

**INTERGOVERNMENTAL AGREEMENT FOR THE FUNDING AND PROVISION OF
FORECLOSURE MEDIATION SERVICES IN FRANKLIN COUNTY**

THIS AGREEMENT IS MADE AND ENTERED INTO this ____ day of _____, 2011 by and between the Franklin County Municipal Court (the "Municipal Court"), the Franklin County Court of Common Pleas – General Division (the "Common Pleas Court"), the Franklin County Prosecuting Attorney (the "Prosecuting Attorney"), the Franklin County Treasurer (the "Treasurer") and the Board of Commissioners of Franklin County, Ohio (the "Board of Commissioners").

Background Information

- A. The Municipal Court has an existing mediation program and developed the Franklin County Foreclosure Mediation Project (the "Original Project") to serve the Common Pleas Court, the Prosecuting Attorney, the Board of Commissioners, borrowers and lenders.
- B. The Original Project was funded under a certain Intergovernmental Agreement for the Funding and Provision of Foreclosure Mediation Services in Franklin County (the "Original Agreement") between the parties and the Original Agreement expired on December 31, 2010.
- C. Under the terms of Section 5 of the Original Agreement, the Project is required to return any excess funds to the Prosecutor and the Treasurer, unless the Parties amend the Original Agreement.
- * D. Since the Project has excess funds under the Original Agreement in an amount equal to Thirteen Thousand Six Hundred Forty-Three Dollars and 36/100 (\$13,643.36) (the "Excess Funds"), the Treasurer and the Prosecutor desire to authorize the Project to use the Excess Funds for the continuation of the Original Project according to the terms of this Agreement.
- E. The Judges of the Common Pleas Court have authorized the Court to proceed with foreclosure mediation services provided by the Municipal Court on behalf of the Common Pleas Court.
- F. This Agreement has been authorized by Resolution Number _____ approved by the Board of Commissioners.

Provisions

NOW, THEREFORE, in consideration of the mutual promises as hereinafter set forth, the parties agree as follows:

1. Term. The term of this Agreement is January 1, 2011 through December 31, 2011. Subsequent terms are contingent upon the mutual agreement of the parties, certification of available funds by the Common Pleas Court and Prosecuting Attorney and approval by Board of Commissioners. The parties to the Original Agreement hereby agree that the Original Agreement shall be amended to allow for the Project to retain and use the Excess Funds according to the terms of this Agreement. In light of the foregoing, the parties agree that this action shall not result in the extension of the Original Agreement and that the terms of this Agreement shall control the further use of the Excess Funds.

2. Maximum Obligation. The maximum obligation of the Common Pleas Court under this agreement shall not exceed \$273,840.00 and the maximum additional obligation of the Prosecuting Attorney under this Agreement shall not exceed \$50,000 for the term of this Agreement, as outlined

in Section 1 above and subject to the other terms and provision of this Agreement. The parties acknowledge that the foregoing amount does not include the Excess Funds, which the Treasurer and Prosecutor authorize to use for the Project according to the terms of this Agreement. Each of the parties acknowledge that the Prosecuting Attorney's additional funding up to \$50,000 shall be provided by appropriation from the Prosecuting Attorney's Delinquent Tax Assessment and Collection (DTAC) Fund and that no funds will be appropriated from the Board of Commissioners' General Fund for this project.

