

**MEMORANDUM OF AGREEMENT
AMONG THE
FEDERAL EMERGENCY MANAGEMENT AGENCY,
KENTUCKY HERITAGE COUNCIL,
THE KENTUCKY DIVISION OF EMERGENCY MANAGEMENT,
AND THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT
FOR THE DEMOLITION OF TWO PROPERTIES IN
THE CITY OF LEXINGTON, KENTUCKY**

WHEREAS, the Federal Emergency Management Agency (FEMA) of the Department of Homeland Security proposes to administer grant funding pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 USC § 5121 et seq. (Public Law 93-288, as amended), and its implementing regulations codified in Title 44 of the Code of Federal Regulations (CFR), to the Lexington Fayette Urban County Government (LFUCG) under the Hazard Mitigation Grant Program (HMGP), for the demolition of two properties located at 277 Lafayette Parkway and 283 Lafayette Parkway, Lexington, Fayette County, Kentucky 40503 (herein referred to as “the Undertaking”); and

WHEREAS, FEMA has determined, in consultation with the Kentucky Heritage Council (which the State has designated to serve as the State Historic Preservation Officer (SHPO)), that the Area of Potential Effect (APE) for standing structures included in the Undertaking is described as the Lafayette Parkway Historic District, and that 277 Lafayette Parkway and 283 Lafayette Parkway are contributing properties to the Lafayette Parkway Historic District, which is eligible for inclusion in the National Register of Historic Places (NRHP); and

WHEREAS, FEMA, in consultation with SHPO, has determined that the Area of Potential Effect (APE) for archaeological resources included in the Undertaking is the area immediately surrounding the residences located on Lafayette Parkway where ground disturbance may occur during demolition activities; and

WHEREAS, FEMA has determined, in consultation with the SHPO, that there are no known archaeological sites located within the Area of Potential Effect (APE); and

WHEREAS, FEMA has determined that the Undertaking would adversely affect the historic district located in the APE, as defined in 36 CFR § 800.5(a)(2), and has consulted with the SHPO pursuant to 36 CFR Part 800 implementing Section 106 of the National Historic Preservation Act (16 USC § 470); and FEMA has determined that the Undertaking will be reviewed pursuant to 36 CFR § 800.6(b); and

WHEREAS, FEMA has consulted with Kentucky Division of Emergency Management (KYEM), the grantee of FEMA HMGP, and the LFUCG (subgrantee) regarding the effects of the Undertaking on the historic districts and has invited them to sign this Memorandum of Agreement (MOA) as invited signatories; and

WHEREAS, FEMA, in accordance with 36 CFR § 800.6(a)(1), has notified the Advisory Council on Historic Preservation (ACHP) of this MOA and invited the ACHP to participate and be a signatory; and the ACHP has declined to participate; and

WHEREAS, the subgrantee, in accordance with 36 CFR § 800.2(d)(2), provided a public notice in *The Lexington Herald-Leader*, the newspaper of record for the City of Lexington, on August 20, 2012; and no public comments were received; and

WHEREAS, FEMA notified the Absentee-Shawnee Tribe of Oklahoma, Cherokee Nation, Chickasaw Nation, Eastern Band of Cherokee Indians, Eastern Shawnee Tribe of Oklahoma, Miami Tribe of Oklahoma, Peoria Indian Tribe of Oklahoma, Shawnee Tribe, and United Keetoowah Band of Cherokee Indians in Oklahoma (collectively referenced as “Tribes”) and provided information regarding identified historic properties in the APE, information regarding the history and topography of the APE, and afforded the Tribes an opportunity to participate in the consultation on August 16, 2012; and

WHEREAS, the United Keetoowah Band of Cherokee Indians in Oklahoma declined to participate in the resolution of adverse effects in a letter dated August 28, 2012 but requested that FEMA contact it immediately if construction exposes any human remains or funerary items; and

WHEREAS, the Shawnee Tribe’s Historic Preservation Department declined to participate in the resolution of adverse effects in a letter dated September 4, 2012 but requested that FEMA contact it immediately in the event that archaeological materials are encountered during construction, use, or maintenance of the location; and

WHEREAS, the signatories have mutually agreed to enter into this MOA pursuant to the authority of 36 CFR § 800.6(b) & (c);

NOW, THEREFORE, FEMA, SHPO, KYEM, and the subgrantee agree that treatment measures will be administered in accordance with the following stipulations in order to mitigate the adverse effect of the Undertaking on the Lafayette Parkway historic district and satisfy FEMA’s responsibilities in accordance with Section 106 of the NHPA.

