

DEMOLITION PROGRAM AGREEMENT
(MUNICIPALITY)

THIS DEMOLITION PROGRAM AGREEMENT (“Agreement”) is made and entered into as of _____, 20____ (“Effective Date”) by and between the County of Cuyahoga County, Ohio, a body corporate and politic and a political subdivision of the State of Ohio organized and existing under the Charter of Cuyahoga County effective January 1, 2010, as same may have been amended, modified, and supplemented to the effective date hereof (the “County”) and the City of North Royalton [Municipal Corporation/Township], Ohio (the “Municipality”). The County and the Municipality are collectively referred to as the “Parties”.

RECITALS

WHEREAS, pursuant to Ordinance No. 02014-0014, the County Council of Cuyahoga County, Ohio (the “Ordinance”) established, as set forth in Chapter 807 of the Cuyahoga County Code, the Cuyahoga County Property Demolition Program (the “Program”) to eliminate vacant, abandoned and nuisance or blighted properties in the County;

WHEREAS, the Municipality has identified structures, a target area or properties needing demolition (collectively, the “Properties”), has exercised, or will exercise during the term of this Agreement, its powers and/or legal authority to demolish the Properties, and has demolished, or will demolish, on its own, or pursuant to an agreement with Cuyahoga County Land Reutilization Corporation (the “Land Bank”) or other approved third party demolition administrator, during the term of this Agreement, the Properties;

WHEREAS, pursuant to the Program, the Municipality has submitted an application for a grant [loan] from the Cuyahoga County Property Demolition Fund (the “Fund”), and the County has awarded the Municipality a grant [loan] from the Fund in the amount of \$110,000.00 to reimburse the [Municipality/Land Bank] for the costs of demolition and other approved expenses under the Program; and

WHEREAS, the Parties are desirous of entering into this Agreement to govern their respective obligations under the Program with respect to the grant [loan].

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the Parties from the other, and intending to be legally bound, the Parties agree as follows:

AGREEMENT

1. ACCURACY OF RECITALS; DEFINED TERMS.

The Parties acknowledge the accuracy of the above Recitals, which are incorporated into and made a part of this Agreement. Capitalized terms used, but not defined, herein shall have the meanings as set forth in the Ordinance.

2. CONFIRMATION OF AWARD.

The Municipality has applied for, and the County has awarded the Municipality, a grant [loan] from the Fund, under the 2nd round of the Program, in the amount of \$110,000.00 (the "Award"). The Award shall be disbursed to the [Municipality/Land Bank] as work is completed and costs are documented as set forth in this Agreement.

3. CONDITIONS.

The obligations of the County under this Agreement are subject to the satisfaction of the following conditions, which conditions may only be waived by the County (in the County's sole discretion and in writing), for whose sole benefit such conditions exist:

3.1 The County, through its Department of Development, has reviewed the Municipality's application for an Award from the Fund and has determined that it meets all criteria set forth in the Ordinance, including but not limited to, the Municipality has satisfactorily identified the Properties, certified the Properties as vacant, abandoned and nuisance or blighted, and has identified a plan for redevelopment or maintenance of the Properties in furtherance of its plan to improve housing quality or strengthen the housing market in its community.

3.2 The Municipality has exercised, or will exercise during the term of this Agreement, its police powers and/or legal authority to enable the demolition of the Properties itself or pursuant to an agreement with a third party demolition administrator.

3.3 The Municipality agrees to competitively bid according to its charter, ordinances, and state law, as applicable, all demolition work to be paid for by the Municipality, and to require such competitive bidding for all demolition work to be procured and managed by a third party demolition administrator, if any, funded in whole or in part by the Award.

3.4 The Municipality shall, and/or shall cause any of its contractors, subcontractors and/or third party demolition administrators to, abide by all procedures and standards established by the Cuyahoga County Department of Development in the performance of any and all demolition and property maintenance services, including, but not limited to, obtaining appropriate permits, compliance with any and all environmental regulations, and all applicable County ethics and procurement regulations and ordinances, including but not limited to, reporting requirements. The Municipality shall promptly correct or cause to correct the violation of any performance standards, ordinances or regulations established by the County or the Cuyahoga County Department of Development.

3.5 The Municipality agrees that no portion of its Award shall be used to pay the costs (or reimburse it for the costs) of applying for the Award or for the administration of a demolition project. Notwithstanding the foregoing, the Municipality may request and receive up to two percent (2%) of the Award to retain the Land Bank as its agent and to compensate the Land Bank for administering approved demolition projects.

