85.20, Standards for financial management systems.
- d. Section 85.22, Allowable costs.
- e. Section 85.26, Non-Federal audits.
- f. Section 85.32, Equipment.
- g. Section 85.33, Supplies.
- h. Section 85.34, Copyrights.
- i. Section 85.35, "Sub-awards to debarred and suspended parties."
- j. Section 85.36, Procurement.
- k. Section 85.44, Termination for convenience.
- l. Section 85.51, Later disallowances and adjustments.
- m. Section 85.52, Collection of amounts due.

OMB Circular No. A-122 and the following provisions of 24 Part 84 shall apply to Subrecipients that are non-governmental non-profit organizations:

- a. Section 84.2, Definitions.
- b. Section 84.5, Subawards.
- c. Section 84.13, Debarment and suspension; Drug-Free Workplace.
- d. Section 84.16, Resource Conservation and Recovery Act.
- e. Section 84.21, Standards for financial management systems.
- f. Section 84.22, Payment.
- g. Section 84.26, Non-Federal audits.
- h. Section 84.27, Allowable costs.
- i. Section 84.28, Period of availability of funds.
- j. Section 84.30, Purpose of property standards.
- k. Section 84.31, Insurance coverage.
- l. Section 84.34, Equipment.
- m. Section 84.35, Supplies and other expendable property.
- n. Section 84.36, Intangible property.
- o. Section 84.37, Property trust relationship.
- p. Section 84.40, Purpose of procurement standards.
- q. Section 84.41, Recipient responsibilities.
- r. Section 84.42, Codes of conduct.
- s. Section 84.43, Competition.
- t. Section 84.44, Procurement procedures.
- u. Section 84.45, Cost and price analysis.
- v. Section 84.46, Procurement records.
- w. Section 84.47, Contract administration.
- x. Section 84.48, Contract provisions.
- y. Section 84.51, Monitoring and reporting program performance.
- z. Section 84.60, Purpose of termination and enforcement.
- aa. Section 84.61, Termination.
- bb. Section 84.62, Enforcement.
- cc. Section 84.72, Subsequent adjustments and continuing responsibilities.
- dd. Section 84.73, Collection of amounts due.

All capitalized terms used but not otherwise defined herein shall have the meaning given to them in Part I of this Agreement, in the HOME Program Rules and Regulations or the UAR.

SECTION 2 - RECORDS; RECORDKEEPING

Establishment and Maintenance of Records - Records shall be maintained under this Agreement in compliance with §92.508 of the HOME Program Rules and Regulations. Except as otherwise specifically provided therein, records shall be maintained for a period of five (5) years after the Project Completion Date or during the Affordability term and for a period of 3 years thereafter.

Documentation of Eligible Project Costs - All costs of the Project 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 Community shall submit copies of all independent audits performed on the Subrecipient during the term of this Agreement to the Lead Entity. All records must be kept according to standard accounting practices.

Employment and Tax Matters - The Community assumes all responsibility for any and all workers' compensation premiums, unemployment compensation premiums, and federal, state and local taxes due on the compensation paid to all its employees. The Community agrees to follow all federal, state and local laws and regulations pertaining to any employees the Community may use to provide services under this Agreement.

Marketing - The Community shall document the Community's marketing of the Project to the community. Newspaper stories, posters, mailings, speaking engagements or other techniques employed shall be recorded by the Subrecipient. Specifically, the Community shall document its Affirmative Marketing Activities subject to and in accordance with 24 CFR §92.351.

Project Data - The Community shall maintain records for each family assisted including annual rental records, if applicable, and data on the Project demonstrating, among other things, participant eligibility for the Project as provided under this Agreement in compliance with 24 CFR §92.508(a) and 24 CFR §92.253.

Housing Quality Standards - The Community shall maintain records demonstrating that the Project meets the property standards in 24 CFR §92.251.

Affordability - The Community shall maintain annual housing quality standards demonstrating that the Project meets the property standards in 24 CFR §92.251.

Procurement Records - The community shall establish written Procurement procedures in accordance with 24CFR§85.36. The Community shall maintain data on the Project demonstrating, among other things that some form of cost or price analysis has been completed in connection with every procurement action to determine reasonableness, allocability and allowability.

Deed Restriction - In projects where assistance is provided to rental property, a deed restriction must be filed and must remain in effect for the period of affordability, without regard

to any mortgage or transfer of ownership of the Project Site. The deed restriction shall be prepared and recorded by the Lead Entity with the County Recorder.

