

COUNCIL CHAMBER

City of Berea, Ohio

ORDINANCE No. 2013-36

By Dean W. Van Dress Sponsored By Mayor Cyril M. Kleem

AN ORDINANCE

AUTHORIZING AND RATIFYING THE MAYOR TO ACCEPT GRANT FUNDS AND TO ENTER INTO AN AGREEMENT WITH, THE CUYAHOGA COUNTY DEPARTMENT OF DEVELOPMENT FOR GRANT FUNDS FOR REDEVELOPMENT OF RESIDENTIAL PROPERTIES, AND DECLARING AN EMERGENCY.

WHEREAS, the Cuyahoga County Department of Development, through funding from Federal Neighborhood Stabilization Program has made available certain grant funds for Census Tract 1341; and

WHEREAS, the City has made application for and has been awarded a certain grant in the amount of \$200,000.00 for acquisition and new construct of residential properties in Census Tract 1341.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Berea, State of Ohio;

SECTION 1. That the Mayor is authorized to enter into a certain Grant Agreement with the Cuyahoga County Department of Development in substantially the form of Agreement attached hereto as Exhibit "A" and incorporated herein by reference, and the submission of the application, acceptance of the grant award and execution of the Grant Agreement are hereby affirmed and ratified.

SECTION 2. That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal actions were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

SECTION 3. That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, property, health, safety and welfare, or providing for the usual daily operation of a municipal department, and for the further reason that it is immediately necessary to comply with the terms and time limits of the grant established by the Cuyahoga County Department of Development. Therefore, provided this Ordinance receives the affirmative vote of two-thirds of all members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise, from and after the earliest period allowed by law.

PASSED: March 18, 2013

[Signature]
President of Council

ATTEST: [Signature]
Clerk of Council

APPROVED: March 18, 2013

[Signature]
Mayor

Approved as to Form:

[Signature]
Director of Law

GENERAL AGREEMENT

NEIGHBORHOOD STABILIZATION PROGRAM III
COMPETITIVE MUNICIPAL GRANT PROGRAM

PART I

THIS AGREEMENT is made and entered into this ____ day of _____, 2013 by and between the COUNTY OF CUYAHOGA, OHIO, (the "County"), on behalf of the Department of Development, and the City of Berea, a political sub-division, with principal offices located at 99 South River Drive, Berea, Ohio 44017 (the "Provider").

WHEREAS, such activities to be performed include acquisition, rehabilitation and redevelopment of foreclosed, abandoned or vacant residential properties;

WHEREAS, the County desires to engage the Provider to render certain services and assistance in connection with said services;

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

ITEM I - SCOPE OF SERVICES:

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

ITEM II - TIME OF PERFORMANCE:

- A. The services of the Provider are to commence April 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, but in any event, all of the services required herein shall be completed by December 31, 2013.
- B. Amendment to the time of performance shall be subject to the provisions of Part II, Section 14, Paragraph C, hereof.

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 \$200,000 for all of the services required. It is further expressly understood and agreed that in no event will the Agreement exceed any budget line item of the latest approved budget by greater than ten

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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 at a minimum on a quarterly 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 an invoice 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 - EQUAL EMPLOYMENT OPPORTUNITY:

The Provider agrees to comply with:

- A. Title VI of the Civil Rights Act of 1964, (P.L. 88-352) and the HUD regulations under 24 CFR, Part 1, which provides that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance by way of grant, loan, or Agreement and will immediately take any measures necessary to effectuate this Agreement. If any real property or structure thereof is provided or improved with the aid of Federal financial assistance extended to the Provider, this assurance shall obligate the Provider, 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.

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.

- D. Executive Order 11063 on equal opportunity in housing and related facilities owned or operated by the Federal government or provided with Federal financial assistance.
- E. Executive Order 11246, as amended, requiring nondiscrimination and affirmative action to ensure nondiscrimination in employment by government and Provider and under Federally assisted construction contracts.
- F. Cuyahoga County Resolution Number 1895 dated July 4, 1975 et seq. adopting an expanded program for Equal Opportunity in all activities funded by or through the Cuyahoga County.
- G. The National Affordable Housing Act of 1990 (P.L. 101-625) adds religion as a basis on which Provider may not discriminate in the programs and activities funded under CDBG.