3.6 The Municipality (or the Land Bank if serving as the agent of the Municipality) shall timely submit the necessary documents to the County Fiscal Office to cause a statutory lien for all demolition costs to be placed on each demolished property, unless the property is owned by the Municipality or the Land Bank or the demolition costs have already been repaid by the legal owner of the property or some other party. This lien may include additional costs incurred by the Municipality as part of its processing of the demolition, over and above those costs reimbursed by the Demolition Fund, as authorized by law. Any demolition lien payments received by the Municipality or the Land Bank shall be used by the party who recorded the statutory lien for future demolitions, not covered by the Program.

4. DISBURSEMENTS OF AWARD FUNDS.

As a condition precedent to each disbursement of the Award, the Municipality shall furnish or cause to be furnished to the County the following, in form and substance satisfactory to the County: (i) certification or other evidence satisfactory to the County that services, materials and equipment have been paid for and are free of any lien or security interest (other than the lien owing to the Municipality) and that proof of actual payment is maintained on file by the Municipality (or the Land Bank if serving as the agent of the Municipality) for inspection by the County or its agents; (ii) timely and accurate reporting of the status of each property approved for demolition using the County's online reporting system, including approved properties which have not yet been demolished as of the date of the disbursement request; (iii) affirmation by the Municipality, as of the date of such disbursement request, that (a) the representations and warranties of the Municipality as set forth in this Agreement remain true and correct; (b) no default or breach that has not been cured has occurred and is then continuing under this Agreement; (c) each item for which disbursement is requested is an eligible cost or expense under the Program; and (d) no item for which disbursement is requested is the subject of a duplicative disbursement request; and (iv) such other instruments, documents and information as the County may reasonably request, including a written certification for each property demolished that the Municipality, or its third party demolition administrator, has on file all the documents and information required by the County, as set forth in its written demolition program standards, available for inspection by the County or its agents. The County shall not be required to process reimbursements more often than once each calendar month, but may choose to accept more frequent reimbursement requests in its sole discretion in the interest of administrative efficiency and timely reimbursement of substantial funding awards.

With respect to any Properties for which the Land Bank is serving as the Municipality's agent, the amount of the Award attributable to such Properties, shall be disbursed directly to the Land Bank pursuant to the agreement entered into by and between the County and the Land Bank dated N/A.

5. INSURANCE REQUIREMENTS.

5.1 The Municipality shall procure, maintain, and pay premiums for the following forms of insurance:

a. Worker's Compensation Insurance as required by the State of Ohio. Such insurance requirement may be met by either purchasing coverage from the Ohio State Insurance Fund or by maintaining Qualified Self-Insurer status as granted by the Ohio Bureau of Workers Compensation (BWC). If Municipality has employees working outside of Ohio, Worker's Compensation Insurance as required by the various state and Federal laws as applicable including Employers' Liability coverage with limits of liability not less than: \$1,000,000 each accident for bodily injury by accident; \$1,000,000 each employee for bodily injury by disease; \$1,000,000 policy limit for bodily injury by disease. Such insurance shall be written on the National Council on Compensation Insurance (NCCI) form or its equivalent.

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

c. Business Automobile Liability Insurance covering all owned, non-owned, hired, and leased vehicles. Such insurance shall provide a limit of not less than \$1,000,000 combined single limit (bodily injury & property damage) each accident; such insurance shall be written on an occurrence basis on the Insurance Services Office (ISO) form or its equivalent.

d. Professional Liability Insurance/Errors & Omissions Liability Insurance providing coverage for claims arising out of the provision of design, architectural, engineering and/or other professional services with a limit of liability not less than: \$5,000,000 per claim; \$5,000,000 aggregate. Such insurance may be written on either an occurrence or claims-made basis. However, if written on a claims-made basis, the claims-made retroactive date on the policy shall be prior to the commencement of any professional activity related to this Agreement.

