

MEMORANDUM OF AGREEMENT

This MEMORANDUM OF AGREEMENT (hereinafter the “Memorandum”) is made and entered into this [] day of September, 2013, by and between LEXINGTON FAYETTE URBAN COUNTY GOVERNMENT, an urban county government within the Commonwealth of Kentucky, with an address of 200 East Main Street, Lexington, Kentucky 40507, (hereinafter “LFUCG”) and the OFFICE OF THE ATTORNEY GENERAL OF KENTUCKY, a Constitutional Office within the Commonwealth of Kentucky, with an address of 700 Capital Avenue, Suite 118, Frankfort, KY 40601, (hereinafter “Office of the Attorney General”).

W I T N E S S E T H:

WHEREAS, in February, 2013, the Office of the Attorney General settled a legal dispute with Lender Processing Services, Inc., LPS Default Solutions, Inc., and DocX LLC (collectively, “LPS”) for its questionable foreclosure practices relating to Kentucky residents;

WHEREAS, pursuant to the terms of the LPS Settlement, the Office of the Attorney General is charged with distributing settlement proceeds to foreclosure relief and housing programs, including housing counseling, legal assistance, foreclosure prevention programs and hotlines, foreclosure mediation, and community blight remediation;

WHEREAS, successful strategies to combat the negative impact of the foreclosure crisis must include one or all of the following components: preventing foreclosures and keeping families in their homes, stabilizing neighborhoods where foreclosures have occurred, helping the affected families recover, demolishing blighted and abandoned structures, and providing more affordable, stable and reliable housing choices throughout the Commonwealth; and

WHEREAS, foreclosures in Fayette County account for a significant percentage of the foreclosures filed statewide each year which results in increasing numbers of displaced families and abandoned properties, in turn leading to blight, lower housing values in the surrounding neighborhood, and increased illegal and unsafe conditions; and

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, and for other good and valuable consideration, the receipt, mutuality, and sufficiency of which is hereby acknowledged by the parties hereto, LFUCG and the Office of the Attorney General agree as follows:

SECTION 1. DEFINITIONS

“Programs” shall mean any of the programs identified in Section 3 as beneficiaries of funds from Office of the Attorney General’s distribution of the proceeds of the LPS Settlement that are intended to prevent foreclosures and keep families in their homes, stabilize neighborhoods where foreclosures have occurred, help the affected families recover, demolish blighted and abandoned structures, and provide more affordable, stable, and reliable housing choices throughout the Commonwealth.

SECTION 2. OBLIGATIONS OF THE OFFICE OF THE ATTORNEY GENERAL

The Office of the Attorney General covenants and agrees to undertake the following obligations:

A. Pursuant to this Memorandum, the Office of the Attorney General agrees to disburse Seven Hundred Fifty Nine Thousand One Hundred and Twenty Five Dollars (\$759,125.00) to LFUCG to fund and administer the Programs identified in this Memorandum of Agreement.

B. The Office of the Attorney General shall possess the right to inspect and audit records at any time associated with any of the Programs by providing LFUCG at least two (2) days' advance written notice of its intent to do so.

SECTION 3. OBLIGATIONS OF LFUCG

LFUCG covenants and agrees to administer the following Programs with the use of the funds identified in Section 2 through either its departments/divisions or by contract or grant with an external entity. In any instance where LFUCG contracts or grants with an external entity to administer Programs under the terms of this Memorandum of Agreement, LFUCG must execute a written agreement with the external entity that is subject to the approval of the Office of the Attorney General. No funds shall pass from LFUCG to any external entity unless and until the Office of the Attorney General, in writing, assents to the terms of the written agreement between LFUCG and the external agency.

LFUCG covenants and agrees to administer Seven Hundred Fifty Nine Thousand One Hundred and Twenty Five Dollars (\$759,125.00) of the Commonwealth of Kentucky's share of the LPS Settlement to create or enhance programs that: provide assistance to individuals who have been impacted by foreclosure; provide incentives for acquisition, rehabilitation and/or resale or rental of properties that have been the subject of foreclosure; and counsel individuals facing foreclosure or trying to rebuild credit following a foreclosure. All of these uses coincide with successful strategies to combat the negative impact of the foreclosure crisis.