ITEM V - PERSONNEL ASSIGNED

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

County of Cuyahoga

City of Berea

Angela Henderson
Name

Rebecca Corrigan
Name

Housing Development Specialist
Title

Executive Director
Title

Cuyahoga County Dept. of Development
1701 East 12th Street, 1st Floor
Reserve Square
Cleveland, Ohio 44114

City of Berea
99 South River Drive
Berea, Ohio 44017

E-mail: ahenderson1@cuyahogacounty.us

E-mail: Rebecca@bereactdc.org

(216) 443-8162
Telephone

(440) 826-4727
Telephone

(216) 348-4477
Fax

(440) 243-5036
Fax

ITEM VI - CONDITIONS & ATTACHMENTS

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

By entering into this Agreement or by submitting a bid or a proposal, I agree on behalf of the contracting or submitting business entity, its officers, employees, subcontractors, providers, agents or assigns, to conduct this transaction by electronic means by agreeing that all documents requiring county signatures may be executed by electronic means, and that the electronic signatures affixed by 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, OHIO

BY: _____

Title: County Executive

Date: _____

CITY OF BEREA, OHIO

BY: *Civil Klamm*

Title: Mayor

Date: 2-13-13

ATTACHMENT I

NEIGHBORHOOD STABILIZATION PROGRAM III
COMPETITIVE MUNICIPAL GRANT

Municipality: City of Berea

Project Name: Berea – NSP3 Acquisition and Redevelopment

Budget

USE OF FUNDS <i>Line Item:</i>	SOURCE OF FUNDS						TOTAL
	NSP III	NSP II	NSP I	GENERAL FUND	OTHER: _____	OTHER: _____	
Eligible NSP3 Cost	\$200,000						\$200,000
Total Project Cost	\$200,000						\$200,000

**SCHEDULE A
NEIGHBORHOOD STABILIZATION PROGRAM III
COMPETITIVE MUNICIPAL GRANT**

Scope of Services

Community Name:	City of Berea
Project Name:	Berea – NSP3 Acquisition and Redevelopment
Fiscal Year:	FY2011
Source of Funds:	Neighborhood Stabilization Program 3
NSP III Project Cost:	\$200,000 Total Project Cost: \$200,000
Project Description:	Acquisition demolition and redevelopment of a vacant residential property through new construction of a single-family residential structure to be sold or rented to an income eligible household.
Project Location:	Census Tract 1341 Block Group 1
Project Start Date:	April 1, 2013
Project Completion Date:	December 31, 2013
National Objective:	Benefiting low-, moderate-, and middle-income households
Eligible Activities:	Eligible Use E: Redevelop demolished or vacant properties
Special Conditions:	Subject to Section 3 and local vicinity hiring requirements. Required to report quarterly on beneficiaries and status of funds. Subject to Uniform Relocation Act and Tenant Protections regulations.

SCHEDULE A
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Municipality: City of Berea

Project Name: Berea – NSP3 Acquisition and Redevelopment

MINIMUM CUMULATIVE REIMBURSEMENTS

By:	June 30, 2013	\$121,000.00
By:	September 30, 2013	\$164,500.00
By:	December 31, 2013	\$200,000.00

Failure to submit properly documented reimbursement requests totaling at least minimum amounts set for the above, by dates listed, will be grounds for termination of this grant agreement under section 17 below.