3. Scope of Services. The Municipal Court agrees to provide the following services in managing the Project:

- A. Notification Materials – Subject to the approval of the Common Pleas Court, the Project shall continue to use printed materials about mediation and a Request for Mediation form that will be sent to borrowers with the summons in all recently filed foreclosure cases. The Project will coordinate with referring agencies to develop protocols and procedures for case referrals and data collection.
- B. Receipt of Referrals – The Project will receive referrals to mediation (Request for Mediation) from borrowers who have been served with a foreclosure complaint filed with the Common Pleas Court. In addition, referrals to mediation may come from a variety of sources including, but not limited to, the Common Pleas Court Judges, the Legal Aid Society of Columbus, any of the five local HUD approved housing counseling agencies, HandsOnCentral Ohio, the State of Ohio's Save the Dream Hotline, and the Franklin County Homeowner Helpline, but will be limited to borrowers involved in pending foreclosure cases and in no event shall the Project include tax foreclosures filed on behalf of the Franklin County Treasurer.
- C. Acceptance of Requests for Mediation – The Project shall accept Requests for Mediation filed by borrowers in foreclosure within 28 days of receiving the summons and request for mediation form. The Project may, within its discretion and in coordination with the Common Pleas Court, accept Requests for Mediation beyond the 28-day period.
- D. Evaluation of Borrowers – For borrowers submitting a Request for Mediation, but not previously evaluated by another referring agency, the Project shall inform the homeowner in the Notice of Scheduled Mediation that all necessary personal and financial data necessary to mediate the homeowner's case should be submitted to the lender's attorney at least two weeks prior to the scheduled mediation date.
- E. Security of Financial Data – The Project shall undertake all reasonable precautions to safeguard borrowers' personal data (financial or otherwise) that the Project collects and shall be fully responsible for any liability arising from the accidental or intentional release, theft, loss, or misuse of homeowner personal data, whether such liability arises from intentional, unintentional, or negligent acts.
- F. Mediation Notification – The Project shall send copies of the Request for Mediation and scheduling notices to borrowers, counselors, lenders, and servicers participating in mediation.
- G. Mediation Sessions – The Project shall coordinate participation of necessary parties to the foreclosure action in the mediation. The Project will provide morning, afternoon and evening mediation sessions. The Project has the discretion to request in-person participation by attorneys and their clients at the mediation session.
- H. Timing of Mediation Sessions – The Project shall be responsible for conducting the foreclosure mediation sessions within the timeframes established by the Common Pleas Court.

- I. Payment of Mediators – The Project shall be responsible for issuance of payment to mediators from the funds provided by the Common Pleas Court and the Prosecuting Attorney and in accordance with the terms of this Agreement. The parties agree that the Project shall pay mediators \$120 per mediation. If the mediator receives notification of a mediation cancellation within 48 hours of the scheduled mediation or appears for a session that does not mediate because one or more parties are unavailable, the mediator will be paid \$40.00. The Project shall be responsible for compliance with all applicable tax reporting requirements relating to payment of mediators or Project personnel. No mediators will be paid directly by the Common Pleas Court, Prosecuting Attorney or Board of Commissioners. The Project shall be responsible for making such fact clear to any participating mediator.
- J. Space & Accommodations – The Project shall be responsible for providing all space, rooms and other accommodations necessary to conduct the mediation sessions and for Project personnel.
- K. Training – The Project shall be responsible for providing training for all mediators. Training shall conform to any requirements established by the Ohio Supreme Court for the conduct of foreclosure mediations. Training may also be provided for attorneys, lenders, servicers, HUD approved counseling agency staff and other Project participants.
- L. Tracking & Reporting of Mediation Activity – By the 15th calendar day (or next business day following) of April, July, October and January, 2011, the Project shall provide to the Common Pleas Court, Prosecuting Attorney and Board of Commissioners a report detailing the mediation activity of the Project. The quarterly activity report shall be provided in an electronic format and printed format. The printed copy shall be signed by the Project Coordinator and the Project Administrator. Any statistical report shall be provided in an Excel format. The Quarterly Mediation Activity Report shall at a minimum provide the following data:
 - i. Number of referrals received by total and broken down by referring agency (for the month, year-to-date and prior year.)
 - ii. Number of Requests for Mediation generated by foreclosure filings (for the month, year-to-date and prior year)
 - iii. Number of borrowers deemed suitable candidates for mediation (for the month, year-to-date and prior year)
 - iv. Number of borrowers deemed not suitable candidates for mediation (for the month, year-to-date and prior year)
 - v. Number of mediations scheduled, held and cancelled, as well as the reason for cancellation.
 - vi. A report of the outcomes of the mediations.
- M. Court Filings – The Project shall be responsible for filing of all necessary paperwork with the Common Pleas Court regarding the conduct of and results of the mediation sessions.
- N. Maintenance of Records – The Project shall be responsible for the maintenance of all records, in either printed or electronic format, regarding the Project, including but not limited to, individual mediation files, reports, referral data, evaluation documentation, and financial reports (including supporting documentation for all expenditures) and such records shall be maintained in accordance with the Municipal Court’s records retention policy.
- O. Evaluation – The Project staff will design and implement an evaluation component for the Project. The project will seek grant funding for data analysis.