None of the LPS Settlement funds distributed pursuant to the terms of this Memorandum of Agreement shall be directly distributed to any entity, homeowner, individual, agency or external agency residing or otherwise geographically located outside of the Commonwealth of Kentucky.

**PROGRAM 1: BUILD AFFORDABLE HOUSING FOR RESIDENTS
DISPLACED BY THE NEWTOWN PIKE EXTENSION
PROJECT.**

In 2007, LFUCG, in partnership with the Federal Highway Administration and the Kentucky Transportation Cabinet, began working on an extension of Newtown Pike. LFUCG will use funds to construct homes for residential homeowners displaced by the Newtown Pike Extension Project and for other low-income, first-time homeowners. An estimated 16 housing units will be constructed. Land and infrastructure (streets, sidewalks, utilities) costs will be supported by U.S. Department of Transportation funds. Displaced homeowners will be “made whole” per the uniform relocation and real property acquisition act. With HOME Investment Partnerships Program dollars, LFUCG will support the ownership portion for other low-income buyers through either a subsidy to the buyer or a development subsidy; however, there is a serious gap between the cost of housing and affordability by low-income households. Buyers of these units will enter into land leases with the Community Land Trust. Estimated construction cost of these units will be \$150,000-\$165,000 per unit.

Use of HOME Funds. Federal home dollars are made available through Title II of the of the Cranston-Gonzalez National Affordable Housing Act, as amended, the purpose of which is to expand the supply of decent, safe, sanitary, and affordable housing, with primary attention to rental housing, for very low-income and low-income families. Based upon federal appropriations and a formula, LFUCG is allocated federal funds under this program. Formula cities under HOME are called participating jurisdictions. Participating jurisdictions must provide a cash match equal to 25% of the federal program funds awarded. The complete regulations are found at 24 CFR Part 92.

HOME funds may be used by a participating jurisdiction to provide incentives to develop and support affordable rental housing and homeownership affordability through the acquisition of real property (including assistance to homebuyers), new construction, reconstruction, or moderate or substantial rehabilitation of non-luxury housing with suitable amenities, including real property acquisition, site improvements, conversion, demolition, and other expenses, including financing costs, relocation expenses of any displaced persons, families, businesses, or organizations, to provide tenant-based rental assistance, including security deposits; to provide payment of reasonable administrative and planning costs; and to provide for the payment of operating expenses of community housing development organizations. The housing must be permanent or transitional housing, and includes permanent housing for disabled homeless persons, and single-room occupancy housing.

Funding. The Office of the Attorney General will provide LFUCG with \$230,000 in necessary funding which is to be used as the local cash match for federal HOME funds towards the construction of up to eight housing units for residential homeowner’s displaced by the Newtown Pike Extension Project and/or low-income, first-time homeowners.

PROGRAM 2: BUILD AFFORDABLE HOUSING FOR LOW AND VERY LOW INCOME RENTERS IN PARTNERSHIP WITH THE URBAN LEAGUE AND THE FAYETTE COUNTY LOCAL DEVELOPMENT CORPORATION.

Since its inception in 1981, the Fayette County Local Development Corporation (“FCLDC”) has concentrated on development in the core, inner-city neighborhoods of the East End area of Lexington. The FCLDC will partner with the Urban League of Lexington-Fayette Incorporated to provide these services. Boarded and blighted houses, along with trash strewn vacant lots, have disproportionately marked the East End area, and this proposal will attempt to remedy those types of problems.

The funds allocated under this Program will be leveraged with the HOME funds received through LFUCG’s Division of Grants and Special Programs, and also with commercial financing and other available sources of funding, to develop safe and contemporary affordable housing for low and very low income renters.

Funding: The Office of the Attorney General will provide LFUCG with \$100,000 in necessary funding which is to be utilized in conjunction with FCLDC and/or the Urban League for property acquisitions to build and/or acquire housing for low-income renters.

PROGRAM 3: SUPPORT THE HOPE CENTER, A HOMELESS SHELTER THAT PROVIDES SERVICES TO MORE THAN 2000 MEN EACH YEAR.

