

MODIFICATION #3 TO NEIGHBORHOOD STABILIZATION PROGRAM

FUNDING AGREEMENT

THIS MODIFICATION AGREEMENT (“Agreement”) is entered into this _____ day of _____, 2010, by the **COMMONWEALTH OF KENTUCKY, DEPARTMENT FOR LOCAL GOVERNMENT** (“DLG”), and the **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT** (“Recipient”).

WHEREAS, DLG and Recipient entered into a Neighborhood Stabilization Program (NSP) Funding Agreement No. 09N-043, executed October 20, 2009 (“Funding Agreement”), for the project known as the Lexington-Fayette Urban County Government Landbanking NSP Program (Project”) for funds under the federal NSP program administered by DLG; and

NOW THEREFORE, in consideration of the promises and mutual rights and obligations of the parties, the Funding Agreement is modified as follows:

1. Update Standard Terms and Conditions language to read as follows:

Memorandum of Agreement Terms and Conditions for Agreements
Between A State Agency and Other Governmental Body or Political Subdivision
Terms and Conditions
Revised January 2012

Cancellation clause:

Either party may cancel the contract at any time for cause or may cancel without cause on 30 days' written notice.

Funding Out Provision:

The state agency may terminate this contract if funds are not appropriated to the contracting agency or are not otherwise available for the purpose of making payments without incurring any obligation for payment after the date of termination, regardless of the terms of the contract. The state agency shall provide the contractor thirty (30) calendar days written notice of termination of the contract.

Reduction in Contract Worker Hours

The Kentucky General Assembly may allow for a reduction in contract worker hours in conjunction with a budget balancing measure for some professional and non-professional service contracts. If under such authority the agency is required by Executive Order or otherwise to reduce contract hours, the contract will be reduced by the amount specified in that document.

Access to Records

The state agency certifies that it is in compliance with the provisions of KRS 45A.695. "Access to contractor's books, documents, papers, records, or other evidence directly pertinent to the contract." The contractor, as defined in KRS 45A.030(9) agrees that the contracting agency, the Finance and Administration Cabinet, the Auditor of Public Accounts, and the Legislative

Research Commission, or their duly authorized representatives, shall have access to any books, documents, papers, records, or other evidence, which are directly pertinent to this contract for the purpose of financial audit or program review. Records and other prequalification information confidentially disclosed as part of the bid process shall not be deemed as directly pertinent to the contract and shall be exempt from disclosure as provided in KRS 61.878(1)(c). The contractor also recognizes that any books, documents, papers, records, or other evidence, received during a financial audit or program review shall be subject to the Kentucky Open Records Act, KRS 61.870 to 61.884.

Effective Date:

All Memorandum of Agreements are not effective until the secretary of the Finance and Administration Cabinet or his authorized designee has approved the contract and until the contract has been submitted to the government contract review committee. However, Memoranda of Agreements \$50,000 or less are exempt from review by the committee and need only be filed with the committee within 30 days of their effective date for informational purposes only as provided under KRS 45A.700.

KRS 45A.695(7) Payments on personal service contracts and memoranda of agreements shall not be authorized for services rendered after government contract review committee disapproval, unless the decision of the committee is overridden by the secretary of the Finance and Administration cabinet or agency head, if the agency has been granted delegation authority by the secretary.

Violation of tax and employment laws

KRS 45A.485 requires the contractor to reveal to the Commonwealth, prior to the award of a contract, any final determination of a violation by the contractor within the previous five (5) year period of the provisions of KRS chapters 136, 139, 141, 337, 338, 341, and 342. These statutes relate to the state sales and use tax, corporate and utility tax, income tax, wages and hours laws, occupational safety and health laws, unemployment insurance laws, and workers compensation insurance laws, respectively.

To comply with the provisions of KRS 45A.485, the contractor shall report any such final determination(s) of violation(s) to the Commonwealth by providing the following information regarding the final determination(s): the KRS violated, the date of the final determination, and the state agency which issued the final determination.

KRS 45A.485 also provides that, for the duration of any contract, the contractor shall be in continuous compliance with the provisions of those statutes which apply to the contractor's operations, and that the contractor's failure to reveal a final determination as described above or failure to comply with the above statutes for the duration of the contract, shall be grounds for the Commonwealth's cancellation of the contract and the contractor's disqualification from eligibility for future state contracts for a period of two (2) years.

Subrecipient must check one:

_____ The contractor has not violated any of the provisions of the above statutes within the previous five (5) year period.