SECTION 3 - REPORTS

At such times and in such forms as the HUD or the Lead Entity may require under the HOME Program Rules and Regulations and the UAR, there shall be furnished to HUD or to the Lead Entity statements, records, data and information, as HUD or the Lead Entity may request pertaining to matters covered by this Agreement.

SECTION 4 - AUDITS AND INSPECTIONS

Subject to and in accordance with 24 CFR Parts 44 and 45, during normal business hours and as often as the Lead Entity, HUD and/or the Comptroller General of the United States ("Comptroller General") may deem necessary, there shall be made available to the Lead Entity, HUD and/or representatives of the Comptroller General for examination all records of the Community with respect to all matters relating to the Project, and the Community shall permit the Lead Entity, 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 the Project.

In addition to the above-described inspections, the Lead Entity or Member Jurisdiction may perform on-site inspections of the Project and/or records at any time it deems desirable in accordance with the HOME Program Rules and Regulations and the UAR; provided, however, that the Member Jurisdiction shall conduct an on-site inspection of the Project at least annually.

SECTION 5 - CONFLICT OF INTEREST

No employee, agent, consultant, officer or elected or appointed official of the Member Jurisdiction 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 thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter, and the Community shall take appropriate steps to assure compliance.

SECTION 6 - PROCUREMENT STANDARDS AND METHODS

The Community 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", for governmental subrecipients and 24 CFR Part 84, Sections 84.40 – 84.48 for non-governmental, non-profit subrecipients. Copies of these procedures are available from the Lead Entity upon request by the Community.

The Community agrees that, whenever it makes purchases or enters into a contract that uses County funds in whole or in part, it will make its best efforts to meet the following goal in the utilization of small business enterprise (SBE) in the total contract award for this project:

35%. Evidence of the bidder's good faith effort must be submitted with the bid if the goal of 35% is not met. Compliance with the SBE goal is encouraged pursuant to Cuyahoga County Commissioner's Resolution Number 000981 dated February 29, 2000. The intent of the SBE Program is to ensure that SBE's have an equal opportunity to participate in procurement and other contracting opportunities within the County.

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. Generally, a SBE must have been in operation for one year and demonstrate that it has a physical presence within Cuyahoga County. Its gross revenues and workforce are in accordance with the amounts set forth below:

Construction – Less than \$25 million and less than 70 employees

Architectural/Engineering – Less than \$7.5 million and less than 25 employees

Commodity Providers – Less than \$1.5 million and less than 15 employees

Professional Services – Less than \$2.5 million and less than 20 employees

The Department may take whatever action it finds necessary if the Community does not utilize the best efforts to achieve these goals.

SECTION 7 - EMPLOYMENT DISCRIMINATION PROHIBITED

Subject to and in accordance with 24 CFR Part 5, during the performance of this Agreement, the Community agrees as follows:

The Community 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 Community 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 Community 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 Community setting forth the provisions of this nondiscrimination clause.

The Community will, in all solicitations or advertisements for employees placed by or on behalf of the Community, state that the Community is an Equal Opportunity Employer.

SECTION 8 - ENVIRONMENTAL REVIEW

The Community does not assume the Member Jurisdiction's environmental responsibilities described in 24 CFR §92.352; and the Community does not assume the Member Jurisdiction's responsibility to initiate the review process thereunder.

SECTION 9 - LEAD REMEDIATION

In compliance with the Final HUD Lead-Based Paint Regulation, all projects where funds are committed to a specific project in accordance with 24 C.F.R. 92.2, on or after September 15, 2000 (or such later date as approved in writing by HUD), shall comply with the requirements of Subpart J of the Final Rule, as published in the Federal Register on September 15, 1999, pages 50140-50231. Documentation shall be maintained in each case file, available for County and HUD review on request, including but not limited to the following:

For Rehabilitation Assistance up to \$5,000 per Unit

1. Borrower's acknowledgement of receiving a standard lead hazard pamphlet.
2. Written report of paint testing of painted surfaces to be disturbed, if any.
3. Documentation that a State of Ohio licensed Lead Abatement Contractor repaired all disturbed painted surfaces found (or assumed without testing) to contain lead paint.
4. Record of clearance of the disturbed area by a properly trained and licensed person.
5. Copy of the written notice to occupants describing the clearance results.

Items 2-5 are not required if the work disturbs no painted surfaces, or painted surfaces less than 2 square feet per interior room, 20 square feet total exterior, or 10% of any one item.

