

REHABILITATION CONSTRUCTION CONTRACT

This Rehabilitation Construction Contract ("Contract") is made this _____ day of _____, _____, by and between _____ ("Owner") and _____ ("Contractor").

BACKGROUND

- A. Owner intends to repair and rehabilitate his/her property located at _____.
- B. The City of Cleveland ("the City") intends to provide rehabilitation financing for the above-described project through the _____ Program of the Division of Neighborhood Services of the Department of Community Development.
- C. Contractor has agreed to contract with Owner to: (i) rehabilitate the property according to this Contract and (ii) correct specified violations of the City's building and housing ordinances.
- D. Contractor and Owner have agreed that City will be a third-party beneficiary under this Contract as described in Section 21.2.

1. DEFINITIONS

"Change Order" means a written order to Contractor signed by Owner and the Commissioner of Neighborhood Services or designee authorizing an addition, deletion, or revision in the Project.

"Clearance Examination" means an activity conducted by a Lead Risk Assessor following lead-based paint hazard-reduction activities to determine that the hazard-reduction activities are complete and that no soil-lead hazards or settled dust-lead hazards exist in the dwelling unit or worksite. The Clearance Examination will include a visual assessment and/or and collection and analysis of environmental samples.

"Completion" means finishing the Project, including, without limitation: Contractor's delivery to Owner and the Commissioner of Neighborhood Development of lien waivers and releases from all Subcontractors; all product and equipment warranties; all permits or certificates required for Owner's complete use of the Project; and Contractor's completion of all punch list items.

"Contract Price" means the total of all monies payable to Contractor under this Contract.

“Lead Abatement Contractor” means any licensed individual who engages in or intends to engage in lead abatement and who may employ or supervise one or more lead abatement workers, including on-site supervision of lead abatement projects. Lead abatement contractor includes, but is not limited to, individuals who: a) take personal air monitoring samples for workers to determine workers’ potential exposure to lead dust and other lead hazards; or b) prepare specifications, plans, or documents concerning the pre-abatement plan.

“Lead Risk Assessor” means a person who performs a lead risk assessment or a lead hazard screen risk assessment (a risk assessment that involves limited paint and dust sampling), or identifies acceptable abatement strategies for reducing lead hazards and determines the abatement plan for lead hazard reduction work. A licensed risk assessor can do any lead activities that a licensed lead inspector can legally do.

“Lead (Abatement) Worker” means a licensed individual who is responsible in a non-supervisory capacity for the performance of lead abatement.

“Payment Request” means Contractor’s submission to Owner and the City of a completed payment request form that shows the Contractor’s progress in completing the Project, and includes an original invoice reflecting a 10% hold-back amount, a contractor’s affidavit, lien waivers from any Subcontractors whose work is being paid, and a copy of each required permit.

“Project” means all construction (including, without limitation, labor, materials, equipment, tools, transportation, disposal of construction debris, and permits) required to complete the Project described in Section 3.1.

“Specifications” means the work specification sheets for this Project attached as Exhibit A to this Contract and the specifications stated in Section 3 of this Contract.

“Subcontractor” means any individual, firm, or corporation having a direct contract with Contractor, or Contractor’s subcontractor(s), for the completion of all or a portion of the Project.

“Time for Performance” means the completion schedule defined in Section 5.

“Unavoidable Delays” means any delay in the Project caused by: (a) economic, industry-wide strikes, (b) fire, (c) unusual delays in transportation, (d) acts of God, (e) acts of the public enemy, (f) floods, (g) rebellions, riots, insurrections or sabotage, (h) unusually adverse weather conditions, (i) arbitrary suspension, stoppage, or interruption of the Project by Owner, or (j) approved Change Orders.

2. INTERPRETATION

2.1 Parts of Contract. Whenever possible, the parts of the Contract will be interpreted to be consistent with each other. The parts of this Contract are complementary, and what is required by one will be as binding as if required by all. In the event of a conflict, the parts of the Contract will be given preference in the following order: Specifications as amended by the most current Change Order will be given first priority, Specifications will be given second priority, and General Conditions will be given third priority.

2.2 Intent of Contract. Owner and Contractor intend that this Contract include all work and all items necessary for the proper Completion of the Project. The laws of the State of Ohio will govern this Contract.

2.3 Entire Contract. This Contract represents the entire understanding of Owner and Contractor regarding the Project and supersedes prior written or oral Contracts.

2.4 Amendments To Be In Writing. This Contract may not be changed except by written instrument executed by Owner and Contractor under the laws of the State of Ohio and approved by the City as third-party beneficiary.

