

DRAFT MEMORANDUM OF AGREEMENT

Between Lexington-Fayette Urban County Government & Kentucky Housing Corporation

This Memorandum of Agreement is made by and between the Lexington-Fayette Urban County Government through its Division of Grants and Special Programs and Affordable Housing Fund, 200 E. Main Street, 6th Floor, Lexington, Kentucky 40507, and Kentucky Housing Corporation through its Multifamily Programs (“KHC”), 1231 Louisville Road, Frankfort Kentucky 40601-6191.

WHEREAS, a core function of KHC is to provide quality, safe and affordable rental housing for Kentucky’s residents.

WHEREAS, KHC is releasing its Notice of Funding Availability (“NOFA”) for its GAP Financing with Tax-exempt Bond round on June 15, 2015.

WHEREAS, KHC is making available a combined total of \$19 million of KHC’s Equity Bridge Loan (EBL), HOME Investment Partnerships (HOME Gap) and Affordable Housing Trust Fund (AHTF Gap) funds (collectively, the “Funds”), to be exclusively used as described within this NOFA.

WHEREAS, a core function of LFUCG is to provide quality, safe and affordable rental housing for Lexington and Fayette County residents.

WHEREAS, LFUCG administers funds from the HOME Investment Partnership Program (“HOME”) and Lexington’s own Housing Program (“AHP”).

WHEREAS, LFUCG will include Affordable its own HOME/AHP funds in KHC’s June 2015 NOFA to allow coterminous allocation of LFUCG and KHC funds in affordable rental multifamily development projects.

NOW THEREFORE, the parties agree as follows:

- A. General Agreement. LFUCG HOME funds will be listed as source within KHC’s NOFA. LFUCG and KHC will each publicize the NOFA. KHC will be the recipient of all proposals and applications and will share with LFUCG staff all documents regarding proposal seeking LFUCG funding. LFUCG and KHC will evaluate proposals in partnership, but LFUCG will make all decisions about the investment of LFUCG HOME funds. LFUCG will work directly with selected developers/owners to formally commit funds and enter into HOME/AHP written agreements.
- B. KHC Funding Rounds Covered by this Agreement. This Agreement pertains only to KHC’s NOFA for Tax Exempt Bond financing plus gap funding scheduled for release in June 2015.
- C. Funds Committed by LFUCG. LFUCG will commit \$X million in HOME/AHP funds to be allocated as part of KHC’s NOFA.

D. LFUCG Discretion over project selection and funding.

E. Application Process and Coordination.

1. KHC will revise its draft NOFA to include information about LFUCG's HOME funds, eligibility requirements, and funding preferences. LFUCG will approve NOFA language regarding its funds.
2. KHC will release the NOFA on its website and via mass and direct emails. LFUCG will also publicize the NOFA
3. KHC Managing Director of Multifamily Programs, Andrew Hawes, will field questions regarding the NOFA. Questions specific to LFUCG funds will be forwarded to Irene Gooding and/or Rick McQuady, [TITLES], of LFUCG.
4. KHC will be the recipient of all proposals. For projects seeking LFUCG funds, KHC will share all submission with LFUCG staff.
5. KHC and LFUCG will meet in person and via phone/internet to review applications together.
6. LFUCG's Selection Committee will make decisions about conditional commitment of funds to selected projects and will communicate this to KHC.
7. KHC will make initial announcements of conditional awards.
8. KHC will then administer the technical submission phase. For projects seeking LFUCG funds, KHC will share all relevant technical submission documents with LFUCG staff.
9. KHC and LFUCG will meet in person and via phone/internet to vet issues such as project feasibility, compliance, eligibility.
10. LFUCG's Selection Committee will make decisions about final commitment of funds to selected projects and will communicate this to KHC.
11. KHC will make initial announcements of final awards.
12. LFUCG will enter into any contracts or written agreements directly with project developers and/or owners.

F. Sharing of Documents & Public Information. KHC will serve as the point of contact and clearinghouse for all proposals and supporting documentation related to the NOFA. KHC will share with LFUCG all documentation pertaining to applicants seeking LFUCG funds. Should relevant documents be submitted to LFUCG instead of KHC, LFUCG will likewise share documents with KHC. NOFA responses and all related materials constitute public records within the meaning of the Kentucky Open Records Act (Kentucky Revised Statutes (KRS) §§ 61.870 to 61.884). LFUCG will forward any such requests to KHC, and KHC will respond to any requests.

G. Responsibility. Neither KHC nor LFUCG assumes any responsibility for the administration of one another's funding programs. Each party is responsible for its own compliance, underwriting, recordkeeping, and so on.

- H. Flow of Funds and Separate Contracting. No LFUCG funds will flow through KHC. LFUCG will contract directly with developers/owners selected to receive LFUCG funding.
- I. Term. This Agreement shall be effective upon approval by both parties and shall continue through June 30, 2016, unless sooner terminated by either party. This Agreement may be terminated by either party upon 30 day written notice of an intent to terminate served upon the non-terminating party.
- J. Miscellaneous.
1. *Prior Negotiations Merged.* All prior negotiations and agreements between the parties with respect to the subject matter of this Agreement are hereby merged herein, and no statement, agreement, or Agreement not contained herein will be recognized or enforced unless in writing and of even date herewith or subsequent thereto.
 2. *Modification.* No change or modification of this Agreement will be valid unless it is in writing and signed by the parties.
 3. *Parties Bound.* This Agreement will inure to the benefit of, and be binding upon the parties, their legal representatives, successors, and assigns.
 4. *Governing Law.* This Agreement will be construed pursuant to the laws of the Commonwealth of Kentucky.
 5. *Section Headings.* The section headings have been included in this Agreement solely for the convenience of the parties and are not to be deemed a part of this Agreement or material to its construction.
 6. *Invalid Provisions.* Should any provision of this Agreement be deemed invalid or unenforceable, it will not affect the other provisions of this Agreement, and this Agreement will be construed in all respects as if the invalid or unenforceable provisions were omitted.
 7. *Notices.* All notices provided for or given under this Agreement will be in writing and will be deemed given when personally delivered or when mailed by certified mail, return receipt requested, to the last known address of the party.

To indicate their understanding of and agreement to the terms of this Agreement, the parties have executed this instrument on the ____ day of _____, 2015.

[NAME & TITLE]
Lexington-Fayette Urban County Government

J. Kathryn Peters, Executive Director
Kentucky Housing Corporation