5. Payment for Services

A. Disbursements – Upon execution of this Agreement, the Common Pleas Court shall make monthly payments of \$22,820 to the Project, beginning in February 2011. The Common Pleas Court shall make payment to the Columbus City Treasurer-Foreclosure Mediation Project Grant, Attn: Cherie Mollette, 375 S. High St. 16th floor, Columbus, OH 43215.

The Prosecuting Attorney shall disburse \$50,000 to the Project in quarterly payments of \$12,500, beginning in February 2011 within 30 days of receipt of the invoice. The Project will invoice the Prosecuting Attorney quarterly beginning in January 2011. The Prosecuting Attorney shall pay each invoice amount to the Columbus City Treasurer-Foreclosure Mediation Project Grant, Attn: Cherie Mollette, 375 S. High St. 16th floor, Columbus, OH 43215. All parties acknowledge that the funds for this Agreement originate in the Prosecuting Attorney's DTAC funds and the Common Pleas Court Special Projects Fee Funds and that the Board of Commissioners' General Fund shall provide no direct or indirect funding for the Project.

The Common Pleas Court, Prosecuting Attorney and Board of Commissioners recognize that the purpose of the Project is to conduct mediation sessions to resolve actual foreclosure litigation and to help borrowers maintain ownership, where possible. The Common Pleas Court, Prosecuting Attorney and Board of Commissioners retain the discretion to withhold a portion of any periodic payment if the Common Pleas Court, Prosecuting Attorney or Board of Commissioners determine that the volume of mediation sessions does not warrant disbursement of the entire \$273,840 from the Common Pleas Court or \$50,000 from the Prosecuting Attorney. If at the end of the contract period of this Agreement, the maximum amount has not been fully expended, the Parties can agree to extend the duration of this Agreement, but such extension shall be in a writing signed by all of the Parties. If a surplus amount in the contract funds exists at the normal fiscal closing date in December 2011 or upon the date of any termination exercised under Paragraph 12, the Project shall return the excess funds to the Prosecuting Attorney's DTAC fund and the Common Pleas Court on a pro-rata basis, unless Parties agree to amend the terms of this Agreement in writing.

B. Permissible Expenses Defined – See Exhibit A (attached.)

- Contract Project Coordinator
- Contract support staff
- \$120 per mediator for mediation
- \$40 if the mediator receives notification of a mediation cancellation within 48 hours of the scheduled mediation, or appears for a session that does not mediate because one or more parties are unavailable.
- Interpreters
- Supplies, Photocopying
- Training expenses
- Administrative fee

Notwithstanding the foregoing, as an inducement to the Court and the Prosecuting Attorney to enter into this Agreement, the Project agrees that there shall be no increases of Permissible Expenses during the term of this Agreement from amounts paid in 2009-2010 for salaries, wages, and administrative fees, with the exception of the increase in

rate paid to the Mediation Coordinator, mediators for mediations and mediation cancellation fees.

6. Accounting and Maintenance of Funds Disbursed

The Project shall ensure that all funds disbursed to the Project under this Agreement are accounted for separately. Upon request, the Project must make available to the Common Pleas Court, Prosecuting Attorney and Board of Commissioners all financial records of the Project, including all program expenditures, invoices, and purchase orders.