3. THE PROJECT

3.1 General Description. (This section is to be completed by the Commissioner of Neighborhood Services or designee). Contractor will complete the following Project:

as more fully described in the Specifications attached as Exhibit A that are incorporated by reference into this Contract.

3.2 Performance Standards. Contractor will perform all work according to the following performance standards:

- (a) All materials used under the Contract must be new (unless otherwise specified), of same or better grade, quality, dimensions, and design as that specified, and must meet or exceed all applicable codes and HUD minimum standards, including HUD fire resistance standards.
- (b) Workers skilled in their respective trades will perform all specified work according to the best practices of their trades, and in full compliance with all applicable codes and HUD minimum standards.
- (c) Approval of materials or workmanship at an interim inspection does not relieve Contractor of the responsibility to turn over the same at a final

closing in acceptable condition, unless the Contractor is able to provide evidence that damage to the materials or workmanship was not the fault of Contractor or Subcontractors.

- (d) All work must comply with the specifications stated in the General Specifications Standards Manual of the Division of Neighborhood Services.
- (e) State-certified lead workers must perform all lead hazard reduction work.

3.3 Project Clean-Up. Contractor will be responsible for cleanup upon Completion of the Project. If the work site does not pass the initial clearance inspection and/or comply with all applicable standards, Contractor will be responsible for all additional cleaning.

4. CONDUCT OF THE WORK

4.1 Contractor will conduct its work so as to ensure:

- (a) Owner's and Contractor's continued access to the Project site at all reasonable hours as defined in Section 4.2. Daily work area will be restricted to the occupants until clearance has been obtained and authorization to enter area has been given by the Risk Assessor.
- (b) Owner's opportunity to reside in the structure during all phases of rehabilitation. Contractor's obligations may include, without limitation: working around furniture; covering carpets and furniture in the work area with drop cloths; keeping passageways and hallways clear of debris, lumber, and equipment; following safe work practices during construction; and daily cleaning, which requires daily removal of all construction debris from the premises, as well as daily cleaning of the construction area.
- (c) Contractor's responsibility for all costs to obtain clearance if the first attempt fails.
- (d) Reasonable use of Owner's utilities (e.g. light, heat, power, and water) required to complete the Project, given that Owner will be responsible for the costs of all utilities.
- (e) Performance of work according to applicable laws, rules, ordinances and regulations. If Contractor observes that the plans or Specifications are at variance with applicable laws, rules, ordinances, or regulations bearing on the conduct of the work, it will promptly notify Owner and the Commissioner of Neighborhood Services or designee in writing.
- (f) Performance of all construction in a manner best calculated to ensure the safety of the Project and those working on it. Contractor will observe the safety provisions for applicable laws and building construction codes and will take or cause to be taken such additional safety and health measures as the City may determine to be reasonably necessary. Contractor will guard machinery, equipment, and all hazards.
- (g) Correction of all specified violations of the City's building and housing ordinances.

4.2 Hours of Work. Owner will permit Contractor to work Mondays through Saturdays from 7:00 a.m. to 5:00 p.m. Owner and Contractor will mutually agree to any variation of days or hours in the work schedule.

- (a) Contractor must submit work schedule for lead abatement as defined by the State of Ohio prior to starting work.
- (b) Contractor must submit work schedule for the entire job.

4.3 Storage. Contractor may use the premises for storage of equipment and materials, but in so doing, Contractor assumes all the responsibility for the safety and security of these items. No combustible materials may be stored or allowed to accumulate on the job site. If storage of equipment and materials causes damage to person and/or property, Contractor will assume responsibility for damage to person and/or restoring the property to its original condition upon Completion of the Project.

4.4 Security. The security of a job site is the responsibility of Contractor at all times when work is in progress.

4.5 Clean-up. Contractor will make daily removal of construction debris during the course of work. Contractor will remove construction debris before calling for the daily clearance under State and HUD guidelines.

4.6 Latent Defects.

- (a) Latent defects are those that could not have been found or reasonably determined before Contractor's bid through diligent investigation of the Project by the Commissioner of Neighborhood Services or designee and Contractor.
- (b) Latent defects that become evident as the work progresses must be reported to the Commissioner of Neighborhood Services or designee and Owner in writing, not ignored or covered over.
- (c) The Commissioner of Neighborhood Services or designee and Owner must approve, in writing, all work to correct latent defects. The approval will be given by means of a written Change Order. The Change Order will specify the time Contractor requires to correct latent defects as represented to, and approved by, Owner and the Commissioner of Neighborhood Services or designee.
- (d) Owner agrees to extend the number of days stated in Section 5.2 by the number of days agreed upon with Contractor and the Commissioner of Neighborhood Services or designee to correct latent defects.

