

**Programmatic Agreement
Among The
Lexington Fayette Urban County Government, Kentucky
The Kentucky State Historic Preservation Officer,
And The
Advisory Council on Historic Preservation
For The Administration Of
Community Development Programs**

WHEREAS, the Lexington Fayette Urban County Government, State of Kentucky (“Urban County Government”) proposes to administer its HOME Investment Partnerships (“HOME”) of the Cranston-Gonzalez National Affordable Housing Act, as amended, at 42 U.S.C. 12701; its Emergency Solutions Grants Program (“ESG”) of the Stewart B. McKinney Homeless Assistance Act, at 42 U.S.C. 11301 (1988) as amended; Housing Opportunities for People with AIDS Program (HOPWA), the Lead Hazard Reduction Program (LHR), and its Community Development Block Grant (“CDBG”) program with funds from the U.S. Department of Housing and Urban Development (“HUD”) under Title I of the Housing and Community Development Act of 1974 pursuant to 24 CFR Part 58 (“Department of Housing and Urban Development: Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities; Final Rule”); and

WHEREAS, the Urban County Government has determined that the administration of these programs may have an effect on properties included in or eligible for inclusion in the National Register of Historic Places (“National Register”) and has consulted with the Kentucky State Historic Preservation Officer (“SHPO”), and the Advisory Council on Historic Preservation (“ACHP”) pursuant to 36 CFR 800.14(b) of the regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. 470f); and

WHEREAS, the Urban County Government uses these HUD funds for homeowner rehabilitation, emergency repairs, exterior façade rehabilitation, homebuyer assistance, purchase programs with both façade and rehabilitation components, housing development, new construction and rehabilitation activities, public facilities and public improvement, and demolition activities; and

WHEREAS, the Urban County Government is eligible to use these funds throughout Fayette County, which constitutes the Area of Potential Effect; and

WHEREAS, the Urban County Government Division of Grants and Special Programs and Division of Historic Preservation participated in the consultation and have been invited to

concur in this Programmatic Agreement; and

WHEREAS, ACHP has participated in consultation for this Agreement and is also a signatory; and (EDIT ACCORDING TO ACHP RESPONSE)

NOW, THEREFORE, the Urban County Government, the SHPO, and the ACHP agree that the programs shall be administered in accordance with the following stipulations to satisfy the Urban County Government's Section 106 responsibilities for all individual undertakings of the programs.

Stipulations

The Lexington Fayette Urban County Government shall ensure that the following measures are carried out:

I. Administration of this Programmatic Agreement

- A. The Urban County Government shall ensure that all projects covered by this Programmatic Agreement will be reviewed by a person meeting at a minimum the Secretary of the Interior's Professional Qualification Standards (48 FR 44738-9) and who has completed the ACHP's training course "The Section 106 Essentials" ("Preservation Professional"). This Preservation Professional, who may be an employee of either the Urban County Government or a Urban County Government related agency, will review all project plans and specifications involving historic sites or places as stipulated by the Urban County Government survey, will maintain individual project files showing compliance with this Programmatic Agreement, will monitor projects for conformance to the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings ("Standards"), including making on-site inspections, and will act as the Point of Contact for Section 106 compliance with the SHPO. The Urban County Government will consult with the SHPO to determine and ensure that the Preservation Professional meets the professional qualifications specified above.
- B. Each year the Urban County Government will notify the public of its current CDBG, HOME, HOPWA, LHR, and ESG programs, and make available for public inspection documentation on the programs. Included in this documentation will be information on the type(s) of activities undertaken with program funds during the prior year and activities projected for the current year; information on identified historic properties, and/or areas where historic properties may be present which might be affected by these activities; the amount of program funds available in the current program year; and how interested persons can receive further information on the program and advise

the Urban County Government, the SHPO, and the ACHP of any concerns they may have about program effects on historic properties.

II. Exempt Activities

A. No further review is required if the Preservation Professional determines that an individual program or covered undertaking is limited to:

(1) Repairs/additions to buildings less than 50 years of age which are not located within or adjacent to an Historic District, or near or adjacent to properties individually eligible for the National Register.

(2) Non-contributing buildings in a SHPO-approved surveyed historic district.

(3) Projects approved by the SHPO for the Historic Preservation Tax Credit Program, so long as the project remains active in the tax credit review process.