7. Monthly Financial Reporting & Reconciliation

The Project shall provide a monthly report to the Common Pleas Court, Prosecuting Attorney and Board of Commissioners that accounts for all financial activity of the Project. The Monthly Financial Report shall be due by the 15th day of each month following the effective date of this Agreement. The report shall detail the expenses of the Project for the month and year-to-date. The Monthly Financial Report shall be provided in an electronic format and printed format (printed copy shall be signed by the Project Coordinator and Project Administrator). The report shall also be provided in an Excel format. The funds provided pursuant to this Agreement shall be used to pay permissible program expenses, as described in Paragraph 5 (B) of this Agreement.

8. Entire Agreement

This agreement sets forth the entire agreement between the parties with respect to the subject matter. Understandings, agreements, representations, or warranties not contained in this Agreement, or as written amendment hereto, shall not be binding on any party.

9. Project Administrator

Eileen Pruett of the Municipal Court, or her successor, has been designated to serve as the Project Administrator for this Agreement and shall provide oversight of the activities conducted hereunder. Eileen Pruett shall manage the Contract on behalf of the Municipal Court and shall be the principal point of contact for the Municipal Court and Project concerning the performance of this Agreement.

10. Project Administration

Any notice or demand or other communication required or permitted to be given under this Agreement or applicable law shall be effective only if it is in writing, properly addressed, and either delivered in person, or by a recognized courier service, or deposited with the United States Postal Service as first-class certified mail, postage prepaid and return receipt requested, to the parties at the following addresses:

To the Municipal Court:	Eileen Pruett Project Administrator Manager, Small Claims Division and Dispute Resolution Department Franklin Municipal Court 375 South High Street, 16 th Floor Columbus, Ohio 43215-4520 614-645-8500
To the Common Pleas Court:	Atiba Jones Executive Director Franklin County Common Pleas Court 369 South High Street

	Columbus, OH 43215 614-462-749
To the Prosecuting Attorney:	Mary Johnson, Assistant Prosecuting Attorney Prosecuting Attorney's Office 373 South High Street, 17 th Floor Columbus, Ohio 43215 614-525-6026
To the Board of Commissioners:	Don Brown, County Administrator 373 S. High St., 26th floor Columbus, OH 43215
To the Treasurer:	Edward J. Leonard Franklin County Treasurer 373 South High Street, 17 th Floor Columbus, OH 43215

11. Applicable law, Remedies

This Agreement shall be governed in accordance with the laws of the State of Ohio. The parties agree that resolution of disputes before filing a court action is desirable and that they will pursue direct negotiation, mediation and/or arbitration before filing any claim or counterclaim. In the event that informal dispute resolution is not successful, all claims, counterclaims, disputes and the matters in question between the parties arising out of or relating to this Agreement or its breach will be decided in a court of competent jurisdiction within Franklin County, Ohio.

12. Agreement Termination

A. Termination for Default

If any party violates any material term or condition of this Agreement or fails to fulfill in a timely and proper manner its obligations under this Agreement, then the aggrieved party shall give the other parties written notice of such failure or violation. The responsible party shall give the other parties written notice of a proposed correction to such failure or violation. The responsible party will correct the violation or failure within 30 calendar days or as otherwise mutually agreed. If the failure or violation is not corrected, this Agreement may be terminated immediately by written notice from the aggrieved party to the other parties. The option to terminate shall be at the sole discretion of the aggrieved party. If it is determined for any reason the failure to perform is not within the defaulting party's control, fault or negligence, the termination shall be deemed a Termination for Convenience. This section shall not apply to any failure to perform which results from the willful or negligent acts or omissions of the aggrieved party. The Common Pleas Court and Prosecuting Attorney shall pay the Project from available program funds for any permissible expenses incurred by the Project after the notice of termination but prior to the effective date of the termination, unless termination is for mismanagement of funds.