4.7 Damage. Contractor will correct, at no charge, all damage, including damage resulting from the use of defective materials by the Contractor, its employees, or any Subcontractor during the performance of the Contract.

4.8 Manufacturer's Warranties. Contractor will convey to Owner all manufacturer's warranties and instruction manuals, and will instruct Owner as to proper procedures for qualifying for the warranties, keeping the warranties in effect, and making claims against the warranties.

4.9 Superintendence. Contractor will furnish Owner and the Commissioner of Neighborhood Services or designee with the name and telephone number of one official who will represent and be responsible for Contractor and its Subcontractors in the execution and conduct of the work.

4.10 Checking. Before proceeding to perform its own portion of the work, Contractor will examine the work performed by its Subcontractors or other contractors to assure that the dimensions and location of the execution of previous work is in accordance with this Contract.

4.11 Contractor's Conduct on Project Site. Contractor agrees to conduct its work on the Project site with all deliberate speed and in a professional and courteous manner. Contractor's employees will not engage in lewd or obnoxious behavior; threaten, intimidate, or enter into physical or verbal confrontation with Owner, other residents, or invitees; leave trash or other debris on Owner's property; or otherwise conduct themselves in a manner contrary to generally accepted standards of professionalism.

4.12 Materials, Equipment, and Supplies. Contractor will furnish all materials, equipment, and supplies it requires to complete the Project.

5. TIME FOR PERFORMANCE; EXTENSIONS; PENALTY CLAUSE

5.1 Commencement of Work. No later than 15 days after the execution of this Contract by Owner and Contractor and approval by the Commissioner of Neighborhood Services or designee, the Owner will properly secure all personal belongings and clean the premises.

If Owner fails to complete this requirement within the 15-day period after the approval and execution of this Contract, this Contract will terminate and both Owner and Contractor will be released from their obligations and liabilities in this Contract.

5.2 Time for Performance. Contractor must perform its work under this Contract with such due diligence as will ensure that it completes work by the Completion Date. Time is of the essence with respect to the Time for Performance.

Contractor agrees to perform its work under this Contract according to the dates below:

INTERIOR WORK:

Commencement Date: _____

Completion Date: _____

EXTERIOR WORK:

Commencement Date: _____

Completion Date: _____

Contractor will provide the State of Ohio with a construction schedule for lead abatement according to State guidelines as described in Section 4.2.

5.3 Time Extensions: No Damages For Delay. If the work on the Project is delayed due to Unavoidable Delays as documented by Contractor, or latent defects as described in Section 4.6, Owner agrees to extend the number of days as stated in the construction schedule by the number of days equal to such documented delay. Contractor agrees that, in the case of such Unavoidable Delays, Contractor's and its Subcontractors' sole remedy will be to obtain an extension of time according to the provisions of this Section. Contractor expressly agrees that if there are delays of any kind (including, without limitation, Unavoidable Delays) in the work on the Project, Contractor and its Subcontractors will have no claim against Owner for damages or increase in the Contract Price of any kind, except increases in Contract Price resulting from work authorized by a Change Order.

5.4 Penalty Clause.

- (a) If Contractor fails to complete the work on the Project by either Completion Date stated in Section 5.2, Contractor will be assessed a penalty for each day beyond the Completion Date required to complete the work.
- (b) The daily penalty for failure to complete the work is \$100.
- (c) Upon Completion of the work and Acceptance of Performance by the City as described in Section 12, the City will reduce the Contract Price by the sum of all daily penalties assessed against Contractor and withhold the penalty amount from final payment.
- (d) Contractor will not be assessed a penalty if the delay is due to one of the following reasons:
 - (1) Unavoidable Delays, as defined in Section 1;
 - (2) Latent defects, as defined in Section 4.6(a); or
 - (3) Approved Change Orders.

6. ARBITRATION AGREEMENT

Any controversy or claims arising out of or relating to this Contract, or breach of this Contract, will be settled by binding arbitration according to the Rules of the American Arbitration Association ("AAA"), attached as Exhibit A. All decisions of arbitrators and all pre-arbitration settlements reached by the parties will be final, conclusive and binding upon the parties. Any court having jurisdiction may render judgment upon the award rendered by the arbitrator(s).