PART II

TERMS AND CONDITIONS

NEIGHBORHOOD STABILIZATION PROGRAM III COMPETITIVE MUNICIPAL GRANT

SECTION 1 - UNIFORM ADMINISTRATIVE REQUIREMENTS

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

- a. Section 85.3, "Definitions."
- b. Section 85.6, "Exceptions."
- c. Section 85.12, "Special grant or sub-grant conditions for 'high-risk' grantees."
- d. Section 85.20, "Standards for financial management systems," except paragraph (a).
- e. Section 85.21, "Payment," except as modified by Section 570.513.
- f. Section 85.22, "Allowable costs."
- g. Section 85.26, "Non-Federal audits."
- h. Section 85.31, "Real Property."
- i. Section 85.32, "Equipment," "Except in all cases in which the equipment is sold, the proceeds shall be program income."
- j. Section 85.33, "Supplies."
- k. Section 85.34, "Copyrights."
- l. Section 85.35, "Sub-awards to debarred and suspended parties."
- m. Section 85.36, "Procurement," except paragraph (a).
- n. Section 85.37, "Sub-grants."
- o. Section 85.40, "Monitoring and reporting program performance", except paragraphs (b) through (d) and paragraph (f).
- p. Section 85.41, "Financial reporting," except paragraphs (a), (b), and (e).
- q. Section 85.42, "Retention and access requirements for records."
- r. Section 85.43, "Enforcement".
- s. Section 85.44, "Termination for convenience."
- t. Section 85.51, "Later disallowances and adjustments."
- u. Section 85.52, "Collection of amounts due."

SECTION 2 - ALLOWABLE COSTS

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

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

- A. Compensation of employees for the time and effort devoted specifically to the execution of the Agreement up to, but not to exceed, ten percent of grant amount.
- B. Cost of materials acquired, consumed, or expended specifically for the purpose of the Agreement.
- C. Equipment and other approved capital expenditures.
- D. Other items of expense incurred specifically to carry out the Agreement.
- E. Services provided specifically for the Agreement by other agencies.

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

SECTION 3 - RECORDS

- A. Establishment and Maintenance of Records - Records shall be maintained with respect to all matters covered by this Agreement. Except as otherwise authorized, such records shall be maintained for a period of four years after receipt of the final payment under this Agreement.
- B. Documentation of Costs - All costs shall be supported by properly executed payrolls, time records, invoices, Agreements, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, Agreements, voucher orders, or other accounting documents pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible. The Provider shall submit copies of all independent audits performed on the Provider during the term of this Agreement to the County. All records must be kept according to standard accounting practices. All costs associated with the activities listed in Item 1 "SCOPE OF SERVICES" shall be reported to the county on a quarterly basis.
- C. 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 their employees. The Provider agrees to follow all Federal, State and local regulations pertaining to any employees the Provider may use to provide services under this Agreement.

- D. The Provider shall document the marketing of NSP services to the Community. Newspaper stories, posters, mailings, speaking engagements or other techniques employed shall be recorded by the Provider.
- E. Client Data - The Provider shall maintain client data demonstrating client eligibility for services provided, if applicable. Such data shall include, but not be limited to: client name, address, income level or other basis for determining eligibility, and description of services provided. Client data shall be reported to the county on a quarterly basis.

SECTION 4 - REPORTS

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

Provider shall provide to the County quarterly reports on beneficiaries, status of activities, and status of outstanding grant funds on the Tuesday following the last day of the quarter.

SECTION 5 - AUDITS AND INSPECTIONS

At any time during normal business hours and as often as the County, HUD and/or the Comptroller General of the United States may deem necessary, there shall be made available to the County, HUD and/or representatives of the Comptroller General for examination all records of the Provider with respect to all matters and the Provider shall permit the County, HUD and/or representatives of the Comptroller General to audit, examine and make excerpts or transcripts from such records, and to make audits of all Agreements, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters.

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

SECTION 6 - CONFLICT OF INTEREST

No employee, agent, consultant, officer or elected or appointed official of the County or Provider 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 7 - 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." A copy of these procedures is available 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 "shall, to the maximum extent feasible, provide for the hiring of employees who reside in the vicinity of NSP3 projects or contract with small businesses that are owned and operated by persons residing in the vicinity of such project." Provider 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: 30%. Evidence of the bidder's good faith effort must be submitted with the bid if the goal of 30% is not met. Compliance with the SBE goal is encouraged pursuant to Cuyahoga County Resolution Number 055058 dated December 20, 2005. 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:

- A. Construction - Less than \$25 million and less than 70 employees
- B. Architectural/Engineering - Less than \$7.5 million and less than 25 employees
- C. Commodity Providers - Less than \$1.5 million and less than 15 employees
- D. 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 make the best efforts to achieve these goals.

