

GENERAL AGREEMENT
NONPROFIT PROVIDER

PART I

THIS AGREEMENT is made and entered into this ____ day of _____, 2013 by and between the COUNTY of CUYAHOGA, OHIO, the "County", the Department of Development and the Neighborhood Housing Services of Greater Cleveland, Inc., a Nonprofit Corporation, with principal office located at 5700 Broadway Avenue, Cleveland, Ohio 44127 the "Provider".

WITNESSETH:

WHEREAS, the Cuyahoga County have 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 the Housing Emergency Recovery Act of 2008; 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 South Euclid Land Trust Homes Project; 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 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.

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 Provider 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. The services of the Provider are to commence July 1, 2013 and shall be undertaken and completed in such sequence as to assure their expeditious completion in light of the purposes of this Agreement. All services required herein shall be completed by no later than August 31, 2015.
- B. Amendment to the time of performance shall be subject to the provisions of Part II, Section 14, Paragraph C, hereof.

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 \$100,000 consisting of Fiscal Year 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. 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 Provider for actual expenditures involved in performing the necessary work as set forth in the Scope of Services and Budget. The Provider 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 – CONDITIONS & ATTACHMENTS:

It is expressly understood and agreed that Schedule A “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.

By entering into this agreement /amendment to agreement or (by submitting a bid) or (by submitting a proposal) I understand on behalf of the contracting or submitting business entity, its officers, employees, subcontractors, sub-grantees, agents or assigns, that all County contracts 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, and the contractor shall comply with all such ordinances.

I agree to conduct this transaction by electronic means by agreeing that all documents requiring county signatures may be executed by electronic means, and that the electronic signatures affixed by the county to said documents shall have the same legal effect 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 chapters 304 and 1306 of the Ohio revised code as they pertain to electronic transactions, and to comply with the electronic signature policy of Cuyahoga County.

IN WITNESS WHEREOF, the parties hereto have affixed their signatures on the day and date first above written.

COUNTY OF CUYAHOGA

Edward FitzGerald, County Executive

BY:

Edward FitzGerald, County Executive

2013-07-23 12:05:05

DATE:

Neighborhood Housing Services of
Greater Cleveland, Inc.

BY:

DATE:

SCHEDULE A

Scope of Services

Provider Name:	Neighborhood Housing Services of Greater Cleveland, Inc.
Program Funding:	HOME
Year Award:	Fiscal Year 2012
Areas Served:	City of South Euclid
Eligible Activity:	24 CFR 92.205(a)(1) and 92.206(c) homebuyer acquisition cost assistance.
Project Description:	<p>The program will include the following activities.</p> <p>HOME funds will be used in the amount of \$25,000 each for homebuyer write-down assistance for 4 buyer of vacant, renovated houses in South Euclid. Buyers must meet HOME program income limits. Houses must meet all applicable codes.</p> <p>The project will use HOME resale restrictions with resale restricted to income qualified buyers for the 10 year HOME affordability period beginning with sale and occupancy of each house.</p> <p>A deed restriction to run with the land will be filed on each property to assure compliance with all HOME program affordability requirements in effect upon sale of the house to it's first buyer.</p> <p>Funds will be released on a per-homebuyer basis as income qualified buyers take ownership and actually occupy each house. Funds will be used to reduce the sales price.</p>
Location of the Project:	City of South Euclid
Program Income:	No Program Income will be received by the Provider.
Licensing Requirements:	<p>The Provider 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:</p> <ul style="list-style-type: none">• Articles of incorporation• IRS tax exempt status

Agency Name: Neighborhood Housing Services of Greater Cleveland, Inc.

Scope of Services

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Reporting Requirements:

1. Reimbursement for expenses incurred during the reporting period will be processed unless the IDIS reporting forms and a financial report as described herein are properly submitted. The Provider will submit to the Lead Entity, reimbursement requests as activities are completed, including the following documentation:
 - a) The provider 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 e-mail.
 - b) The provider will submit all demographic and performance information for annual HUD reporting. The Provider 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 provider.
2. A narrative report or letter to the Lead Entity should be submitted if the provider encounters any difficulty in meeting the contract requirements. 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 Provider 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 Provider 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 provider since the last report and subtracted from the reimbursement request, along with supporting documentation requested by the Lead Entity.
5. The Provider shall provide Lead Entity with a copy of its audit report within 30 days after the completion of the audit.

Should the Provider 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 Provider 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 the Agreement.

Amendments to Agreement:

Changes in Schedule A, Scope of Services and Attachment I – Budgetary Details, shall be agreed to by the Lead Entity in writing prior to the implementation of any changes. If an amendment to the Agreement is required, the Provider may not proceed with the changes until the amendment is executed by Cuyahoga County.

ATTACHMENT 1
APPROVED BUDGET

Matching Requirements – for the entire project

This program uses the Consortium match pool.

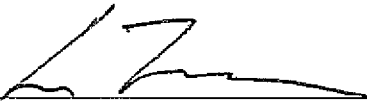
BUDGETARY DETAILS

PROVIDER: Neighborhood Housing Services of Greater Cleveland, Inc.

PROGRAM: South Euclid Land Trust Homes Project

Budget for 26 months.


#	COST CATEGORIES	BUDGETED AMOUNT
1		
2		
3		
4		
5		
6		
7	Other	\$100,000.00
	Total	\$100,000.00



Signature of Agency

5/30/13

Date



Printed Name



Title

Angela Henderson

Prepared By

05/10/2013

Date Prepared

PROJECT EXPENDITURES BUDGETARY DETAILS

PROVIDER: Neighborhood Housing Services of Greater Cleveland, Inc.