The City will not act as a representative of either Owner or Contractor. Either party may demand arbitration by contacting AAA. At the time of demand, the party will provide notice of demand for arbitration to the Commissioner of Neighborhood Services.

The parties to arbitration will share the arbitrator's fees and administrative costs according to AAA Rules.

7. CONTRACTOR'S FEE

7.1 Contract Price. Owner agrees to pay Contractor the Contract Price of _____ for the rehabilitation work of the Project, which Contract Price will be in full consideration of Contractor's work on the Project.

7.2 Payment Requests.

- (a) Contractor will submit to Owner and City a Payment Request that shows the Contractor's progress in completing the Project. This Payment Request will include an original invoice reflecting a 10% hold-back amount; a Contractor's affidavit; lien waivers from any Subcontractors whose work is being paid; and a copy of each required permit.
- (b) Each payment described in Section 7.3 will be payable to Contractor after Contractor submits a Payment Request covering all work applicable to the payment to the Commissioner of Neighborhood Services or designee; provided that all or part of a payment may be withheld if (a) Contractor's work fails to satisfy one of the performance standards specified in Section 3.2, or (b) Contractor is in default of any other term of this Contract.
- (c) Contractor may submit a maximum of three Payment Requests.

7.3 Payment of Contract Price. Owner agrees that the Contract Price described in Section 7.1 will be paid according to the following procedure:

- (a) Upon receipt of a Payment Request, the Commissioner of Neighborhood Services or designee will inspect the completed work and approve the work if the materials chosen by Owner under this Contract have been used or installed in conformity with the standards established in the Performance Standards and Specifications of the General Specifications Manual of the Division of Neighborhood Services.

- (b) Upon receiving a satisfactory inspection report, the Commissioner of Neighborhood Services or designee will disburse payment to Contractor.

7.4 Contractor's Payments to Subcontractors. Promptly after receipt of each payment, Contractor will pay all Subcontractors for the portion(s) of work performed by Subcontractors as stated in the applicable Payment Request, and supply the Commissioner of Neighborhood Services or designee with proof of payment upon request.

7.5 Acceptance of Payments Constitutes Release. Contractor's acceptance of the complete payments referenced in Section 7.3 will release Owner and City from all claims of Contractor.

8. DEFAULT, TERMINATION, AND OTHER REMEDIES

8.1 Default by Contractor. Each of the following will constitute a default by the Contractor:

- (a) Any lien is filed against the Project because of any act or omission of Contractor and is not removed within 20 days;
- (b) Contractor fails to make payment to Subcontractors for materials or work supplied for the Project within 10 days of written demand by the Commissioner of Neighborhood Services or designee;
- (c) Except for a default concerning defective materials or equipment, Contractor fails to keep, perform, and observe every other obligation contained in this Contract, including the deadline for starting as stated in Section 5.2, within 30 days after receipt of notice of default from Owner.

8.2 Owner's Remedies for Default.

- (a) Upon occurrence of any of the defaults listed in Section 8.1(a) or (b), Owner may, upon five days written notice to Contractor, terminate the Contract and select a new contractor from the list of contractors approved by the Department of Community Development.
- (b) Upon occurrence of any of the defaults covered by Section 8.1(c), except those concerning defective work, materials, or equipment, Owner may, after giving the Contractor written notice and 30 days to cure the default(s), terminate the Contract if the default(s) is not cured and select a new contractor from the list of contractors approved by the Department of Community Development.
- (c) Upon written notification to Owner and Contractor from the Commissioner of Neighborhood Services or designee that work, materials, or equipment used in the Project are defective, Owner may reject such defective work, materials or equipment and give Contractor written notice to correct such defects.

- (1) Contractor will begin reasonable efforts to cure the defects within five consecutive working days of receipt of Owner's notice to correct the defects.
- (2) If Contractor fails to begin reasonable efforts to cure the defects within five consecutive working days of receipt of the Owner's notice, Owner may send written notice of termination to Contractor and terminate this Contract 30 days later.
- (3) Upon termination, Owner may select a new contractor from the list of contractors approved by the Department of Community Development.

(d) Owner may reject defective work, materials, or equipment and may exercise any additional rights and remedies that Owner may have at law or in equity.

8.3 Default by Owner. The following will constitute a default by Owner: Owner stops the work on the Project for a period exceeding five consecutive working days through no act or fault of Contractor or its Subcontractors.