SECTION 8 - EMPLOYMENT DISCRIMINATION PROHIBITED

During the performance of this Agreement, the Provider agrees as follows:

- A. 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.
- B. 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 9 - HISTORIC PRESERVATION AND ENVIRONMENTAL REVIEW

The Provider is responsible to know that historic preservation rules may apply to federally funded exterior maintenance, repairs, and renovations. The Provider is expected to determine which structures may require historic preservation review due to age, location, and scope of work. Before allowing work to be done on any such structure, the Provider is expected to notify the County and cooperate in obtaining any documentation required for review by the Ohio Historic Preservation Office. The Provider does not assume the County's environmental responsibilities described in 570.604; and the Provider does not assume the County's responsibility to initiate the review process.

SECTION 10 - COPYRIGHTS

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

SECTION 11 - PATENTS

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

SECTION 12 - POLITICAL ACTIVITY PROHIBITED

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

SECTION 13 - LOBBYING PROHIBITED

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

SECTION 14 - CHANGES

- A. The County may, from time to time, permit changes in the Scope of Services of the Agreement to be performed hereunder. Any such changes shall be incorporated in written amendments to this Agreement signed by the parties.
- B. The County may from time to time cause changes in the expressed maximum sum of this Agreement provided such changes in compensation are authorized by resolution of the County Executive and are pursuant to the provisions of Part I, Item III hereof. Any such changes shall be incorporated in written amendments to this Agreement signed by the parties.
- C. The County may upon its own initiative or upon that of the Provider, authorize changes in the time of performance as established in Part I, Item II hereof. As a condition precedent to the authorization of such change, the County shall have determined that the 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 document. Any change in the time of performance shall be agreed to by the Provider and the County 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 in performing the services under this Agreement. Such personnel shall not be employees of or have any Contractual relationship with the County.
- B. All of the services required hereunder will be performed by the Provider or under its supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under State and local law to perform such services.

SECTION 16 - ASSIGNABILITY

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

SECTION 17 - TERMINATION OF AGREEMENT

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

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

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

SECTION 18 - TERMINATION FOR NECESSITY OF THE COUNTY

The County may terminate this Agreement for necessity by giving at least thirty (30) days notice in writing from the County to the Provider. If the Agreement is terminated by the County as provided herein, the Provider will be paid an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of the Provider covered by this Agreement, less payments of compensation previously made. Provided, however, that if less than sixty percent (60%) of the services covered by this Agreement have been performed upon the effective date of such termination, the Provider shall be reimbursed (in addition to the above payment) for that portion of the actual out-of-pocket expenses (not otherwise reimbursed under the Agreement) incurred by the Provider during the Agreement period which are directly attributable to the uncompleted portion of the services covered by this Agreement. If the Agreement is terminated due to the fault of the Provider, Section 18 hereof relative to termination shall apply.

SECTION 19 - NON-EXPENDABLE PROJECT PROPERTY

All tangible property, personal or real, acquired for the purpose of carrying out this Agreement shall be owned by the provider and subject to the provisions of 24 CFR85.32. When original or replacement real property, acquired under the terms of this contract is proposed for disposition, the provision for disposition of real property under section 85.31 shall be followed. When disposing of equipment acquired under this contract with a current per unit fair-market value in excess of \$5,000, the County has a right to receive its portion of the sale proceeds as discussed in 32(e).

SECTION 20 - LOCAL VICINITY AND SECTION 3: HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1968

- A. The work to be performed under this Agreement is on a project assisted under a program providing direct Federal assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u., Section 3 requires that to the greatest extent feasible opportunities for training and employment be given lower income residents of the project area and Agreements for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the area of the project.
- B. The Provider will include the Section 3 clause in Section 20, part A (above) every contract and subcontract executed under this Agreement
- C. The parties to this Agreement will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR 135, and all applicable rules and orders of the Department issued 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.