For Rehabilitation Assistance \$5,001 - \$25,000 per Unit

1. Borrower's acknowledgement of receiving a standard lead hazard pamphlet.
2. Written report of paint testing of painted surfaces to be disturbed, if any.
3. Written report of risk assessment of the entire unit by a properly licensed person.
4. Documentation that a State of Ohio licensed Lead Abatement Contractor performed interim controls of all lead-based paint hazards identified and/or created by the work.
5. Record of clearance of the entire unit by a properly trained and licensed person.
6. Copy of the written notice to occupants describing the clearance results.

The risk assessment is mandatory if any painted surfaces of any size will be disturbed by rehab.

Standard Lead Remediation Clause for Down Payment Programs

1. Borrower's acknowledgement of receiving a standard lead hazard pamphlet.
2. Record of visual assessment of all painted surfaces for deteriorated paint.
3. Record of paint stabilization using safe work practices (license not required).
4. Record of clearance of the work area by a licensed Lead Risk Assessor.
5. Copy of the written notice to occupants describing the clearance results.

Items 3-5 are not required if the visual assessment shows no deteriorated paint.

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 therefrom.

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 HOME Program 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 HOME Program funds provided under this Agreement shall be used for publicity or propaganda purposes designated to support or defeat legislation pending before the U.S. Congress.

SECTION 14 - CHANGES; AMENDMENTS

- A. The Consortium may, from time to time, permit changes in the Scope of Services of the Agreement to be performed hereunder provided such changes are authorized by resolution of the Cuyahoga County of Cuyahoga County ("the County") and are otherwise in compliance with the HOME Program Rules and Regulations.. Any such changes shall be incorporated in written amendments to this Agreement signed by the parties.
- B. The Consortium may change the amount of the HOME Program funds allocated to the Program under this Agreement provided such changes in compensation are authorized by resolution of the County and are otherwise in compliance with the HOME Program Rules and Regulations. Any such changes shall be incorporated in written amendments to this Agreement signed by the parties.
- C. The Consortium may upon its own initiative or upon that of the Community, authorize changes in the time of performance as established in Part I of this Agreement subject to the time of performance requirements under the HOME Program Rules and Regulations and provided such changes in compensation are authorized by resolution of the County. As a condition precedent to the authorization of such change, the Consortium shall have determined that the Community 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. Any change in the time of performance shall be agreed to by the Community and the Consortium in writing, and said writing shall be incorporated in written amendments to this Agreement signed by the parties.

SECTION 15 - PERSONNEL

- A. The Community represents that it has or will secure at its own expense, all personnel required to perform under this Agreement. Such personnel shall not be employees of or have any contractual relationship with the Consortium, the Lead Entity or the Member Jurisdiction.
- B. All of the services required hereunder will be performed by the Community or under its supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under applicable federal, state and local law to perform such services.

SECTION 16 - ASSIGNABILITY

The Community shall not assign any interest in this Agreement and shall not transfer any interest in the same (whether by assignment or notation).

SECTION 17 - TERMINATION OF AGREEMENT

If the Community fails to fulfill in a timely and proper manner any term or condition contained in this Agreement, including but not limited to, the Affordable Housing Requirements or the Affordability Term Requirements, or if Community shall violate any of the covenants, agreements, or stipulations in this Agreement, the Lead Entity 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 Community hereunder;
- B. Withhold or reduce funds not yet paid to the Community;
- C. Recover funds previously paid to the Community;
- D. Place liens, encumbrances or restrictions on any property obtained by the Community through the expenditure of HOME Program funds;
- E. Exercise any and all additional rights the Consortium may have at law or in equity.

Termination pursuant to clause (A) above shall be effective five (5) days after the date the Lead Entity has given written notice to the Community of such termination. In the event of termination, the Consortium or Member Jurisdiction, as the case may be, shall have a security interest in and lien on, and in such event the Community does hereby grant the Consortium or Member Jurisdiction, as the case may be, a security interest in and lien on all work on the Project in the amount of the HOME Program funds used for the Project. The Consortium or Member Jurisdiction, as the case may be, shall be entitled to take any further action as shall be necessary or appropriate to perfect its security interest therein or place a lien thereon; provided, however, that upon the Community's repayment to the Consortium or Member Jurisdiction, as the case may be, of all funds due and owing thereto, the Consortium or Member Jurisdiction, as the case may be, shall release such security interest or lien. No action or inaction by the Consortium, the Lead Entity or the Member Jurisdiction at any time with respect to 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 Consortium or Member Jurisdiction, as the case may be, unless reduced to writing and signed by the County.