Hope Center is a private, nonprofit organization, which coordinates and provides life sustaining/life rebuilding services to Lexington’s homeless and at-risk persons. The Center is the primary men’s homeless shelter for Lexington, serving more than 2,000 homeless men each year. The Center provides basic needs such as food, clothing, and shelter, while also addressing recovery services.

The Hope Center is located at 360 West Loudon Avenue in Lexington. The building is over twenty years old and needs a new HVAC system to better service the building, plumbing repairs, and measures to increase and provide for proper ventilation. Two years ago, the Center received a \$250,000 CDBG grant through LFUCG. With this funding, the Center began building renovations, including upgrading the kitchen and expanding bathroom/shower facilities. LFUCG requested \$200,000 in CDBG funds for FY 2014 to continue these renovations. However, even if these additional CDBG funds are received, the Hope Center also needs an additional \$125,000 to complete necessary repairs and renovations.

Funding: The Office of the Attorney General will provide LFUCG with \$125,000 in necessary funding to be used in conjunction with any CDBG funds for the repair and renovation of the men’s homeless shelter located at 360 West Loudon Avenue.

PROGRAM 4: SUPPORT THE SALVATION ARMY OF LEXINGTON, KENTUCKY IN PROVIDING EMERGENCY SHELTER AND TRANSITIONAL LIVING SPACE

The Salvation Army of Lexington is a private, nonprofit organization, which coordinates and provides life sustaining/life rebuilding services to Lexington's homeless, at-risk individuals and families. The organization operates a 152-bed comprehensive emergency shelter and transitional living center for families and single women. There are 18 family units and 11 dormitory rooms for single women. The Salvation Army provides for basic needs such as food, clothing, and shelter, while assisting with recovery services and developing action plans. In 2012, the Salvation Army of Lexington experienced a 25% percent increase in homeless women and children seeking emergency shelter. The Shelter housed 1,566 people (unduplicated), including 1,127 adults and 439 children.

Additional funding will enhance support for the emergency shelter and transitional living center and assist homeless families and single women in obtaining permanent housing.

Funding: The Office of the Attorney General will provide LFUCG with \$50,000 in necessary funding to be used in support of the Salvation Army of Lexington's emergency shelter and transitional living center.

PROGRAM 5: PARTNER WITH HABITAT FOR HUMANITY TO PROVIDE HOUSING FOR LOW INCOME FAMILIES IN FAYETTE COUNTY.

Lexington Habitat for Humanity, Inc. is an ecumenical Christian ministry partnering with volunteers and donors to eliminate substandard housing. Families in need achieve homeownership by purchasing simple, decent affordable homes they help build with community partners. Families are selected based on need, ability to pay, and willingness to partner. Habitat for Humanity serves families with income below 60% of area median income for Fayette County. According to census data from 2010, there were 42,448 families in Lexington below 60% of area median income.

Funding: The Office of the Attorney General will provide LFUCG with \$125,000 in necessary funding to be used in conjunction with Habitat for Humanity in order to construct at least two (2) houses for qualified low-income families.

PROGRAM 6: FUND THE COMMUNITY WIDE HOUSING REHABILITATION AND EMERGENCY REPAIR PROGRAM.

Code enforcement violations involving neglected, blighted, run-down and/or abandoned properties are one of top complaints received by LFUCG's call center. These properties frequently reach a point where the foreclosure actions are brought. In many instances, the property owner has lost the ability to afford to make repairs due to declining health, the loss of a job, or the death of a loved one. To address these situations, LFUCG offers two programs to assist property owners. The programs are the Housing Rehabilitation Program and the Community- Wide Emergency Repair Program.

Both programs assist qualified homeowners with necessary repairs. Eligibility for the programs is based on income and family size. The Housing Rehabilitation Program is designed to help homeowners bring their houses up to the standards of the housing code. The program uses a "no frills" approach designed to make homes safe, warm, dry and protected from the elements. This program makes available money and technical assistance to hire contractors for home repairs. The Housing Emergency Repair Program is designed to assist homeowners with emergency repairs through deferred loans up to \$5,000. Qualifying items for emergency assistance include electrical, plumbing, heating, and AC systems. Funding will assist low-income homeowners with home repairs. Code enforcement violations may be addressed and any property liens may be reduced or forgiven depending on the situation.