- D. Provider will send to each labor organization or representative of workers with which he has collective bargaining Agreement or other Agreement or understanding, if any, written notice advising the said labor organization or workers representative of this commitment under the Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.
- E. Providers receiving HUD financial assistance in excess of \$200,000 may demonstrate compliance with the 'greatest extent feasible' requirement of Section 3 by committing to the numerical goals set forth below:
 - i. Employ Section 3 residents as 30 percent of the aggregate number of new hires for each fiscal year of the covered project if provider is a recipient of Section 3 covered community development assistance.
 - ii. Award to Section 3 business concerns at least 10 percent of the total dollar amount of all Section 3 covered contracts for building trades work arising in connection with housing rehabilitation, housing construction and other public construction, and
 - iii. Award to Section 3 business concerns at least 3 percent of the total dollar amount of all other section 3 covered contracts.

SECTION 21 - INDEPENDENT PROVIDER RELATIONSHIP

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

SECTION 22 - DISCRIMINATION IN SERVICE DELIVERY PROHIBITED

The Provider shall not discriminate against any applicant for its services because of race, religion, color, sex, national origin, age, handicap, ancestry, or Vietnam-era or disabled veteran status. The 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 23 - SECTARIAN/RELIGIOUS ACTIVITY PROHIBITED

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

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

SECTION 24 - NATIONAL OBJECTIVES

Provider hereby warrants that its projected use of NSP funds has been developed so as to give priority to activities which will carry out the objective of benefiting low, moderate- and middle-income families through the development of viable urban communities, by providing decent housing, suitable living environments, and economic opportunities.

In determining whether an activity carries out a national objective, the criteria set forth in 24 CFR 570.208 shall be used.

SECTION 25 - PUBLIC ACCESS TO PROGRAM RECORDS

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

SECTION 26 - GRANT CLOSE-OUT PROCEDURES

This Agreement will be closed out when:

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

Within 90 days of the close-out date as determined above, the Provider shall submit all requests for reimbursement to the County.

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

Any unused grant funds will be captured by the County for use in eligible NSP programs.

SECTION 27 - MONITORING

The County is responsible for monitoring the Provider's NSP funded activities to assure compliance with applicable Federal requirements and to assure that performance goals are being achieved. Generally, one on-site monitoring visit will be conducted during the period of this Agreement. Project site visits involve inspection of work completed to-date, and may be conducted by the County at any time during the grant period.

SECTION 28 - LABOR STANDARDS FOR CONSTRUCTION ACTIVITIES

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

The Provider agrees that, except with respect to the rehabilitation or construction of residential property containing less than eight (8) units, all contractors engaged under contracts in excess of \$2,000.00 for construction, renovation or repair work financed in whole or in part with assistance to such contracts and with the applicable requirements of the regulations of the Department of Labor under 29 CFR Parts 1, 3, 5 and 7 governing the payment of wages and ration of apprentices and trainees to 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.

SECTION 29 – RELOCATION ASSISTANCE AND TENANT PROTECTION REQUIREMENTS

The Provider agrees to comply with (a) the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), and implementing regulations at 49 CFR Part 24; 24 CFR Part 42 – Displacement, Relocation Assistance and Real Property Acquisition for HUD and HUD Assisted Programs; and 24 CFR 570.606 – Displacement, relocation acquisition, and replacement of housing. The Provider shall provide appropriate relocation assistance (URA or section 104(d)) to eligible displaced persons as defined by applicable HUD and/or URA regulations that are displaced as a direct result of acquisition, rehabilitation, demolition or conversion for an NSP-assisted project. The Provider also agrees to comply with applicable ordinances, resolutions and policies concerning the displacement of persons.