(4) Program activities that are limited solely to those listed below:

a. Disposition of historic properties when transferred with appropriate preservation covenants approved by the SHPO and requiring rehabilitation according to the Standards.

b. Maintenance, repair, or replacement in place of paving or line painting of streets, not including historic pavements such as brick or cobblestone, etc., except when replaced in kind.

c. Maintenance, repair, or replacement in place of sidewalks and curbs, not including historic pavements and curb materials such as cobblestone, limestone, or brick, except when replaced in kind.

d. Maintenance, repair, or replacement in kind and in place of street lights, traffic signals, and traffic signs.

e. Maintenance, repair, or replacement in place of existing utility lines, provided no historic pavements are disturbed.

f. Maintenance, repair, or replacement in place of existing drainage systems, provided no historic pavements are disturbed.

g. Rehabilitation work including any of the following: rebuilding in place of existing wheel chair ramps; installation of missing or damaged glass panes; caulking or weather-stripping; gutter repair or replacement if matching existing; painting in complementary color; installation of new furnace; all electrical work; all plumbing work; repair of existing concrete cellar floor; replacement in kind of asphalt roof shingles or other composite materials; installation of screens; repair of porch ceilings, steps, or railings if done in kind to match existing design and material; repair of cornice if done in kind to match existing design and material. Interior rehabilitation work that affects the exterior appearance of a building is not included in this exemption.

III. Identification and Evaluation

- A. In areas affected by projects covered under this agreement, the Urban County Government will continue to survey districts, sites, buildings, structures, and objects (hereafter "properties") that may meet the Criteria for listing in the National Register (36 CFR Section 60.6). The survey will be conducted in accordance with the "Guidelines for the Location and Identification of Historic Properties Containing Scientific, Prehistoric, Historical, or Archaeological Data" (36 CFR Part 66, Appendix B); the "Identification of Properties, General" (36 CFR Part 801, Appendix 1), and "Preservation Programs, Final Rule" (36 CFR Part 61). All information generated by these surveys will be forwarded to the SHPO, as provided in Stipulation V below.
- B. Each property or district that may be affected by projects covered under this agreement will be evaluated for National Register eligibility by the Urban County Government's Preservation Professional in consultation with the SHPO. The SHPO will respond to determination of eligibility requests within 30 days of receipt of adequate documentation.

(1) If the Urban County Government and SHPO agree on National Register eligibility, properties will be considered and treated accordingly until such time as new information becomes available or they may be reevaluated.

(2) If the Urban County Government and SHPO disagree on eligibility, or if there is any question as to whether a property may meet the Criteria, the

Urban County Government will request a determination of eligibility from the Secretary of the Interior in accordance with 36 CFR Section 63.2.

(3)The Urban County Government will keep a written record of the National Register evaluation for each property.

IV. Treatment of Historic Properties

- A. The Urban County Government may proceed with demolition or relocation of ineligible or noncontributing structures after review and approval by the Urban County Government's Preservation Professional, and after any SHPO consultation required by Stipulation III.B. above.
- B. The Urban County Government may proceed with any required rehabilitation of ineligible or noncontributing structures after review and approval by the Urban County Government's Preservation Professional, and after any SHPO consultation required by Stipulation III.B. above.
- C. The Urban County Government's Preservation Professional will review and approve rehabilitation activities on properties listed in or determined eligible for listing in the National Register. If the Preservation Professional determines that an individual rehabilitation plan meets the Standards, no further review by the SHPO is required, and the Urban County Government may proceed with rehabilitation.
- D. If the Urban County Government proposes rehabilitation that does not conform to the Secretary's Standards, the Urban County Government's Preservation Professional shall consult with the Kentucky SHPO to determine if the plans can be altered or revised in a way that would avoid or minimize negative impacts to historic properties. The Urban County Government will incorporate all recommendations of the Preservation Professional that are needed to make the plans conform to the Standards. If the SHPO and Urban County Government cannot agree on a renovation plan, the Urban County Government will request the comments of the ACHP.
- E. In consultation with the SHPO, the Preservation Professional shall review

and evaluate all non-emergency demolitions of properties listed in or determined eligible for listing in the National Register. The following information will be provided by the Urban County Government to the SHPO for review and comment:

- (1) Location and description of the property proposed for demolition or relocation.
- (2) Justification for the demolition or relocation. This must include references to any building code violations that cannot be corrected by rehabilitation, any liens against the property for such violations, and a description of why rehabilitation or other action is not feasible or prudent.
- (3) Estimates prepared by a qualified architect or other professional approved by the SHPO and Urban County Government Preservation Professional comparing the cost of rehabilitation to the cost of demolition and new construction. This should include the cost of property acquisition, demolition or moving costs, necessary relocation assistance, the cost of historic mitigation measures such as photography, measured drawings, architectural salvage, etc; and the cost of in-fill construction. In some cases, the additional costs of a professional structural assessment and/or archaeological investigations may need to be included.
- (4) Photographs of each elevation (including additional photos showing details of deteriorated areas) of sufficient quality and size to facilitate review along with any other supporting documentation, that will assist the SHPO in evaluating the demolition or relocation request.
- (5) A discussion of mitigation measures the Urban County Government will implement to compensate for the demolition of the historic property.
- (6) Views of interested parties, if any.