_____ The contractor has violated the provisions of one or more of the above statutes within the previous five (5) year period and has revealed such final determination(s) of violation(s). A list of such determination(s) is attached

2. Exhibit A of the Agreement is modified to read as follows:

EXHIBIT A TO NSP FUNDING AGREEMENT

BUDGET

Rider to Section 1-A(2). In addition to **Subrecipient's** Proposal for Commonwealth Neighborhood Stabilization Program assistance, "Proposal" shall include the following submittals:

Written clarifications requested by/provided to DLG during pre-award review
Evidentiary materials

Rider to Section 2-A. The amount of this NSP1 allocation is:

Total Grant Amount: \$1,027,072

The approximate use of these funds will be

Administrative funds:	\$ 52,461
Eligible Use C:	\$550,848
Eligible Use D:	\$ 86,242
Eligible Use E:	\$337,521

Subrecipient may, based on market conditions and availability of NSP-eligible residential properties, expend greater or lesser amounts for each eligible use specified above. However, cumulative changes that result in a shift of funds equal to 35% or more of any single eligible use will require submission of a budget amendment to, and approval of a budget amendment by, the Department for Local Government. Further, no change may result in expenditures greater than the total allocation of NSP funding.

DELIVERY OF NOTIFICATIONS

Rider to Section 8-A. The address of the **Subrecipient** for the purposes of communications relating to this Agreement shall be the following:

The Honorable James Gray, Mayor
Lexington-Fayette Urban County Government
200 East Main Street
Lexington, KY 40507

Contact

Irene Gooding
Grants Manager
Lexington-Fayette Urban County Government
200 East Main Street
6th Floor
Lexington, KY 40507
ireneg@lfucg.com

DESCRIPTION OF SUBRECIPIENT ACTIVITIES

Rider to Section 1-C(10). "Subrecipient Activities" for this Project shall consist of the following:

1. The **Subrecipient** agrees to perform activities as stated in the NSP1 proposal and given preliminary approval on April 2, 2009, as summarized below:

Eligible Use C: Acquire approximately fourteen (14) foreclosed properties, purchase and hold for a maximum of ten (10) years from date of acquisition. For the purposes of the NSP, the land bank will operate in a specific, defined geographic area. It will purchase properties that have been abandoned or foreclosed upon and maintain, assemble, facilitate redevelopment of, market, and dispose of the land-banked properties.

Eligible Use D: Demolish approximately twelve (12) blighted structures in Fayette County.

Eligible Use E: Acquire and redevelop (rehabilitate or reconstruct) approximately five fifteen (15) vacant or demolished properties. Redevelopment may include conversion to green space / community gardens for properties that are not developable under current planning and zoning requirements.

2. **Subrecipient** agrees to put a deed restriction on all properties in the land bank that limits usage to NSP eligible activities of single- or multi-family home ownership or rental property development for households with incomes at or below 120% of area median. Permanent housing created through **Subrecipient's** use of NSP funds may be for either rental or homeownership activity, as defined in the Commonwealth of Kentucky's Substantial Amendment to its Action Plan.
3. The **Subrecipient** will give priority to addressing residential foreclosed or abandoned properties in Census Tract 19, and Census Tract 2, when feasible. Furthermore, the **Subrecipient** shall focus on houses and properties located in Census Tract Block Groups with a HUD risk score of 8, 9, or 10. If financing, renovating, or rehabilitating a house or

property in a tract and block group with a lower risk score (other than the two indicated above) is necessary to accomplish the federal goals of stabilizing neighborhoods distressed by the foreclosure crisis, the **Subrecipient** may do so with prior permission from DLG.

NSP funds will be used to stabilize distressed neighborhoods in the Census tracts and block groups as identified in the baseline funding agreement.

4. The **Subrecipient** agrees to provide all necessary administration to the project to assure compliance with all applicable state, federal and local statutes, as set forth in this funding agreement. The **Subrecipient** shall expend no more than \$52,461 of NSP1 funds to cover administrative costs of the project.

TIME OF PERFORMANCE

1. The **Subrecipient** had fourteen (14) percent of its funds, or \$186,460 (One Hundred Eighty-Six Thousand, Four Hundred Sixty Dollars) contractually obligated to specific unit addresses (or for services for specific NSP-assisted properties) as of March 31, 2010.
2. The **Subrecipient** agrees to have seventy-five percent (75%) of the funds (\$750,000) contractually obligated to specific unit addresses (or for services for specific NSP-assisted properties) by May 15, 2010.
3. The **Subrecipient** agrees to have 100 percent (100%) of the funds (\$1,000,000) contractually obligated to specific unit addresses (or for services for specific NSP-assisted properties) by June 30, 2010.
4. Should the above obligation deadlines not be met, **Subrecipient** agrees that it will:
 - A. Accept and execute a modification to this funding agreement reducing the cumulative funds awarded to an amount to be determined by the Department for Local Government, based on the **Subrecipient's** actual obligation of funds at the benchmark dates in (1), (2), and (3) above; and
 - B. Accept and execute a modification to this funding agreement reducing the cumulative funds awarded the amount of contractually-obligated funds, plus any funds required to complete in-process units, with such amount to be determined by the Department for Local Government on or after June 15, 2010.
5. One hundred percent (100%) of the **Subrecipient's** NSP allocation must be expended by December 31, 2012, including completion of construction of all Eligible Use E redevelopment units. All produced units must be rented or sold, as applicable, no later than February 1, 2013. Unexpended funds are subject to recapture as of January 2, 2013.