8.4 Contractor's Remedy for Default. Upon occurrence of any of the defaults listed in Section 8.3 or at any time thereafter during the continuance thereof, Contractor may, upon five days notice, terminate this Contract and recover an amount of money equal to what Owner would have had to pay in the Northeast Ohio market to purchase the portion of the work, materials, and equipment supplied and titled to Owner on the effective date of termination, less all payments previously made by Owner to Contractor under this Contract. Owner and Contractor intend Contractor's above-stated remedy will be the exclusive remedy available to Contractor upon Contractor's termination of this Contract, and that other remedies such as suspension of work, profit, or unperformed work, action on the Contract Price, and specific performance are expressly excluded.

8.5 No Waiver of Default. No Waiver by either Owner or Contractor at any time of any of the terms or conditions of this Contract will be deemed or taken as a waiver at any time of the same or any other term or condition or of the strict and prompt performance of the term or condition. No waiver will be valid against Owner or Contractor unless it is in writing and signed by Owner or Contractor.

9. SUBCONTRACTORS

9.1 General Requirements. No portion of the work on the Project will be performed, and no materials or equipment required on account of the work will be finished, by any Subcontractor unless and until a subcontract for the same is entered into between Contractor and Subcontractor. Contractor will keep the subcontract on file in his or her office for a period of one year after Completion of the rehabilitation project for Owner. Within 30 days after execution of this Contract, Contractor will submit to Owner a written list of all Subcontractors on the Project.

- 9.2 Contents of Subcontracts. Every subcontract will contain the following:
- (a) a provision that incorporates into the subcontracts by reference all of the provisions of this Contract in every situation where it is necessary to facilitate the Contractor's ability to perform the Contract's terms.
 - (b) a provision that permits Contractor to terminate the subcontract in the event of a breach by Subcontractor or in the event of any other occurrence or omission that would result in a delay in the timely progress of the work on the Project;
 - (c) a "no damage for delay" provision that, among other things, will expressly incorporate the terms of Section 5.4(d); and
 - (d) a provision requiring Subcontractor to cooperate with separate Subcontractors in the performance of work on the Project.

10. LABOR AND MATERIALS

10.1 Contractor's Obligation To Pay All Claims. Contractor will promptly pay or satisfy the just and equitable claims of all persons who have performed labor or furnished material for Contractor in the execution of the Contract, including those who have previously filed attested account of their claims with the City, and all bills, costs, or claims of whatever kind that may in law or equity become a lien upon the work or against the fund from which the work is to be paid or a charge against the City. If the attested accounts, claims, bills, or costs are not paid or adjusted to the satisfaction of the Commissioner of Neighborhood Services or designee, then it is agreed that the City may proceed as described in Section 10.2.

10.2 City's Right to Retain Monies to Pay Claims. The City may retain out of any monies due Contractor under this Contract a sum sufficient to pay all persons who have done work or furnished labor or materials for the work contracted for, and who have filed an attested account of the claim, supported by a sworn affidavit, with the Commissioner of Neighborhood Services or designee within four months from the performance of labor or the delivery of materials, stating that any balance for the work or materials is still due and unpaid, which amount may be retained by the City until satisfactory evidence is furnished to the Commissioner of Neighborhood Services or designee that balance has been fully paid. If the evidence is not furnished before the next payment becomes due to Contractor under the Contract, the Commissioner of Neighborhood Services or designee may pay the balance to the person claiming it and charge the payment to Contractor as payment on the Contract, unless Contractor has previously filed written notice with the Commissioner of Neighborhood Services or designee stating that the claim is in dispute. In the event of a dispute, the City will retain the amount until the claim has been adjusted or the money paid into court on proceedings to determine the rights of Owner and Contractor to the funds held by the City.

11. INSPECTION OF WORK BY GOVERNMENT AGENCIES

11.1 The City's right to inspect the work will be according to the following conditions:

- (a) The City will at all times have access to the work. Contractor will give the City timely notice of its readiness for inspection and, if the inspection is by authority other than the City, notice will be given of the time fixed for the inspection.
- (b) Any work completed, but not approved by a City inspector, then hidden by further work, must be uncovered for examination at the Contractor's own expense. Contractor will pay the cost of corrective work if the work fails to comply with this Contract. Owner will pay the cost of corrective work if Contractor can show that Contractor or its Subcontractors did not cause the defect.
- (c) If the completed work was approved by the City inspector and then covered, Owner will be responsible for the cost of uncovering and recovering such work, if, upon examination after reopening, the work is satisfactory. Contractor will at all times permit the City or its representatives to examine and inspect rehabilitation work.
- (d) Owner understands and agrees that the City's inspection rights stated in Section 11(1)(a) are created only for the City's purposes, i.e., to enforce the Performance Standards and Specifications established in the Division of Neighborhood Services' General Specifications Standards Manual, and protection of the City's collateral, consistent with the City's status as a third-party beneficiary as described in Section 21.2. These inspection rights do not create a City duty or obligation to enforce Owner's desired construction standards.
- (e) The report of the City's inspector confirming that the rehabilitation work meets the housing code requirements does not relieve the Contractor from complying with the Performance Standards and Specifications stated in the Division of Neighborhood Services' General Specifications Standards Manual.

11.2 City and Contractor's Right of Entry. Owner agrees to allow the City and Contractor or Subcontractor(s) (if any) to enter on the premises at all reasonable hours to inspect the work completed under this Contract, or to replace and repair any work that may have been determined to be defective by the Commissioner of Neighborhood Services or designee. The rights to entry will commence from the date of the execution of the contract and will continue for a period of 12 months from the date after acceptance by the Commissioner of Neighborhood Services or designee of the construction work to be performed under this Contract.

11.3 Refusal of Entry by Owner.

- (a) If Owner, for any reason not approved by the Director of Community Development or designee, refuses the right of entry, Contractor (or Subcontractor(s) [if any]), if otherwise not in default, will have the right to terminate the Contract and will be released from further liability for the performance of the Contract.
- (b) The refusal of Owner to permit entry will relieve the Commissioner of Neighborhood Services or designee from all responsibility imposed upon him or her under the terms of this Contract.

11.4 Inspectors as designated by any Government Agency having jurisdiction over the subject matter of the Contract will be authorized to inspect all work done and materials furnished at a reasonable time, or at such other times as may be necessary to carrying out and completing work.

12. ACCEPTANCE OF PERFORMANCE

Under the payment provisions of Section 7, Owner and Contractor agree that, upon satisfactory inspection by the Department of Community Development of the work performed with the materials selected by Owner, the Commissioner of Neighborhood Services or designee will approve payment for the completed work and disburse payment to Contractor. Owner understands and agrees that the City's right to determine the satisfactory quality of the work is created only for the City's purposes consistent with the City's status as a third-party beneficiary as described in Section 21.2 of this Contract. The City will base acceptance of Contractor's work upon whether the work meets the requirements of the Performance Standards and Specifications of the Division of Neighborhood Services' General Specifications Manual, HUD standards, and protection of the City's collateral. The City's right to accept the Contractor's work is not created for the purpose of enforcing Owner's purposes and does not create a City duty or obligation to enforce Owner's construction standards.

13. WARRANTY

13.1 Contractor's Warranty.

In consideration of the price bids and payments received, Contractor warrants that all labor and materials are free of defects and deficiencies, and that all work done and materials used conform to the Contract and comply with the City's housing code, HUD standards, and the Performance Standards and Specifications established in the Division of Neighborhood Services General Specifications Standards Manual as to kind, quality, function, and characteristics. The warranty period will begin upon the date of final acceptance by the Commissioner of Neighborhood Services or designee, in writing, of the rehabilitation work and shall continue for a period of 12 months. On that date, the Department of Community Development will submit to Owner: (1) a copy of the

final acceptance document; and (2) a Receipt of Contractor's Warranty form stating that Owner understands the terms of the warranty and acknowledges the date of final acceptance as the date the warranty period begins. Owner will sign and date this form and return it to the Department of Community Development. A sample form is attached to this Contract as Exhibit B.

13.2 Notice of Defects.

If at any time during the warranty period, any defects or omissions become apparent in the work, or if it becomes apparent that any of the work is not in compliance with the City's housing code, HUD standards, and the Performance Standards and Specifications established in the Division of Neighborhood Services' General Specifications Standards Manual, as determined by the City inspector, the City inspector may notify the Contractor and the Owner in writing of such defects or omissions.

13.3 Repair of Defects or Omissions.

- (a) If repairs to defects or omissions must be made while work under the Contract is in progress, Owner must comply with the provisions of Section 8.2(c) of this Contract.
- (b) If repairs to defects or omissions must be made after work under the Contract has been completed, but during the warranty period, Contractor, upon receipt of written notice from the City inspector of defective work and receipt of written notice from Owner to repair the defective work, will have five days to begin reasonable efforts to correct the defective work. If Contractor fails to begin reasonable efforts to cure the defective work, Owner may select another contractor from the list of contractors approved by the Department of Community Development to repair the defective work.
- (c) Removal and Correction of Work. If it is necessary to remove any part of the work to rectify defects or omissions or to repair defects in materials or workmanship, or if any part of the work becomes damaged due to the rectification or repairing, the work will be replaced or repaired, all to the standards established in the City's housing code, the HUD regulations, and the Performance Standards and Specifications established in the Division of Neighborhood Services General Specifications Standards Manual. The warranty provisions will also apply to all rectified or repaired work.
- (d) Funds for Repairs. If monies for the repairs are not sufficient to meet the expense, the Contractor will furnish additional monies.