F. Within 30 calendar days of receipt of adequate documentation, the

Kentucky SHPO will review the information submitted and will either concur or object in writing to the proposed demolition or relocation to the Urban County Government. If the SHPO concurs in the demolition or relocation, the SHPO will either accept the proposed mitigation, or will specify additional measures that will be needed. Upon receipt of the SHPO's comments, the Urban County Government will either implement the SHPO's recommended mitigation measures and then proceed with the demolition/relocation, or the Urban County Government will continue consultation with the SHPO to see if there are alternate mitigation measures that would be accepted by both Urban County Government and SHPO. If the Urban County Government and SHPO cannot agree on proposed demolition or relocation plans, the Urban County Government will request the comments of the ACHP.

G. Upon receipt of notification from the Urban County Government's Chief Building Inspector, Fire Marshall, or Director of the Division of Code Enforcement that listed or eligible historic properties within the Urban County Government have been declared an imminent threat to health and safety, the Urban County Government will immediately notify the SHPO of the emergency and document the structure by taking photographs of each facade and any significant architectural details. The Urban County Government, coordinating with the Preservation Professional, may take other emergency mitigative actions, when possible and appropriate, such as architectural salvage, simple measured drawings, and archival research. Within 30 days after demolition, the Urban County Government will provide copies of this documentation to the SHPO. A copy of the appropriate Fire Marshall or Building Inspector report will be placed in the project file. The Urban County Government shall also notify the ACHP in writing of its decisions to demolish contributing structures or individually listed or eligible structures which are declared a significant public hazard in accordance with 36 CFR 800.12. **Properties demolished under Stipulation IV.G. must be true emergencies resulting, for example, from damage caused by fire, flood, or wind, etc. Demolition of structures that have gradual deterioration due to lack of maintenance and owner neglect do not qualify for expedited review under Stipulation IV.G., and should be treated under Stipulation IV.E. and F.**

H. Within or adjacent to an historic district, new construction or development, new alterations, or additions to existing historic structures will be responsive to the guidelines for new construction and development in the Standards.

(1) Designs and specifications for all new construction or development covered by the terms of this Programmatic Agreement will be reviewed by the Urban County Government's Preservation Professional, and then submitted to the SHPO for review and approval prior to execution of construction contract documents. Such new construction shall be compatible with the size, scale, material, and character of the neighborhood. The SHPO will review the documentation within thirty (30) calendar days and respond to the Urban County Government whether or not the new construction and/or development plans meet the Standards, or what modifications to the plans are needed for them to meet the Standards. The Urban County Government will incorporate the SHPO's recommendations in all final construction documents. If the Urban County Government and SHPO cannot agree on new construction or development plans, the Urban County Government will request the comments of the ACHP.

(2) In addition to proper scale, materials and size, in-fill construction should respect the historic streetscape of the surrounding neighborhood in terms of setback and lot size.

I. At any time, the Preservation Professional may consult with the SHPO concerning treatment of historic properties. Informal consultation is encouraged between the Preservation Professional and the SHPO or SHPO staff, especially concerning large or complex renovation and new construction projects. Technical assistance will be provided by SHPO staff upon request.

V. Treatment of Archaeological Properties

- A. Prior to any ground disturbance associated with program activities, with the exceptions stated in Stipulation II.A.(1) and II.A.(4) above, the Urban County Government shall submit documentation on the site to the Kentucky SHPO and request an opinion as to the need for an archaeological survey. This documentation shall include photographs of the project site, information concerning historic development of the site and details of any prior ground disturbance.
- B. If, after reviewing the documentation, the SHPO determines that a potential for significant archaeological resources exists that would be impacted by the

construction, then the Urban County Government will conduct an archaeological survey and evaluation of the area, consistent with the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation Projects, and the most current Kentucky SHPO's *Specifications for Conducting Fieldwork and Preparing Cultural Resource Assessment Reports*. The survey and evaluation will be undertaken in consultation with the SHPO.

- C. If resources discovered during the survey are determined to meet the Criteria for National Register eligibility, they will be avoided and preserved in place whenever feasible. When preservation in place is not feasible, the SHPO will be consulted and an archaeological mitigation plan, consistent with the ACHP's handbook, "Treatment of Archaeological Properties," and the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation will be developed and submitted to the SHPO for review and approval. Upon approval by the SHPO, the Urban County Government will ensure that the plan is implemented. If the Urban County Government and SHPO cannot agree concerning the treatment of eligible archaeological properties, the Urban County Government will request the comments of the ACHP.