3. **Ratification of Funding Agreement**

In making this Amendment, DLG and Subgrantee hereby ratify and affirm the continued enforcement of the provisions of the Funding Agreement except as explicitly modified herein.

EXECUTED BY THE PARTIES THIS ____ DAY OF _____, 2012.

COMMONWEALTH OF KENTUCKY

SUBGRANTEE

BY:

BY:

Tony Wilder, Commissioner
Department for Local Government

Subgrantee CEO
(Title/Agency)

DATE _____

DATE _____

Examined as to form and legality only:

Examined as to form and legality only:

Counsel for the Dept. for Local Gov't.

Counsel for Subgrantee



Commonwealth of Kentucky
Finance and Administration Cabinet
OFFICE OF THE SECRETARY
Room 383, Capitol Annex
702 Capital Avenue
Frankfort, KY 40601-3462
(502) 564-4240
Fax (502) 564-6785

Steven L. Beshear
Governor

Lori H. Flanery
Secretary

SECRETARY'S ORDER 11-004

FINANCE AND ADMINISTRATION CABINET

Vendor Document Disclosure

WHEREAS, in order to promote accountability and transparency in governmental operations, the Finance and Administration Cabinet believes that a formal review process should be created whereby the Finance and Administration Cabinet would provide oversight and direction to an agency of the Commonwealth that is in a dispute with a vendor regarding documents that it believes are being improperly withheld by the vendor and are necessary to conduct a thorough review of the vendor's activities pursuant to said contract; and

WHEREAS, KRS 42.014 and KRS 12.270 authorizes the Secretary of the Finance and Administration Cabinet to establish the internal organization and assignment of functions which are not established by statute relating to the Finance and Administration Cabinet; further, KRS Chapter 45A.050 and 45A.230 authorizes the Secretary of the Finance and Administration Cabinet to procure, manage and control all supplies and services that are procured by the Commonwealth and to intervene in controversies among vendors and state agencies; and

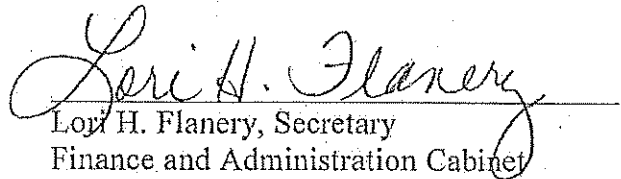
NOW, THEREFORE, pursuant to the authority vested in me by KRS 42.014, KRS 12.270, KRS 45A.050, 45A.230, and 200 KAR 5:314, I, Lori H. Flanery, Secretary of the Finance and Administration Cabinet, do hereby order and direct the following:

- I. Upon the filing of a Petition for Determination with the Finance and Administration Cabinet by an agency of the Commonwealth, the Finance and Administration Cabinet ("FAC") shall formally review any dispute arising where the agency has requested documents from a vendor that holds a state contract and the vendor has refused access to said documents under a claim that said documents are not directly pertinent or relevant to the agency's inquiry upon which the document request was predicated.
- II. Upon the filing of a Petition for Determination from an agency of the Commonwealth, the FAC shall formally review any situation where the agency has requested documents that the agency deems necessary to conduct audits,

investigations or any other formal inquiry and a dispute has arisen as to what documents are necessary to conclude the inquiry.

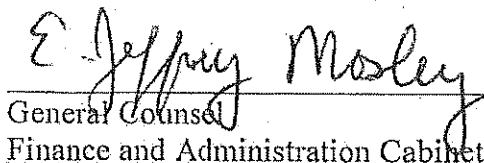
- III. Upon the filing of a Petition for Determination by an agency of the Commonwealth pursuant to Section I or Section II, the FAC shall consider the request from the Executive Branch agency and the position of the vendor or party opposing the disclosure of the documents, applying any and all relevant law to the facts and circumstances of the matter in controversy. After FAC's review is complete, FAC shall issue a Determination which sets out FAC's position as to what documents and/or records, if any, should be disclosed to the requesting agency. The Determination shall be issued within 30 days of receipt of the request from the agency. This time period may be extended for good cause.
- IV. If the Determination concludes that documents are being wrongfully withheld by the vendor or other party opposing the disclosure from the state agency, the private vendor shall immediately comply with the FAC's Determination. Should the vendor or other party refuse to comply with FAC's Determination, then the FAC, in concert with the requesting agency, shall pursue any and all options that it possesses to obtain the documents in question, including, but not limited to the following:
- a. Initiating discussions with the vendor to obtain the documents determined to be necessary for the inquiry;
 - b. Terminating the vendor's contract; or
 - c. Filing an action jointly or singularly against the vendor in a court of appropriate jurisdiction to obtain a court order mandating the disclosure of the documents determined to be necessary for the inquiry.
- V. Any provisions of any prior Order that conflicts with the provisions of this Order shall be deemed null and void.

THIS ORDER SHALL BECOME EFFECTIVE UPON EXECUTION.


Lori H. Flanery, Secretary
Finance and Administration Cabinet

Dated: August 25, 2011

APPROVED FOR FORM AND LEGALITY:


General Counsel
Finance and Administration Cabinet