B. Termination for Convenience

When it is in the best interest of any party, any Party may terminate this Agreement, in whole or in part, by providing written notice to the other parties at least 45 calendar days prior to the effective date of termination. The Common Pleas Court and Prosecuting Attorney shall pay the Project from available program funds for any permissible expenses incurred by the Project after the notice of termination, but prior to the effective date of the termination.

13. Modifications

No modification, amendment, alteration, addition or waiver of any section or condition of this Contract shall be effective or binding unless it is in writing and signed by an authorized representative of the Municipal Court, the Common Pleas Court, Prosecuting Attorney and Board of Commissioners and approved by all parties to the agreement.

14. Nonexclusive Remedies

The remedies provided for in this Agreement shall not be exclusive, but are in addition to all other remedies available under the law.

15. Survivorship

All services rendered under this Agreement shall be bound by all of the terms, conditions, prices, discounts and rates set forth herein, notwithstanding the expiration of the initial term of this Agreement or any extension thereof. Further, the terms, conditions and warranties contained in this Agreement that by their sense in context are intended to survive the completion of the performance, cancellation or termination of this Agreement shall so survive.

16. Review of Records

The Municipal Court shall maintain books, records, documents and other evidence of accounting procedures and practices that sufficiently and properly reflect all direct and indirect costs of any nature invoiced in the performance of this Agreement and shall retain all such records as required by law. Records involving matters in litigation related to this Agreement shall be kept as required by law including appeals. If any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the retention period referenced above, the Municipal Court shall retain the records until completion of the action and all issues which arise from it or until the end of such retention period, whichever is later. All such records shall be subject at reasonable times and upon prior notice to examination, inspection, copying or audit by personnel authorized by the Common Pleas Court, Prosecuting Attorney, Board of Commissioners, the Municipal Court and Project Administrator, Auditor of State and other state or federal officials so authorized by law, rule, regulation or contract, when applicable. During the term of this Agreement, access to these items will be provided within Franklin County. During the required time period, delivery of and access to these items will be at no cost to the Common Pleas Court, Prosecuting Attorney and Board of Commissioners.

17. Uncontrollable or Unavoidable Event

Neither party will be liable for failure to perform its obligations hereunder if such failure results from an uncontrollable or unavoidable event, act of God, refusal of any license or consent of any act of any national, federal, state or local governmental authority or any department, agency or representative thereof, fire, explosion, accident, industrial dispute, act of war, riot, epidemic or other natural disaster or anything beyond either party's reasonable control.

18. Severability

If any term or condition of this Agreement or the application thereof to any persons or circumstances is held invalid, such invalidity shall not affect other terms, conditions, or applications that can be given effect without the invalid term, condition, or application. To this end, the terms and conditions of this Agreement are declared severable.

Waiver of any breach, term or condition of this Agreement shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this Agreement shall be held to be waived, modified or deleted except by a written instrument signed by the parties hereto.

20. Authority to Bind

The signatories to this Agreement represent that they have the authority to bind their respective organizations to this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year by their respective signatures.

MUNICIPAL COURT:

Paul Herbert
by Keith Bartlett 2/10/11
Judge Paul Herbert Date
Administrative and Presiding Judge
By Keith Bartlett, Court Administrator

BOARD OF COMMISSIONERS:

Marilyn Brown Date
President

Approved as to form:

Paula Brooks Date

Richard C. Pfeiffer, Jr.
Columbus City Attorney

John O'Grady Date

COMMON PLEAS COURT:

[Signature]
2/23/2011
Judge Charles Schneider Date
Administrative Judge
Franklin County Common Pleas Court
- General Division

PROSECUTOR:

[Signature]
23 Feb 11
Ron O'Brien Date
Franklin County Prosecuting Attorney

TREASURER:

By: Edward J. Leonard
Edward J. Leonard
Franklin County Treasurer

Approved as to form:

Ron O'Brien
Franklin County Prosecuting Attorney

By: Deane Keane 2/23/11
Assistant Prosecuting Attorney