5.2 Insurance Coverage Terms and Conditions

a. In relation to the General Commercial liability policy, the Municipality shall name the "County of Cuyahoga, Ohio and its employees" as an Additional Insured and shall contain the following provisions:

i. Thirty (30) days prior notice of cancellation; and

ii. A waiver of subrogation wherein the insurer(s) waives all rights of recovery against the County in relation to the General Commercial liability policy.

b. The insurance required herein shall be provided by insurance carrier(s) licensed to transact business and write insurance in the state(s) where operations are performed and shall carry a minimum A.M. Best's rating of A VII or above.

c. These insurance provisions shall not affect or limit the liability of the Municipality stated elsewhere in this Agreement or as provided by law.

d. The Municipality shall require any and all of its subcontractors to procure, maintain, and pay premiums for the insurance coverages and limits of liability outlined above with respect to products, services, work and/or operations performed in connection with this Agreement.

e. The County reserves the right to require insurance coverages in various amounts or to modify or waive insurance requirements on a case-by-case basis whenever it is determined to be in the best interest of the County, but which changes must be permitted under Municipality's then current insurance policies.

f. The Municipality shall furnish a Worker's Compensation Certificate and Certificate of Insurance evidencing the insurance coverages required herein are in full force and effect. Acceptance of a non-conforming certificate of insurance by the County shall not constitute a waiver of any rights of the parties under this Agreement.

g. The Municipality shall have the right to provide the insurance required hereunder by participating in a self-insurance program with sufficient limits. Confirmation of self-insured status is required.

6. REPORTING REQUIREMENTS; SUBSTITUTION OF PROPERTIES; PROCEED ORDERS.

6.1 The Municipality shall update the status of each of the Properties approved for demolition using the County's online reporting system and, if required by the County shall submit to the County periodic reports, in the format required by the County, containing similar information as submitted in its disbursement requests. Each such report shall provide information detailing the progress of the Municipality's demolition activity, status of liens recorded, the total amount of Award funds received and such other information requested by the County.

6.2 Within six (6) months from the date of this Agreement, the Municipality may remove one or more Properties from the list of Properties to be demolished, and may, but is not required to, substitute other Properties within the target area(s) or neighborhood typological priority area(s) specified in its funding application and approved by the County. Substituting Properties will not increase the total amount of the Award.

6.3 The Municipality must issue Proceed Orders to its demolition contractor(s), its third party demolition administrator, or the Land Bank, as applicable, for all Properties approved for demolition or substituted as set forth in Section 6.2, within six (6) months from the Effective Date. The County may, but is not required to, notify the Municipality after six (6)-months that it is no longer entitled to receive reimbursement under this Agreement for demolition of any or all Properties approved for demolition but for which Proceed Orders have not been issued within such six (6) month period. The County may reduce the Award by the amounts attributable to reimbursement for any Properties for which Proceeds Orders have not been issued within six (6) months of the Effective Date.

7. INDEMNIFICATION

7.1 The Municipality and the County, as Ohio political subdivisions, do not indemnify any person or entity, and agree that no provision of this Agreement or any other Agreement or agreement between County and the Municipality may be interpreted to obligate either to indemnify or defend the other or any other person or entity. Each party agrees to be responsible for any and all damages resulting from the actions or omissions of its officers, officials, employees and agents while same are engaged in the performance of this Agreement,

7.2 Notwithstanding anything contained herein to the contrary, the Municipality agrees to require its contractors and/or subcontractors, including any third party demolition administrators, to save harmless and indemnify the County and its officials, officers, employees, agents, representatives, departments, agencies, boards, commissions, and other authorities from any and all claims and liability, caused by their negligent acts or omissions in the performance of the services under this Agreement or related to the Program.

8. PUBLIC RECORDS; CONFIDENTIALITY

The Parties acknowledge that the Municipality and the County are political subdivisions in the State of Ohio and as such are subject to the Ohio Revised Code and other law related to the keeping of and access to public records, including any and all applicable Sunshine Laws, open meeting requirements, and retention schedules effecting any and all manner of communication with the County and the Municipality and any and all documents in any format or media.

9. REPRESENTATIONS

9.1 The Municipality represents and warrants:

a. it has full power and authority to execute, deliver and perform this Agreement and its obligations hereunder;

b. has exercised, or will exercise during the term of this Agreement, its police powers and/or legal authority to enable the demolition of the Properties itself or pursuant to an agreement with a third party demolition administrator;

c. the execution, delivery and performance, by the Municipality under this Agreement or any other provisions of the Program do not, and will not, violate any provision of law or any court order applicable to the Municipality or the Properties, and do not, and will not, conflict with or result in a default, under any agreement or instrument to which the Municipality is a party or by which it or any of its property or assets is or may be bound;

d. it will timely submit, or ensure the Land Bank, if applicable, submits the necessary documents to the County Fiscal Office to cause a statutory lien for all demolition costs to be placed on each demolished property, unless the property is owned by the Municipality or Land Bank or the demolition costs have already been repaid by the legal owner of the property or some other party; and

e. this Agreement has by proper action, been duly authorized, executed and delivered and constitutes the legal, valid and binding obligations of the Municipality.