Funding: The Office of the Attorney General will provide LFUCG with \$129,125 in necessary funding to be used to assist low-income homeowners with repairs as part of LFUCG's housing repair/rehabilitation programs.

SECTION 4. MUTUALITY OF OBLIGATIONS

A. The Office of the Attorney General and LFUCG agree that the obligations imposed upon each are for the benefit of the Office of the Attorney General and LFUCG and that the timely fulfillment of each and every obligation in accordance with this Memorandum of Agreement is necessary. The failure of a party to fulfill its obligations under this Memorandum of Agreement or the failure of any event to occur by the date established by this Memorandum of Agreement shall constitute a breach of this Memorandum of Agreement unless the fulfillment of such obligation is waived or modified by written agreement of the parties.

B. Except as may otherwise be provided herein, each party to this Memorandum of Agreement shall be solely responsible for any costs incurred in fulfilling its obligations under this Memorandum of Agreement, and no party shall have any claim against any other party for reimbursement of such costs, whether or not any party is in default.

C. Waiver by either party of performance by the other party of any of the provisions of this Memorandum of Agreement shall not be construed as a waiver of any further right to insist upon full performance of the terms of this Memorandum of Agreement.

D. Once this Memorandum of Agreement is executed, the parties may terminate the agreement only for just cause.

SECTION 5. TERM OF MEMORANDUM

This Memorandum of Agreement shall be effective as of the date first written above and shall terminate upon completion of the obligations by the respective parties but no later than three (3) years from the effective date of this agreement, unless an extension is agreed to mutually by such parties.

SECTION 6. MISCELLANEOUS PROVISIONS

A. This Memorandum of Agreement may be signed by each party upon a separate copy, and in such case one counterpart of this Memorandum of Agreement shall consist of a sufficient number of such copies to reflect the signature of each party hereto. This Memorandum of Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and it shall not be necessary in making proof of this Memorandum of Agreement or the terms and conditions hereof to produce or account for more than one of such counterparts.

B. The headings set forth in this Memorandum of Agreement are for convenience or reference only, and the words contained therein shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction or meaning of the provisions of this Memorandum of Agreement.

C. The terms and conditions of this Memorandum of Agreement shall be binding upon and shall inure to the benefit of the successor and assigns, respectively, of the parties. This provision shall not be construed to permit assignment by any party of any of its rights and duties under this Memorandum of Agreement, which assignment shall be prohibited except with the prior written consent of the parties hereto.

D. This Memorandum of Agreement shall not be amended, modified, or supplemented except by a written agreement duly executed by both parties.

E. This Memorandum of Agreement sets forth the entire understanding of the parties with respect to the subject matter hereof, supersedes all existing agreements among them concerning the subject matter hereof.

F. Time is of the essence in the performance of each of the terms and conditions of this Memorandum of Agreement.

G. The parties agree that before filing any suit, action or proceeding with respect to a dispute arising out of or related to the terms and conditions of this Memorandum of Agreement, or any other agreement subsequently executed which arises or derives herefrom, they will attempt to resolve said dispute by participating in good faith in non-binding mediation.

H. The parties agree that any suit, action or proceeding with respect to this Memorandum of Agreement may only be brought in or entered by, as the case may be, the courts of the Commonwealth of Kentucky situated in Frankfort, Franklin County, Kentucky; or the United States District Court for the Eastern District of Kentucky, Frankfort Division.

I. All notices, requests, demands, waivers, and other communications given as provided in this Memorandum of Agreement shall be in writing, and shall be addressed as follows:

If to LFUCG: Mayor, Lexington-Fayette Urban County Government
200 East Main Street
Lexington, KY 40507

If to the Attorney General: Attorney General Jack Conway
Office of the Attorney General
700 Capitol Avenue, Suite 118
Frankfort, Kentucky 40601

In WITNESS WHEREOF, the Lexington-Fayette Urban County Government and the Office of the Attorney General have executed this Memorandum effective as of the date first above written.

LFUCG

By: _____
Jim Gray, Mayor
Date:

Approved as to Form and Legality:

By: _____
Janet M. Graham, Commissioner of Law, LFUCG
Date:

OFFICE OF THE ATTORNEY GENERAL:

By: _____
Sean J. Riley, Chief Deputy Attorney General
Date: