

**HOME INVESTMENT PARTNERSHIPS PROGRAM
CHDO OPERATING AGREEMENT BETWEEN
LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT
AND**

THE FAYETTE COUNTY LOCAL DEVELOPMENT CORPORATION

THIS AGREEMENT, made and entered into on this 22nd day of March 2017, by and between **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**, an urban county government pursuant to KRS Chapter 67A, and located at 200 East Main Street, Lexington, Fayette County, Kentucky 40507 (hereinafter referred to as "GOVERNMENT"), and the **FAYETTE COUNTY LOCAL DEVELOPMENT CORPORATION**, a non-stock, nonprofit Kentucky corporation, organized pursuant to KRS Chapter 273, that has been identified as a Community Housing Development Organization (CHDO) and whose mailing address is 148 Dewese Street, Lexington, Kentucky 40507 (hereinafter referred to as "CHDO".)

RECITALS

WHEREAS, the GOVERNMENT, in accordance with the regulations codified at 24 CFR 92.102 –92.104 for the HOME Investment Partnership Program, has been designated a PARTICIPATING JURISDICTION by the U.S. Department of Housing and Urban Development (hereinafter referred to as "HUD");

WHEREAS, the FAYETTE COUNTY LOCAL DEVELOPMENT CORPORATION has been certified by the GOVERNMENT as a Community Housing Development Organization (CHDO) that meets all of the federal requirements for designation as such.

WHEREAS, the GOVERNMENT has been awarded federal funds from HUD's HOME Investment Partnerships Program (CFDA # 14.239);

WHEREAS, the GOVERNMENT'S 2016 Consolidated Plan provides for the allocation of \$40,000 in funds to the CHDO for eligible operating costs.

WHEREAS, the GOVERNMENT is responsible for ensuring that HOME funds are used in accordance with all program requirements; and,

WHEREAS, federal regulations require the GOVERNMENT to enter into a written agreement with the CHDO ensuring compliance with all applicable federal regulations.

NOW THEREFORE, in consideration of the foregoing and mutually agreed upon promises, conditions, and covenants hereinafter set forth, the GOVERNMENT and the CHDO hereto agree as follows:

ARTICLE I: Obligations of the CHDO

Use of HOME Funds:

The CHDO agrees to use the allocated amount of \$40,000 for operating expenses in accordance with HOME regulations and in accordance with the approved budget. Operations budget is attached as Exhibit 1.

Duration of the Agreement:

The CHDO agrees to have all funds expended for eligible operating costs no later than July 31, 2018.

Request for Disbursements of Funds:

The CHDO agrees that it shall not request disbursement of funds from the GOVERNMENT until the funds are needed for payment of eligible costs and shall request only the amount of funds needed. The CHDO further agrees that any federal funds received and not used by the CHDO within fifteen days of receipt will be returned to the government immediately.

The requests for reimbursement for operating expenses shall include an invoice detailing expenses for which reimbursement is requested, accompanied by copies of invoices, timesheets, payroll registers, and documentation of fringe benefit expenses.

Definition of Community Housing Development Organization (CHDO)

The CHDO agrees that throughout the term of this agreement it will conform to the definition of a Community Housing Development Organization as stated in the HOME Investment Partnerships Program regulations codified at 24 CFR 92.2.

ARTICLE II: Other Program Requirements

Fair Housing and Equal Opportunity: Under any program funded in whole or in part with HOME funds, the CHDO shall not exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States on the grounds of race, color, national origin, religion, sex, familial status or disability.

The CHDO agrees to comply with the requirements of the Fair Housing Act (42 U.S.C. 3601-20) and implementing regulations at 24 CFR, part 100; Executive Order 11063, as amended by executive Order 12259 (3CFR, 1958-1963 Comp., p. 652 and 3 CFR, 1980 Comp., p. 307) (Equal Opportunity in Housing) and implementing regulations at 24 CFR part 107; and title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR part 1.

The CHDO agrees to comply with the requirements of the Age Discrimination Act of 1975 (42 U.S.C. 6101-07) and implementing regulations at 24 CFR part 146: the requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8.

Employment and Equal Opportunity: The CHDO agrees to comply with the requirements of Equal Employment Opportunity, Executive Order 11246, as amended (3CFR 1964-65, Comp., p. 339) (Equal Employment Opportunity) and the implementing regulations issued at 41 CFR chapter 60; and the requirements of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u).

Affirmative Marketing: As it may be applicable, SUBRECIPIENT agrees to comply with the *Affirmative Marketing Plan* as adopted by the GOVERNMENT and as approved by HUD. The Affirmative Marketing Plan is located in the consolidated plan/annual action plan.

Minority/Women-Owned Businesses: To the maximum extent possible, the CHDO agrees to afford minority- and women-owned business enterprises the opportunity to participate in the performance of this Agreement. As used in this Agreement, the term "minority and female business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are African-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians.

Conflict of Interest: The CHDO agrees to comply with the conflict of interest provisions in 24 CFR 84.42 regarding written standards governing the performance of its officers, employees, and agents engaged in awarding and administering contracts. The CHDO further agrees to comply with the conflict of interest provisions at 24 CFR 92.356.

Debarred Contractors: The CHDO shall require all of its contractors and subcontractors to certify that neither they nor their principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in federally funded activities.

Tenant Selection Policies and Tenant Participation Plan: The CHDO shall adopt and follow written tenant selection policies and criteria that are consistent with the purpose of providing housing for very low-income and low-income persons and in conformance with the requirements at 24 CFR 92.253(d). The CHDO shall develop and follow a tenant grievance procedure that shall have the approval of the GOVERNMENT and shall provide a plan for and follow a program of tenant participation in management decisions in accordance with 24 CFR 92.303.

Accounting Standards and Cost Principles: The CHDO agrees to comply with 2 CFR 200, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards” and agrees to adhere to the accounting principles and procedures required therein, use adequate internal controls, and maintain necessary source documentation for all costs incurred. Additionally, the SUBRECIPIENT shall administer its program in conformance with 2 CFR 200. These principles shall be applied for all costs incurred whether charged on a direct or indirect basis.

Standards for Financial Management System: In accordance with 2 CFR 200.302, all grant recipients must have financial management systems that include written procedures for ensuring all expenditures conform to the terms and conditions of the grant as well as the Uniform Guidance Cost Principles. The CHDO agrees to comply with the requirements at 2 CFR 200.302, “Financial Management” 2 CFR 200.302 is attached as Exhibit 2.

Establishment and Maintenance of Records: The CHDO agrees to establish and maintain records sufficient to document compliance with the grant requirements of the HOME Investment Partnerships Program. As applicable, the CHDO will maintain project records as identified in 24 CFR 92.508 (a)(5).

The CHDO agrees that officials of the GOVERNMENT, officials of HUD, officials of the Comptroller General of the United States, or any of their duly authorized representatives shall have access to any books, documents, papers, and records of the CHDO which are directly pertinent to the specific grant program for the purpose of making audit, examination, excerpts, and transcriptions.

The CHDO further agrees to retain records for five years after the expiration of the period of affordability; and in the event that the CHDO discontinues to operate as a legal entity, said records shall be delivered to the GOVERNMENT.

ARTICLE III: Obligations of the GOVERNMENT

In accordance with 24 CFR 92.300-301, the GOVERNMENT agrees to reserve \$40,000 for use by the CHDO for eligible HOME operating costs.

The GOVERNMENT agrees to monitor the performance of the CHDO to assure compliance with all applicable federal regulations; however, monitoring does not relieve the CHDO of primary responsibility for compliance.

The GOVERNMENT agrees to prepare and submit any and all required reports to HUD.

The GOVERNMENT agrees to provide technical assistance to the CHDO in fulfilling its obligations under this agreement.

The GOVERNMENT agrees to make reasonable, allowable disbursements from its local HOME Investment Trust Fund to the CHDO when a need for payment is documented.

The GOVERNMENT agrees to notify the CHDO with any changes in the HOME regulations and all other pertinent information received in regards to the program.

ARTICLE IV: Additional Provisions

No right, benefit, or advantage inuring to the CHDO and no burden imposed on the CHDO hereunder may be assigned or otherwise transferred without the prior written approval of the GOVERNMENT.

This agreement, or any part hereof, may be amended from time to time hereafter only in writing executed by the GOVERNMENT and the CHDO.

This agreement, in accordance with 24 CFR 85.43 can be terminated if the CHDO fails to comply with any term of the agreement. This agreement may be terminated for convenience in accordance with 24 CFR 85.44 upon written notice by the GOVERNMENT.

The failure to perform or comply with any of the covenants, warranties, terms or conditions as set forth in this agreement shall constitute events of breach and default entitling the GOVERNMENT to take all action set out in this agreement or as otherwise allowed by law, including an action for specific performance.

The CHDO agrees to be responsible (in the manner and to the extent permitted by law) for all lawfully proven claims, losses, actions, and expenses (including legal expenses), including claims against the GOVERNMENT, arising from the performance of the terms of this agreement in accordance with the requirements of the HOME Investment Partnerships Program but excepting any such claims, losses, causes of action and expenses arising as a result of fault on the part of the GOVERNMENT, its officers, agents and employees. The CHDO is not responsible for negligent acts of the GOVERNMENT, its officers, agents, and employees.

All notices hereunder shall be sufficiently given and shall be deemed given when delivered or mailed by certified mail, postage prepaid, return receipt requested, to the parties at their respective addresses as first set out herein.

The CHDO acknowledges receipt of the HOME Investment Partnerships Program regulations codified at 24 CFR Part 92

IN WITNESS WHEREOF, the parties have executed this Agreement at Lexington, Kentucky the day and year first above written.

LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT

BY: _____


Jim Gray, Mayor

DATE: _____


22-MAR-2017

ATTEST:


Clerk of Urban County Council

FAYETTE COUNTY LOCAL DEVELOPMENT CORPORATION

BY: _____


Signature of Authorized Official

PORTOR G. PSEPPLES, SR. President
Printed Name and Title of Authorized Official

DATE: _____

3/20/2017

Exhibit 1

FAYETTE COUNTY LOCAL DEV. CORP CHOO OPERATING BUDGET

SALARY - NORMAN FRANKLIN	
(Estimated 41.1% OF \$85,045)	\$34,788
FRINGE COSTS:	
FICA @ 7.65% (85,045 x 7.65% x 41.1 %)	\$2,675
WORKER'S COMP @ .65% (\$85,045 x .65%) x 41.1%	\$ 230
SUTA (UNEMPLOYMENT TAX @ 10% x 10,600 x 41.1%)	\$ 435
DENTAL INSURANCE (\$92 .99 x 41.1 %) x 12)	\$ 460
LIFE INSURANCE (\$169.65 x 41.1 %) x 12)	\$ 840
DISABILITY INSURANCE (\$93.60 x 41.1%) x 12)	\$ 460
PENSION (\$273.49 x 41.1%)	\$ 112
TOTAL FRINGE BENEFITS:	\$5,212
TOTAL SALARY & FRINGE COSTS	\$40,000

2 CFR 200.302 Financial Management.

(a) Each state must expend and account for the Federal award in accordance with state laws and procedures for expending and accounting for the state's own funds. In addition, the state's and the other non-Federal entity's financial management systems, including records documenting compliance with Federal statutes, regulations, and the terms and conditions of the Federal award, must be sufficient to permit the preparation of reports required by general and program-specific terms and conditions; and the tracing of funds to a level of expenditures adequate to establish that such funds have been used according to the Federal statutes, regulations, and the terms and conditions of the Federal award. See also § 200.450 Lobbying. (b) The financial management system of each non-Federal entity must provide for the following (see also §§ 200.333 Retention requirements for records, 200.334 Requests for transfer of records, 200.335 Methods for collection, transmission and storage of information, 200.336 Access to records, and 200.337 Restrictions on public access to records):

- (1) Identification, in its accounts, of all Federal awards received and expended and the Federal programs under which they were received. Federal program and Federal award identification must include, as applicable, the CFDA title and number, Federal award identification number and year, name of the Federal agency, and name of the pass-through entity, if any.
- (2) Accurate, current, and complete disclosure of the financial results of each Federal award or program in accordance with the reporting requirements set forth in §§ 200.327 Financial reporting and 200.328 Monitoring and reporting program performance. If a Federal awarding agency requires reporting on an accrual basis from a recipient that maintains its records on other than an accrual basis, the recipient must not be required to establish an accrual accounting system. This recipient may develop accrual data for its reports on the basis of an analysis of the documentation on hand. Similarly, a pass-through entity must not require a subrecipient to establish an accrual accounting system and must allow the subrecipient to develop accrual data for its reports on the basis of an analysis of the documentation on hand.
- (3) Records that identify adequately the source and application of funds for federally-funded activities. These records must contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, expenditures, income and interest and be supported by source documentation.
- (4) Effective control over, and accountability for, all funds, property, and other assets. The non-Federal entity must adequately safeguard all assets and assure that they are used solely for authorized purposes. See § 200.303 Internal controls.
- (5) Comparison of expenditures with budget amounts for each Federal award.
- (6) Written procedures to implement the requirements of § 200.305 Payment.
- (7) Written procedures for determining the allowability of costs in accordance with Subpart E—Cost Principles of this part and the terms and conditions of the Federal award.