14. ALTERATION OF CONTRACT

14.1 Permitted Changes. After Owner and Contractor sign this Contract, no changes in the Specifications, or other terms of the Contract can be made except:

- (a) where work items were performed by Owner prior to start of work by Contractor; the items must be deleted from the work schedule and their respective cost deducted from the stipulated Contract Price; or
- (b) where work not included in the Specifications or other terms of this Contract is necessary and approved by amendment to this Contract properly signed by Contractor, accepted by Owner, and approved by the Commissioner of Neighborhood Services or designee; or
- (c) where work that is included in the Specifications must be changed under a written Change Order.

14.2 Extra Work. Any extra work that Owner desires to undertake and have completed by Contractor while on the premises will be performed under a separate and distinct written contract between Owner and Contractor and is not the responsibility of, nor will it involve, the City or any payment from the City.

14.3 Substitutions. Contractor may not make substitutions of the materials or equipment stated in the Specifications unless the manufacturer has discontinued the materials or equipment specified. Contractor will notify Owner of any materials or equipment discontinuation. Any materials or equipment substituted for discontinued items must be of equal or greater quality than those specified. All substitutions will require the prior written consent of Owner and the Commissioner of Neighborhood Services or designee, and each Contractor request for substitution will include complete product information and (upon specific request of Owner) will include project sample.

15. CONTRACT ASSIGNABILITY

Owner and Contractor understand and agree that this Contract is not assignable and may not be assigned without the written consent of Owner, Contractor, and the City as third-party beneficiary.

16. INDEMNIFICATION AND INSURANCE

16.1 Contractor Indemnification

Contractor agrees to indemnify and hold harmless Owner and the City, and their respective officers, agents, and employees, against all fines for noncompliance with OSHA, EPA, and HUD requirements; and suits, claims, loss, cost, damage, expense, or liability that may be based upon any injury or damage to persons or property that may arise out of any act, error, or omission to act of Contractor, its officers, employees, and Subcontractors. Contractor will, at its own expense, defend Owner and the City in any litigation arising out of Contractor's or its Subcontractors' negligence or willful

misconduct and pay on behalf of Owner and the City all sums that Owner or the City may become legally obligated to pay as a result of any litigation or claims incurred in connection therewith, including attorneys' fees, and to satisfy and cause to be discharged any judgments obtained against Owner, the City, and their respective officers, agents, or employees. The provisions of this Section will survive the expiration or earlier termination of this Contract.

16.2 Insurance Policies.

- (a) Contractor's Liability Insurance. Contractor will, at its expense and at all times during the performance of services under this Contract, maintain individual policies of both general and lead liability insurance insuring Contractor against the indemnification obligations undertaken in Section 16.1. Each policy of liability insurance must name Owner and City as additional insureds. Contractor will also maintain workers' compensation insurance.
- (b) Owner's Liability Insurance. Owner will be responsible for, and at his option may maintain, such insurance as will protect him from his contingent liability to others for damages because of bodily injury, including death, that may arise from operations under this Contract, and any other liability for damages against which the Contractor is required to insure under any provision of this Contract.

17. TAXES, PERMITS, LICENSES, AND FEES

17.1 Taxes. Contractor will pay all sales, consumer, use, and similar taxes for the Project.

17.2 Permits, Licenses, and Fees. Contractor will secure and pay for the building permit and other permits and governmental fees, licenses, and inspections necessary for proper execution and completion of the work on the Project. These will include licensing and bonding by the Department of Building and Housing.

18. COMPLIANCE WITH LOCAL LAWS

Contractor will perform all work in compliance with applicable building codes whether or not covered by the Specifications for the work.