(1) **PERSONNEL** (a)

Title	Salary	Hours Worked Per Week	% Charged to	Budgeted Amount

TOTAL PERSONNEL \$ 0.00

(a) Monthly budget 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 that 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. Worker's 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		0.00

(3) **TRAVEL** (b)

Description	Budgeted Amount
	0.00

(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
	0.00

(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	Rate or Dollar Amount	Budgeted Amount
		0.00

(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; a copy of the agreement must be on file in our office.

(6) **CONTRACTUAL** (e)

Description	Budgeted Amount
	0.00

(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
HOME funds to be used in the amount of \$25,000 each for homebuyer's write-down assistance for 4 buyers at or below 80% AMI.	\$100,000.00

TOTAL PROGRAM BUDGET

\$ 100,000.00

PART II
STANDARD TERMS AND CONDITIONS

HOME INVESTMENT PARTNERSHIP PROGRAM

**SECTION I – HOME PROGRAM RULES AND REGULATIONS;
UNIFORM ADMINISTRATION REQUIREMENTS;**

During the performance of this Agreement, the Provider 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 as 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 standard 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 made available upon request to the Provider.

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

- a. Section 85.6, Exceptions.
- b. Section 85.12, Special grant or sub-grant conditions for “high-risk” grantees.
- c. Section 85.20, Standard 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 Providers that are non-governmental non-profit organizations:

- a. Section 84.2, Definitions.
- b. Section 84.5, Sub-awards.

- 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 Provider shall submit copies of all independent audits performed on the Provider 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 Provider 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 Provider agrees to follow all federal, state, and local laws and regulations pertaining to any employees the Provider may use to provide services under this Agreement.

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

Project Data – The Provider 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 Provider shall maintain records demonstrating that the Project meets the property standards in 24 CFR §92.251.

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

Procurement Records – The provider shall establish written Procurement procedures in accordance with 24 CFR §84.44. The Provider 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 pursuant to 24 CFR §92.252 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 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 Provider with respect to all matters relating to the Project and the Provider 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 Provider shall take appropriate steps to assure compliance.

SECTION 6 – PROCUREMENT STANDARDS AND METHODS

The Provider 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 Providers and 24 CFR Part 84, Sections 84.40 – 84.48 for non-governmental, non-profit Providers. A copy of these procedures is available from the Lead Entity upon request by the Provider.

The Provider 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 County 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 Provider 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 Provider agrees as follows:

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

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

SECTION 8 – ENVIRONMENTAL REVIEW

The Provider does not assume the Member Jurisdiction's environmental responsibilities described in 24 CFR §92.352; and the Provider 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 CFR 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 that 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 or 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 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 Provider, 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 Provider 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 Provider 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 Provider 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 Provider 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 Provider 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 Provider 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 Provider 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 or more of the following rights or remedies:

- A. Terminate this Agreement and the rights of the Provider hereunder;
- B. Withhold or reduce funds not yet paid to the Provider;
- C. Recover funds previously paid to the Provider;
- D. Place liens, encumbrances or restrictions on any property obtained by the Provider 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 Provider 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 Provider 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 Provider's repayment to the Consortium or Member Jurisdiction 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 Provider. If the Agreement is terminated by the Lead Entity as provided herein, the Provider 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 Provider, 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. Provider 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 Provider 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 Provider 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 Provider 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 Provider is not to be considered an agent or employee of the Consortium, the Lead Entity, or the Member Jurisdiction for any purpose and no agency, fiduciary relationship, 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 Provider 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 Provider 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 1 of the Housing and Community Development Act of 1974, as amended, and 24 CFR §92.257, the Provider 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 Provider 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 Provider shall maintain documentation which demonstrates compliance with hour and wage requirements thereof. Such documentation shall be made available to the Lead Entity when the Provider is requesting reimbursement for expenditures under the Program in compliance with this Agreement.

The Provider 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 Provider of its obligation, if any, to require payment of the higher wage. The Provider 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 Provider 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 Provider 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.

PART III

STANDARD ACCOUNTING AND FISCAL MANAGEMENT PROCEDURES

HOME INVESTMENT PARTNERSHIPS PROGRAM

SECTION 1 – GENERAL

The Provider 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 Provider to use generally accepted accounting procedures may result in the disallowance of expenditures for which the Provider 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 Provider'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 Provider is fully responsible for the management and control of its financial systems. Any loss of HOME Program funds as a result of the misfeasance, nonfeasance, or malfeasance of the Provider is the responsibility solely of the Provider and its officers. To insure accountability, the Lead Entity reserves the right to withhold payments, put the Provider under specific financial requirements, or terminate this Agreement.

SECTION 2 – ACCOUNTING SYSTEM STANDARDS

The Provider'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 Provider 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 allocability and the eligibility of costs in accordance with this Agreement.
- F. Accounting records which are supported by source documentation.
- G. A systemic 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 Provider makes 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 Provider 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

Providers 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 Provider 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 the completion of the audit.

SECTION 5 – PROGRAM INCOME

The Provider shall comply with the standards set forth in 24 CFR Part 85 for governmental providers and 24 CFR Part 84 for nongovernmental, non-profit providers to account for Program Income. Program Income represents gross income earned by the Provider 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 Provider 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 Provider, 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 Providers' 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.