The Provider agrees to comply with the Recovery Act provisions concerning tenant protections applicable to NSP acquisitions of foreclosed property. The Provider must document its efforts to ensure that the initial successor in interest (ISII) in a foreclosed upon dwelling or residential real property (typically, the ISII in property acquired through foreclosure is the lender or trustee for holders of obligations secured by mortgage liens) has provided bona fide tenants with the notice and other protections outlined in the Recovery Act. The Provider will not use NSP funds to finance the acquisition of property from any ISII that failed to comply with applicable requirements unless the Provider assumes the obligations of such ISII with respect to bona fide tenants. If the Provider elects to assume such obligations, it may only do so if the tenant is still occupying the property and will provide any tenant displaced as a result of the NSP funded acquisition with the assistance outlined in 24 CFR 570.606. If the Provider knows that the ISII did not comply with the NSP tenant protection requirements and vacated the property contrary to the NSP requirements, NSP funds cannot be used to acquire such properties.

SECTION 30 – LEAD-BASED PAINT

The Provider agrees that any construction or rehabilitation of residential structures with assistance provided under this Agreement shall be subject to HUD Lead-Based Paint Regulations at 24 CFR 570.487 or 24 CFR 570.608, and 24 CFR Part 35, Subpart B. Such regulations pertain to all NSP-assisted housing and require that all owners, prospective owners, and tenants of properties constructed prior to 1978 be properly notified that such properties may include lead-based paint. Such notification shall point out the hazards of lead-based paint and explain the symptoms, treatment and precautions that should be taken when dealing with lead-based paint poisoning and the advisability and availability of blood lead level screening for children under seven. The notice should also point out that if lead-based paint is found on the property, abatement measures may be undertaken. Provider agrees to comply with regulations that further require that, depending on the amount of Federal funds applied to a property, paint testing, risk assessment, treatment and/or abatement may be conducted.

SECTION 31 – RESIDENTIAL REHABILITATION AND SALE STANDARDS

Providers engaging in "gut rehabilitation or new construction (i.e., general replacement of the interior of a building that may or may not include changes to structural elements such as flooring systems, columns or load bearing interior or exterior walls) of residential buildings up to three stories must be designed to meet the standard for Energy Star Qualified New Homes [See Attachment 1]. Other rehabilitation must meet these standards to the extent applicable to the rehabilitation work undertaken, e.g., replace older obsolete products and appliances (such as windows, doors, lighting, hot water heaters, furnaces, boilers, air conditioning units, refrigerators, clothes washers and dishwashers) with Energy Star-labeled products. Water efficient toilets, showers, and faucets, such as those with the WaterSense label, must be installed. Where relevant, the housing should be improved to mitigate the impact of disasters (e.g., earthquake, hurricane, flooding, and fires)."

Section 2301(d)(3) of HERA directs that, if an abandoned or foreclosed-upon home or residential property is purchased, redeveloped, or otherwise sold to an individual as a primary residence, then such sale shall be in an amount equal to or less than the cost to acquire and redevelop or rehabilitate such home or property up to a decent, safe, and habitable condition. Providers may not sell homes that have been rehabilitated with NSP3 grant funds for more than the cost to acquire and redevelop the property; there is no minimum sale price for NSP3 assisted homes. (Sales and closing costs are eligible NSP redevelopment or rehabilitation costs). Note that the maximum sales price for a property is determined by aggregating all costs of acquisition, rehabilitation, and redevelopment (including related activity delivery costs, which generally may include, among other items, costs related to the sale of the property).

PART III

ACCOUNTING AND FISCAL MANAGEMENT PROCEDURES

**NEIGHBORHOOD STABILIZATION PROGRAM III
COMPETITIVE MUNICIPAL GRANT**

SECTION 1 - GENERAL

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

When audits are performed in accordance with the provisions of PART II, Section 5 hereof, discovery of the failure of the 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 17 hereof.

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

The Provider is fully responsible for the management and control of its financial system. Any loss of NSP 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 County reserves the right to withhold payments, put the Provider under specific financial requirements, or terminate the Agreement.

SECTION 2 - ACCOUNTING SYSTEM STANDARDS

Provider's financial management systems shall provide:

- A. Accurate, current and complete disclosure of the financial results of each Agreement including at least a monthly reconciliation of the cash balance of the program.
- B. Records which adequately identify the source and application of funds for Agreement activities. These records shall refer to subsidiary records and/or documentation which support the entry and which are readily accountable. These records shall contain information pertaining to Agreement awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income.