9.2 The Municipality agrees, represents and warrants that with respect to any Award funds received in the form of a loan under the Program, it shall reimburse the County for the full principal amount of the loan, without interest. Upon the full repayment of the loan proceeds, the County under the Program, shall award the Municipality a grant from a revolving loan fund established by the County, in the amount of fifty percent (50%) of the loan, provided the Municipality complies with all other provisions contained in this Agreement, with respect to the Award, including but not limited to, the reporting requirements.

9.3 The Municipality agrees, represents and warrants that it will take or cause to be taken all actions that may be required by it in connection with the Program and/or the Award to ensure that the interest on the bonds issued by the County in connection with the Fund to remain excluded from gross income for federal income tax purposes and will not take or authorize to be taken any actions that would adversely affect that exclusion.

10. DEFAULT

If the Municipality breaches any of its representations under this Agreement or fails to perform any of its obligations or is in default under any other condition of this Agreement for a period of thirty (30) days after date of the County's written notice to the Municipality, the County may, at its sole option, terminate this Agreement and will be under no further obligation to disburse any funds remaining under the Award. If the Agreement is terminated as a result of a default by the Municipality, the Municipality shall not be eligible to apply for a grant or loan under any subsequent round of the Program.

11. FUTURE AWARDS

The County shall have no obligation to make another grant, or loan to the Municipality, under another round of the Program, if any. Under no circumstances shall the Municipality be eligible to apply for a grant or loan in any subsequent round of the Program unless it has satisfactorily fulfilled, in the County's sole discretion, its obligations under this Agreement including, but not limited to, issuing Proceed Orders to its demolition contractors, third party demolition administrators, or the Land Bank, as applicable, and taking all other legal actions necessary to enable demolition for at least eighty percent (80%) of the Properties, accounting for removals and substitutions as provided in Section 6.1 hereof.

12. TERM OF AGREEMENT

This Agreement shall become effective as of the Effective Date and shall remain in full force and effect until the last day of the month which is eighteen (18) months from the Effective Date, unless extended by written agreement of the Parties.

13. MISCELLANEOUS

13.1 This Agreement, with its exhibits (if any), contains the Parties' entire agreement with respect to the subject matter herein. This Agreement may not be modified except by written instrument signed by both Parties and referring to the particular provisions to be modified.

13.2 This Agreement and the rights and obligations of the Parties hereunder shall be construed in accordance with and shall be governed by the laws of the State of Ohio and applicable federal law. The Municipality and the County agree that the state and federal courts sitting in Ohio will have exclusive jurisdiction over any claim arising out of this Agreement and the Municipality and the County consent to the exclusive jurisdiction of such courts. The Municipality agrees not to challenge this provision, and agrees not to attempt to remove any legal action related to this Agreement or any alleged breach of this Agreement outside of Cuyahoga County for any reason.

13.3 The Parties shall comply with all applicable laws and regulations. All County contracts, including this Agreement, are subject to all applicable laws adopted in the Cuyahoga County Code, including but not limited to Title IV: Ethics, and Title V: Contracts and Purchasing. The Cuyahoga County Code and enacted County ordinances are available at <http://code.cuyahogacounty.us>.

13.4 The Municipality personnel may not acquire any personal interest that conflicts with the Municipality's responsibilities under this Agreement. Additionally, the Municipality will not knowingly permit any public official or public employee who has any responsibilities related to this Agreement to acquire an interest in anything or any entity under the Municipality's control, if such an interest would conflict with that official's or employee's duties. The Municipality will disclose to the County knowledge of any such person who acquires an incompatible or conflicting personal interest related to this Agreement. The Municipality will take all legal steps to ensure that such a person does not participate in any action affecting the work under this Agreement, unless the County has determined that, in the light of the personal interest disclosed, that person's participation in any such action would not be contrary to the public interest.