SECTION 18 - TERMINATION FOR NECESSITY OF THE CONSORTIUM

The Lead Entity may terminate this Agreement for necessity by giving at least thirty (30) days notice in writing from the Consortium to the Community. If the Agreement is terminated by the Lead Entity as provided herein, the Community will be paid an amount which shall be fair and reasonable compensation for the actual costs incurred in connection with the work performed on the Project under this Agreement until the date of termination hereof, such amount to be determined in the Lead Entity's discretion, subject to applicable federal regulations. If the Agreement is

terminated due to the fault of the Community, this section, relative to termination for necessity shall also apply.

SECTION 19 - HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1968 - SECTION 3.

- A. The work to be performed under this Agreement is on a project assisted under a program providing direct Federal assistance from HUD 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 to 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.
- B. The parties to this Agreement will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of HUD set forth in 24 CFR 135, and all applicable rules and orders of HUD issued thereunder 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.
- C. Community will send to each labor organization or representative of workers with which it has a 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 20 - INDEMNIFICATION

The Community agrees to indemnify and save harmless the Consortium, the Lead Entity and the Member Jurisdiction against all liability, claims, demands, losses, damages and costs arising from any act or omission by, or negligence of, the Community or its contractors and subcontractors, or the officers, agents, or employees of either while engaged in the performance of this Agreement.

SECTION 21 - TAXES

The community shall pay all taxes and assessments on property, and all payments in lieu of taxes when due. No lien or encumbrance against any assets and/or services purchased with HOME Program funds granted pursuant to this Agreement shall be attached.

SECTION 22 - INDEPENDENT RELATIONSHIP

The Community is not to be considered an agent or employee of the Consortium, the Lead Entity or the Member Jurisdiction for any purpose and any agency, fiduciary relationship, or trust or other relationship whatsoever is created by this Agreement.

SECTION 23 - DISCRIMINATION IN PROGRAM APPLICATION PROCESS PROHIBITED

Subject to and in accordance with 24 CFR Part 5, the Community shall not discriminate against any applicant of the Program because of race, religion, color, sex, national origin, age, handicap, ancestry, or Vietnam-era or disabled veteran status. The Community 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 24 - SECTARIAN/RELIGIOUS ACTIVITY PROHIBITED

In addition to, and not in substitution for, other provisions of this Agreement regarding the provision of services with HOME Program funds, pursuant to Title I of the Housing and Community Development Act of 1974, as amended, and 24 CFR §92.257, the Community agrees, such agreements to include but not be limited to the following:

- 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 the Program on the basis of religion and will not limit residency in the Project 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; and
- D. The portion of the Project used to provide public services assisted in whole or in part under this Agreement shall contain no sectarian or religious symbols or decorations.

SECTION 25 - LABOR STANDARDS FOR CONSTRUCTION ACTIVITIES

In accordance with, 24 CFR §92.354, the Community agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act (40 U.S.C. 276a-276a-5) as amended, the provisions of Contract Work Hours and Safety Standards Act (40 U.S.C. 327-332), the Copeland "Anti-Kickback" Act (40 U.S.C. 276c) and all other applicable federal, state and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this Agreement (hereinafter the "Wage Provisions"). The Community shall maintain documentation which demonstrates compliance with hour and wage requirements thereof.

Such documentation shall be made available to the Lead Entity when the Community is requesting reimbursement for expenditures under the Program in compliance with this Agreement.

The Community agrees that, except with respect to the rehabilitation or construction of residential property containing less than twelve (12) units, all contractors engaged under contracts in excess of Two Thousand Dollars (\$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 ratio of apprentices and trainees to journeyworkers; 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 Community of its obligation, if any, to require payment of the higher wage. The Community shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions meeting the requirements of this paragraph.

Contracts for construction must contain these Wage Provisions if HOME Program funds are used for any project costs in § 92.206 of the HOME Program Rules and Regulations, including construction or nonconstruction costs, of housing with twelve (12) or more HOME Program assisted units. When HOME Program funds are only used to assist homebuyers to acquire single-family housing, and not for any other project costs, the wage provisions apply to the construction of the housing if there is a written agreement with the owner or developer of the housing that HOME Program funds will be used to assist homebuyers to buy the housing, and the construction contract covers twelve (12) or more housing units to be purchased with HOME Program assistance. The Wage Provisions apply to any construction contract that includes a total of twelve (12) or more HOME Program assisted units, whether one or more than one project is covered by the construction contract. Once they are determined to be applicable, the Wage Provisions must be contained in the construction contract so as to cover all laborers and mechanics employed in the development of the entire project, including portions other than the assisted units. Arranging multiple construction contracts within a single project for the purpose of avoiding the Wage Provisions is not permitted.