19. EQUAL EMPLOYMENT

Owner and Contractor will not exclude from participation in, deny benefits to, or discriminate against any applicant for, or participant in, services or housing to be provided on the Project site because of race, color, national origin, religion, age, handicap, or sex. Contractor and Owner will also abide by the following Federal requirements relating to nondiscrimination and equal opportunity: the Fair Housing Act

(42 U.S.C. 3601-19); Executive Order 11063, as amended by Executive Order 12259; Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-4); the Age Discrimination Act of 1975 (42 U.S.C. 6101-6107); section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u); Executive Order 11246, as amended by Executive Orders 11376, 11478, 12086, and 12107 (Equal Employment Opportunity Programs); Executive Order 11625, as amended by Executive Order 12007 (Minority Business Enterprises); Executive Order 12432 (Minority Business Enterprise Development); and Executive Order 12138; as amended by Executive Order 12608 (Women's Business Enterprise).

Contractor and Owner must also abide by any state or local anti-discrimination and equal opportunity laws including, but not limited to, the City's Codified Ordinance Section 187.11(b) or the City's Office of Equal Opportunity Rules and Regulations.

20. LEAD-BASED PAINT

Owner and Contractor acknowledge that the rehabilitation of housing constructed before 1978 using federal funds is subject to the regulations regarding lead-based paint poisoning prevention at 24 CFR part 35 and agree to follow those regulations. Contractor will also comply with all other applicable federal, state, and local laws and policies regarding lead-based paint.

21. CITY'S ROLE IN CONTRACT

21.1 Disbursement of Loan or Grant. In furtherance of the Project, the City has agreed to loan or grant to Owner the sum of \$_____. Owner and City agree that the Department of Community Development will process disbursement of all proceeds for the Project under Section 7. Owner and City agree that the City's responsibilities in the disbursements will be limited to the specific standards contained in Section 7, and further agree that City's disbursement actions create neither an agency relationship nor a fiduciary relationship. While Contractor may have additional obligations to Owner or to the City under the terms of this Contract or other Contracts, Owner and City agree that (a) City's disbursement of the loan or grant may proceed independently of such additional obligations; and (b) City shall have no responsibility or liability to Owner for such additional obligations to Contractor.

21.2 City is Third-Party Beneficiary. Owner and Contractor understand, agree, and intend that City will be third-party beneficiary under this Contract for purposes of ensuring that: (a) the rehabilitation Project funded by a loan or grant from the City is conducted in a manner consistent with HUD standards, the Performance Standards and Specifications established in the City's General Specifications Standards Manual, and applicable codes, laws, and regulations; and (b) the rehabilitation Project is completed in a manner that ensures that the loan of the City is adequately secured by its

mortgage on the completed Project. Nothing in this Contract may be construed to create any third-party beneficiaries under this Contract other than the City.

21.3 Approval by the City. The responsibilities described in this Contract will become effective only upon the written approval of this Contract by the Commissioner of Neighborhood Services or designee on the approval lines provided at the end of this Contract.

22. OTHER PROVISIONS

22.1 Severability. Should any provisions of this Contract be found by a court of competent jurisdiction to be invalid, unlawful, or unenforceable, that finding will not affect the validity or enforceability of any other provision of this Contract.

22.2 Independent Contractor. Owner and Contractor understand and agree that Contractor is an independent contractor not an agent of Owner and, as such, Contractor's agents and employees will not be entitled to any Owner employee benefits including, without limitation, vacation leave, sick leave, insurance, workers' compensation, Social Security, and pension or retirement benefits.

22.3 Owner's Full Understanding and Voluntary Acceptance. Owner and Contractor represent that Owner had reasonable opportunity in the negotiation of this Contract. Hence, in any construction to be made of this Contract, it will not be construed against any party on the basis that the party was the drafter. In entering this Contract, Owner represents that he or she: (1) relied upon the advice of his/her attorneys, or voluntarily chose to proceed without the advice of counsel; (2) had a reasonable opportunity to read this Contract and ask questions of the City regarding its terms and exhibits; and (3) fully understands those terms and voluntarily accepts them. Owner understands and agrees that if a dispute arises over the terms of this Contract, the City cannot represent Owner in the dispute.

22.4 Integration and Supersedence. In the event of any variance or conflict between the terms of this Contract and any other agreement between Owner and Contractor regarding this Project, the provisions of this Contract will govern.

22.5 Notices. All notices sent under this Contract must be sent to the following designated addresses:

To Owner:

To Contractor:

To City:

The rest of this page is left blank intentionally.

WITNESSES:

Print Name

Print Name

Print Name

Print Name

OWNER

By: _____

Print Name

Date

Address

CONTRACTOR

By: _____

Print Name

Company Name

Date

Address

Federal I.D. No.

APPROVED BY:

Department of Community Development
City of Cleveland

Date