

Memorandum of Understanding

Between the Lexington-Fayette Urban County Government and Lexington Habitat for Humanity
for the completion of Environmental Reviews.

This Memorandum of Understanding is made on October ____, 2019, by and between Lexington Habitat for Humanity, a Kentucky nonprofit corporation, whose address is 700 E. Loudon Avenue, Lexington, KY 40505 (hereinafter referred to as LHFH) and the Lexington-Fayette Urban County Government, an urban county government pursuant to KRS 67A, defined as the Responsible Entity under 24 C.F.R. §58.2 (7) (ii)(B) (hereinafter referred to as RE).

WHEREAS, LHFH may elect to pursue housing projects and/or activities with federal financial assistance subject to environmental reviews pursuant to the National Environmental Policy Act of 1969 (NEPA) and implementing regulations of the Council on Environmental Quality, including but not limited to the regulations at 40 CFR Parts 1500-1508, and implementing regulations of the U.S. Department of Housing and Urban Development (HUD), including but not limited to HUD's regulations at 24 CFR Part 58; and

WHEREAS, as the recipient of federal financial assistance, LHFH may secure assistance for completing environmental reviews by the unit of general local government where the project is located as the RE authorized to assume environmental review obligations pursuant to 24 CFR 58.2(a)(7)(ii)(B); and

WHEREAS, the RE certifies it is authorized to: (1) assume responsibility for environmental review, decision making and action under NEPA and each provision of law designated in 24 CFR 58.5 applicable to any and all of the HUD financial assistance awarded to LHFH; (2) accept jurisdiction of the Federal courts for enforcement of these environmental responsibilities; and (3) execute the certification portion of HUD's Request for Release of Funds (RROF) and certifications as set forth in 24 CFR 58.4, 58.13, and 58.71; and

WHEREAS, LHFH requested assistance from the RE to complete the environmental review record with respect to LHFH's projects or activities pursuant to the conditions and provisions set forth in this MOU and the RE accepts responsibility to act as the responsible Federal agency under NEPA and the laws and authorities in 24 CFR 58.5 with respect to said projects and activities.

NOW THEREFORE, in consideration of the mutual promises and the terms and conditions set forth below, LHFH and RE hereby agree as follows:

Article 1. Incorporation of recitals: The recitals sets forth above are incorporated by reference as if fully set forth herein and made a part hereof.

Article 2. Duties and Responsibilities of RE:

1. RE will perform and/or manage all environmental reviews and prepare all necessary documentation in support of the environmental review record for all activities pursuant to the

LHFH projects and any accompanying documents necessary to be submitted to HUD, in full compliance with:

- a) HUD's "Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities" (24 CFR Part 58);
 - b) Section 102 of NEPA;
 - c) Related provisions of the Council on Environment Quality regulations contained in 40 CFR Parts 1500 through 1508; and
 - d) All other applicable Federal and State regulations.
2. Where appropriate and necessary in the environmental review process, RE will issue Findings Of No Significant Impact (FONSI) or Findings Of Significant Impact, determine whether to hold public hearings, prepare environmental impact statements and records of decision, issue notices of FONSI and notices of intent to request release of funds, and prepare requests for release of funds.
 3. RE may retain consultants and experts for special reviews or investigations and obtain other outside services deemed necessary by RE to its functions hereunder. Prior to retaining any such experts, consultants or outside services, RE shall discuss the need for and scope of such work or services with LHFH. LHFH shall pay the cost of any such experts, consultants or outside services as eligible activities.

Article 3: Duties and Responsibilities of LHFH

1. LHFH procures at LHFH's expense and provides RE with all available project and environmental information needed by RE in connection with activities pursuant to this MOU, including, without limitation, existing relevant information and any reports of investigation or study required to conduct an environmental review consistent with law and regulations.
2. LHFH provides RE with documentation that adequately describes the full scope, purpose, and interrelationships of the subject HUD assisted project, which may include privately financed or non-federally assisted LHFH financing, and any other documents and/or information requested by RE that RE reasonably believes is necessary to perform services required under this MOU and that are within LHFH's possession or control.
3. LHFH serves as liaison with local community groups and residents regarding all aspects of RE services under this MOU, including, but not limited to, scheduling meetings and participating in public meetings. LHFH provides the RE with prior written notice of all meetings related to MOU services in order to allow the RE the opportunity to participate in such meetings.

4. LHFH reimburses RE for expenses incurred for performing services under this MOU, including, but not limited to:
 - a. Costs of publishing notices;
 - b. Necessary travel expenses;
 - c. Postage and express package delivery charges;
 - d. Fees and expenses of experts, consultants and outside services retained by the RE; and
 - e. Actual costs incurred associated with any surveys or investigations.
5. LHFH monitors environmental mitigation or procures such services to ensure compliance with environmental conditions specified in the authorization to use HUD funds or HUD approvals.
6. LHFH provides the Five Year and Annual Plans to the RE in order to facilitate integration between RE planning and LHFH activities and projects that require environmental reviews, including development, modernization or other capital activities.
7. LHFH communicates to stakeholders the requirements for environmental reviews before any partner or stakeholder in the development makes a choice-limiting action upon submission of an application for HUD financial assistance.

Article 4. Agreement Terms

1. This MOU is effective for a period of five (5) years or until terminated by LHFH or RE pursuant to the provisions of the MOU.
2. LHFH may terminate this MOU at any time by giving 120 days written notice to RE.
3. RE may terminate this MOU at any time by giving 120 days written notice to LHFH.

Article 5. Conditions

1. No official, employee or agent of either party shall be charged personally by the other or by an assignee or subcontractor with any liability or expenses of defense or be held personally liable under any term or provision of this MOU, because of such party's executing or attempted execution of this MOU, or because of any breach thereof.

This MOU constitutes the entire agreement between the parties with respect to the subject matter hereof, and no other warranties, inducements, considerations, promises, or interpretations shall be implied or impressed upon this MOU that are not expressly addressed herein.

2. No changes or modifications of this MOU are binding unless made in writing and executed by the duly authorized officers of both LHFH and RE.
3. LHFH and RE shall at all times observe and comply with all applicable laws, ordinances, rules, regulations and executive orders of the federal, state and local government now existing or hereinafter in effect, which may in any manner affect the performance of this MOU.
4. Whenever under this MOU either party, by a proper authority, waives either party's performance in any respect or waives a requirement or condition of either party's performance, the waiver so granted, whether express or implied, shall only apply to the particular instance and shall not be deemed a waiver forever for subsequent instances of the performance, requirement or condition. No such waiver shall be construed as a modification of the MOU regardless of the number of times either party may have waived the performance, requirement or condition.

ARTICLE 6. Authority and notice

1. Each person signing this MOU represents and warrants that such person has the requisite power and authority to enter into, execute, and deliver this MOU and that this MOU is a valid and legally binding and enforceable obligation in accordance with its terms.
2. All verbal and written communication, including required reports and submissions, shall be transmitted between RE and LHFH as noted below.

Any notices sent to RE shall be electronically transmitted to: Director of Grants and Special Programs.

Any notices sent to LHFH shall be electronically transmitted to CEO.

IN WITNESS WHEREOF, the Lexington-Fayette Urban County Government and Lexington Habitat for Humanity have executed this Memorandum of Understanding as of the date first written above and under the laws of the Commonwealth of Kentucky.

Lexington-Fayette Urban
County Government

Lexington-Fayette Habitat
for Humanity

Name: Linda Gorton

Title: Mayor

Name: Rachel Childress

Title: Executive Director