- C. Effective control over and accountability for all funds, property and other assets. 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 Agreement. Also, the relation of financial information with performance or productivity data, including the production of unit cost information whenever appropriate and required by the County.
- E. Procedures for determining the permissibility and allocability of costs in accordance with the provisions of Part II, Section 2.
- 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 Provider makes an actual cash disbursement will it be reimbursed for the expense by the County.
- B. Disbursements must be applied only to the authorized use as specified in the scope of services & budget. Failure to pay creditors for activities specified in the Agreement or to disburse funds for their authorized use constitutes a violation of the Agreement terms.
- C. At intervals determined by the County, the 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 County has the authority to take appropriate action, including withholding payments, if this information is not provided when requested.
- D. All requests for reimbursement must be complete and accurate in order for the County to authorize payment. In addition to invoices for completed work, copies of canceled checks, bank statements, or proof of wire transfers must be provided to obtain reimbursement. Failure to submit complete and accurate information will delay or prohibit authorization of payment. Applicable construction project reimbursements must include proper documentation of correct payment of Federal wages.

SECTION 4 - AUDIT REQUIREMENTS

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

The 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 County a copy of its Audit for the time period when CDBG funds are expended.

SECTION 5 - PROGRAM INCOME

The Provider shall comply with the standards set forth in 24 CFR Part 85 to account for program income. Program income represents gross income earned by the Provider from the federally supported activities. Such earnings exclude interest earned on advances and may include, but will not be limited to, income from service fees, sale of commodities, usage or rental fees, and royalties on patents and copyrights.

- A. Unless the Agreement provides otherwise, Providers shall have no obligation to the Federal Government with respect to royalties received as a result of copyrights or patents.
- B. No other program income earned during the project period shall be retained by the Provider. Program income shall, in accordance with the grant, be:
 1. Returned to the Cuyahoga County;
 2. Reported on quarterly status of funds reports for the quarter in which the funds were received;
 3. Used, in part, to further fund the mandated 25% set-aside for low-income rental housing;
 4. Made available to municipal grant recipients to further engage in eligible NSP3 activities, upon written request.

SECTION 6 - REVERSION OF ASSETS

Any real property under the Provider's control that was acquired or improved in whole or in part with NSP funds in excess of \$25,000.00 must be used to meet one of the HUD National Objectives until five years after grant close-out (Part II, Section 2B); and

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

SECTION 7 - USE OF REAL PROPERTY

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

The new use must qualify as meeting one of the HUD National Objectives. If this requirement is not met, the Provider may retain or dispose of the property and reimburse the County an amount as determined above (Part III, Section 6, Paragraph 2). If the change of use occurs after grant closeout, the provisions governing program income (Part III, Section 5) shall apply.

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

**Request for Taxpayer
 Identification Number and Certification**

Give Form to the
 requester. Do not
 send to the IRS.

Name (as shown on your income tax return)
CITY OF BEREA

Business name/disregarded entity name, if different from above

Check appropriate box for federal tax classification (required): Individual/sole proprietor C Corporation S Corporation Partnership Trust/estate

Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶ Exempt payee

Other (see instructions) ▶ **MUNICIPALITY**

Address (number, street, and apt. or suite no.)
11 BEREA COMMONS

City, state, and ZIP code
BEREA, OHIO 44017

Requester's name and address (optional)

List account number(s) here (optional)

Part 3 Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on the "Name" line to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part 1 instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Social security number									
				-					
Employer identification number									
3	4	-	6	0	0	0	2	4	6

Part 4 Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
- I am a U.S. citizen or other U.S. person (defined below).

Certification Instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 4.

Sign Here Signature of U.S. person ▶ *[Signature]* Date ▶ *2-14-13*

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

- Certify that the TIN you are giving is correct (or you are waiting for a number to be issued).
- Certify that you are not subject to backup withholding, or
- Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

Note. If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