13.5 Each of the Parties authorize the other to use such Party's name in connection with any press release, any online or printed marketing materials, or for any similar use.

13.6 All notices, requests, demands or other communications which are required or may be given pursuant to the terms of this Agreement shall be in writing and shall be deemed to have been duly given (i) on the date of delivery if delivered by hand or by confirmed facsimile; (ii) upon the fifth day after such notice is deposited in the United States mail, if mailed by registered or certified mail, postage prepaid, return receipt requested, or (iii) upon the date of the courier's verification of delivery at the specified address if sent by a nationally recognized overnight express courier.

County's address for notification is:
Cuyahoga County Department of Law
2079 East 9th Street
Cleveland, Ohio 44115
Attention: Director of Law

Cuyahoga County Department of Development
2079 East 9111 Street
Cleveland, Ohio 44115
Attention: Director

Municipality's address for notification is:

City of North Royalton
14600 State Road
North Royalton, Ohio 44133

13.7 Neither Party shall be in default its failure to perform any obligation hereunder is caused solely by supervening conditions beyond that Party's reasonable control, including, without limitation, acts of God, civil commotion, strikes, labor disputes, or governmental demands or requirements.

13.8 The failure of either Party to require performance by the other party of any provision of this Agreement or any exhibit shall not affect its right to require such performance at any time thereafter; nor shall the waiver by either party of a breach of any provisions of this Agreement be taken or deemed to be a waiver of the provision itself.

13.9 If any provision of this Agreement is invalid or unenforceable, that provision will be changed and interpreted to accomplish the parties' objectives to the greatest extent possible under applicable law and the remaining provisions of this Agreement will continue in full force and effect.

13.10. The section headings appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, or describe the scope or extent of such section.

13.11 The Municipality may not assign this Agreement without the prior written consent of the County.

13.12 Except as expressly provided in this Agreement, no amendment, change, waiver, or discharge of this Agreement is valid unless in writing and signed by both of the Parties.

13.13 Each of the Parties will comply with all state and federal laws regarding equal employment opportunity and fair labor and employment practices, including ORC Section 125.111 and all related Executive Orders.

13.14. Each of the Parties shall comply with all applicable state and federal laws regarding keeping a drug-free workplace.

13.15 Each of the Parties agree to make all pertinent books and records and other documents pertaining to its obligations under this Agreement available to the other and its designated agents for purpose of audit and examination upon reasonable request during the term of this Agreement and for a period of two (2) years from the expiration date or final payment under this Agreement, whichever is later; provided however, that should either Party be notified that an audit has been commenced pursuant to Ohio Revised Code Sec. 117.11 during said period, for which the aforesaid books and records are material, copies of the aforesaid records shall be retained until the completion of said audit at which time they will be returned to such Party.

13.16 This Agreement may be executed in separate original or facsimile counterparts, each of which shall be deemed an original, and all of which shall be deemed one and the same instrument.

14. NON-DISCRIMINATION

The Municipality agrees to provide the services hereunder without discrimination on account of race, sex, color, religion, national origin, age, occupation, physical or mental disability or veteran status, to the extent required by law. The Parties agree that discrimination and affirmative action clauses contained in Executive Order 11246, as amended by Executive Order 11375, relative to Equal Employment Opportunity for all persons without regard to race, color, religion, sex or national origin, and the implementing rules and regulations prescribed by the Secretary of Labor in Title 41, Part 60 of the Code of Federal Regulations, are incorporated to the extent binding upon the Municipality.

15. ELECTRONIC SIGNATURE POLICY

The Municipality, its officers, employees, subcontractors, sub-grantees, agents or assigns, agree that this transaction may be conducted by electronic means and agree that all documents requiring the County's signatures and the Municipality's signatures, including this Agreement, may be executed by electronic means, and that the electronic signature affixed by either Party to said documents shall have the same legal effect as if that signature was manually affixed to a paper version of the document. The Municipality also agrees on behalf of the aforementioned entities and persons, to be bounded by the provisions of Chapter 304 and 1306 of the Ohio Revised Code as they pertain to electronic transactions, and to comply with the electronic signature policy of the County.

IN WITNESS WHEREOF, this Agreement has been duly signed and delivered by the undersigned as of the day and year first above written.

[MUNICIPALITY] _____, OHIO

COUNTY OF CUYAHOGA, OHIO

By: _____

By: _____

Its: _____

Its: _____