VI. Resolution of Adverse Effects

- A. If the Urban County Government and SHPO agree upon how adverse effects to historic properties will be mitigated, the Urban County Government will document those mitigation measures that will be taken. A record of mitigation measures will be provided to the SHPO for each project that adversely affects historic properties.
- B. If the Urban County Government and SHPO cannot come to an agreement, or if the public objects, or if human remains are present within an undertaking's area of potential effect, the Urban County Government shall notify the ACHP and request its participation.

VII. Discovery

- A. If, after the start of an undertaking, any previously unidentified historic resources (including archaeological features or artifacts) are discovered, the Urban County Government will stop that portion of the project immediately, contact the SHPO, and treat those resources in accordance with Section 800.13 of the ACHP's

regulations.

VIII. Monitoring and Oversight

- A. Copies of all case documentation, including work write-ups, and before and after photographs, will be retained by the Urban County Government's Preservation Professional in individual case files. The Urban County Government will allow the Kentucky SHPO to inspect this documentation to verify adherence with the stipulations of this Programmatic Agreement, and upon written request, will provide the Kentucky SHPO and/or the ACHP with copies of specific case documentation.

- B. By September 30th each year, a summary report will be prepared and submitted to the ACHP and the Kentucky SHPO documenting all program activities for the year. The ACHP or the Kentucky SHPO may conduct an on-site inspection and evaluation of the activities carried out under this Programmatic Agreement. At the request of any signatory, an annual meeting may be scheduled to review the summary report and the Urban County Government's performance with respect to this Agreement. At any time should the SHPO determine the Urban County Government is not satisfactorily carrying out the terms of this Agreement, the SHPO shall consult with the Urban County Government in accordance with Stipulations IX. and/or X. to resolve the situation

- C. In addition, the Urban County Government will provide to the Kentucky SHPO the following information by September 30 of each year:
 - (1) Official Kentucky Site Inventory forms for each property surveyed pursuant to this Programmatic Agreement;
 - (2) Maps showing areas and properties surveyed;
 - (3) A list by street address of all properties surveyed and found to be ineligible or non-contributing;
 - (4) A list by street address of all properties surveyed and found to be individually eligible or contributing;
 - (5) For each individually eligible or contributing property, the Urban County

Government will submit:

- a. A statement of significance;
- b. A list of Contributing and non-contributing elements;
- c. A map showing the boundaries of the area determined eligible;
- d. At least one photograph of the property showing its primary facade. Additional photographs shall be included when there are multiple buildings on a site or a property contains unique or character-defining features on more than one elevation.

IX. Dispute Resolution

Should the SHPO or ACHP object within 30 days to any plans, specifications, reports or other actions submitted or undertaken pursuant to this Programmatic Agreement, the Urban County Government shall consult with the objecting party to resolve the objection. If the Urban County Government determines that the objection cannot be resolved, the Urban County Government shall request the further comments of the ACHP pursuant to 36 CFR 800.7(c). Any ACHP comment provided in response to such a request will be taken into account by the Urban County Government with reference only to the subject of the dispute; the Urban County Government's responsibility to carry out all actions under this Programmatic Agreement that are not the subjects of the dispute will remain unchanged.

X. Amendments, Termination, and Non-Compliance

- A. This Programmatic Agreement may be amended or modified at any time through mutual consent of the parties. The parties to the Agreement shall consult in accordance with 36 CFR Section 800.6(c)(7) to consider such revisions.
- D. Any party to this Programmatic Agreement may unilaterally terminate the Agreement by providing 60 (sixty) calendar day notice to the other parties of the Agreement in which specific reasons for termination are listed. Prior to the 60 (sixty) calendar day notice, the party initiating termination shall have pursued actions to avoid termination and/or taken measures to amend this Agreement.
- E. In the event this Programmatic Agreement is terminated, or the Urban County Government fails to carry out its terms, the Urban County Government will comply with 36 CFR 800.3 through 800.6 with regard to individual undertakings covered by the Programmatic Agreement.

XI. Renewal

This Programmatic Agreement will continue in force for Program Years 2012, 2013, 2014, 2015, and 2016. During Program Year 2016, it will be reviewed by the Urban County Government and the Kentucky SHPO for possible modifications,

termination, or extension. If not renewed or extended, this Programmatic Agreement terminates on June 30, 2016. No extension or modification will be effective unless all parties to the Programmatic Agreement have agreed to it in writing.

Execution and implementation of this Programmatic Agreement evidence that the Lexington Fayette Urban County Government has afforded the ACHP a reasonable opportunity to comment on the program and that the Lexington Fayette Urban County Government has taken into account the effects of the program on historic properties.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

BY: _____ Date: _____
John Fowler, Executive Director

LEXINGTON FAYETTE URBAN COUNTY GOVERNMENT

BY: _____ Date: _____
Jim Gray, Mayor

KENTUCKY STATE HISTORIC PRESERVATION OFFICER

BY: _____ Date: _____
Lindy Casebier, Acting Executive Director