Notwithstanding anything to the contrary stated in this Section 25, the Wage Provisions contain additional exceptions and provisions that may apply.

SECTION 26 - PUBLIC ACCESS TO PROGRAM RECORDS

The Community shall provide the general public with reasonable access to records regarding the past use of HOME Program funds, consistent with applicable state and local laws regarding privacy and obligations of confidentiality.

SECTION 27 – REVERSION OF ASSETS

Upon expiration of this agreement, the Community must transfer to the Lead Entity any HOME funds on hand at the time of expiration and any accounts receivable attributable to the use of HOME funds.

REMAINDER OF THIS SECTION INTENTIONALLY LEFT BLANK.

PART III

STANDARD ACCOUNTING AND FISCAL MANAGEMENT PROCEDURES

HOME INVESTMENT PARTNERSHIPS PROGRAM

SECTION 1 - GENERAL

The Community will be required to establish and maintain a standard accounting system which will provide effective financial controls and meet the requirements of the HOME Program Rules and Regulations as applied to the Program.

When audits are performed in accordance with the provisions of Part II, Section 4 hereof, discovery of the failure of the Community to use generally accepted accounting procedures may result in the disallowance of expenditures for which the Community will be liable and for the assessment of sanctions pursuant to Part II, Section 16 hereof.

The Lead Entity reserves the right to review all financial records in order to assess the financial condition of the Project. If the Lead Entity determines that the Community's financial condition or the methods and practices it uses to manage its financial systems may jeopardize HOME Program funds under this 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 Project under specific financial requirements until the problems have been corrected to the satisfaction of the Lead Entity, or exercise its authority to terminate the Agreement as a result of such conditions.

The Community is fully responsible for the management and control of its financial system. Any loss of HOME Program funds as a result of the misfeasance, nonfeasance, or malfeasance of the Community is the responsibility solely of the Community and its officers. To insure accountability, the Lead Entity reserves the right to withhold payments, put the Community under specific financial requirements, or terminate this Agreement.

SECTION 2 - ACCOUNTING SYSTEM STANDARDS

The Community's financial management systems shall provide:

- A. Accurate, current and complete disclosure of the financial results of the Program including at least a monthly reconciliation of the cash balance of the Program.
- B. Records which adequately identify the source and application of funds for the Project. 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 this Agreement, awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income of the Program.

- C. Effective control over and accountability for all funds, property and other assets. The Community 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 unit of the Project. Also, the relation of financial information with performance or productivity data, including the production of unit cost information whenever appropriate and required by the Lead Entity.
- E. Procedures for determining the allowability and allocability of costs in accordance with this Agreement.
- F. Accounting records which 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 Community makes an actual cash disbursement will it be reimbursed for the expense by the Consortium.
- B. Disbursements must be applied only to the authorized use as specified in the Scope of Services and the Budget. Failure to pay creditors for activities specified in this Agreement or to disburse funds for their authorized use constitutes a violation of the terms of this Agreement.
- C. At intervals determined by the Lead Entity, the Community 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 Lead Entity 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 Lead Entity 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

Communities that expend more than \$300,000 in federal assistance from any source in any year shall have an audit made in accordance with OMB Circular No. A-133.

Any audit shall be made by an independent auditor in accordance with Generally Accepted Government Auditing Standards covering financial and compliance audits. "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 Community is required to send the Lead Entity a copy of its audit for the time period when HOME Program funds are expended, within sixty (60) days after completion of the audit

SECTION 5 - PROGRAM INCOME

The Community shall comply with the standards set forth in 24 CFR Part 85 for governmental subrecipients and 24 CFR Part 84 for nongovernmental, non-profit subrecipients to account for Program Income. Program Income represents gross income earned by the Community from the Program. Such interest includes but will not be limited to, income from service fees, interest on program income pending its disposition, matching contributions, sale of commodities, usage or rental fees, and royalties on patents and copyrights.

- A. Unless the Agreement provides otherwise, the Community 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 Community, in accordance with the grant or other agreement shall be:
 - 1. Added to HOME Program funds committed to the Project by the Consortium and be used to further eligible Program objectives;
 - 2. Used to finance the Community's share of the Project when approved by the Consortium; or
 - 3. Deducted from the Total Project Costs in determining the net costs on which the HOME Program share of costs will be based.