STIPULATIONS

To the extent of its legal authority, and in coordination with SHPO, KYEM, and the subgrantee, FEMA will require that the following measures are implemented:

I. TREATMENT MEASURES

- A. Within 60 days of the execution of this MOA and prior to the demolition or alteration of the two properties located at 277 Lafayette Parkway and 283 Lafayette Parkway, City of Lexington, Fayette County, Kentucky 40503, FEMA will prepare a report for the residences that will be demolished with FEMA funds as a part of this Undertaking (see Appendix C for the estimate timeline). The report will be performed by or under the direct supervision of an individual who meets the Secretary of the Interior’s Professional Qualification Standards set out at 48 FR 44716, September 29, 1983, for History, Architectural History, Architecture, or Historic Architecture (http://www.nps.gov/history/local-law/arch_stnds_9.htm). The report will include the following information:
 1. A Kentucky Individual Building Survey Form for the two properties located at 277 Lafayette Parkway and 283 Lafayette Parkway, Lexington, Fayette County, Kentucky. The completion of the Individual Survey Forms will comply with *Instructions for Completing the Individual Buildings Survey Form (KHC 2007-1)* (Appendix A).
 2. Approximately 5 additional Kentucky Individual Building Survey Forms for a representative sample of each of the predominant housing types in the NRHP-eligible Lafayette Parkway Historic District. The completion of the Individual Survey Forms will comply with *Instructions for Completing the Individual Buildings Survey Form (KHC 2007-1)*.

3. The photographic results of a windshield survey of the affected NRHP-eligible Lafayette Parkway Historic District. The windshield survey will capture the general architectural character of the district. Recordation shall include digital color photographs, captured from the right-of-way, of a representative sample of the predominant housing types and all identified as eligible contributing properties. The photography will comply with the National Park Service's *National Register of Historic Places Photographic Policy*, dated March 2008. Please see Appendix B for a copy of this policy. Photographs will be submitted in RAW format as well as TIFF (minimum 8x10 and 360 dpi saved as 8 bit files) and JPEG (minimum 1024x1024 and 100 dpi) files. All photographs will be saved to an archival quality DVD designed for long-term storage of sensitive data, video or music files. The survey shall begin no later than 60 days following the execution of this MOA (see Appendix C for the estimated timeline).
4. A written narrative for the NRHP-eligible Lafayette Parkway Historic District that shall contain, but is not limited to, the following information:
 - a. Research of subdivision plat to determine who filed the plat, the date the plat was filed, and the developer of the subdivision.
 - b. A sample check of construction dates to determine possible rate of development after the subdivision plat was filed.
 - c. A verbal boundary description and boundary justification for the NRHP-eligible Lafayette Parkway Historic District.
 - d. A bibliography.
- B. The FEMA historian or designated contractor will notify the LFUCG Historic Preservation Division staff of any site visits to the Lafayette Parkway Historic District for the purpose of recordation as outlined in Stipulation I.A.
- C. The draft and final copy of the documentation will be packaged in an archivally stable folder that has sides and a flap over the top. Supporting documentation accompanying digital images will be printed on archivally-stable paper and include: research narrative, map with photo key and date of photography. A proof sheet containing six images per page that includes the address of the property should be submitted on archivally-stable paper along with the media. A PDF that includes this information will be provided.
- D. FEMA shall submit all documentation cited in Stipulation I.A to the SHPO for preliminary review and approval. SHPO shall advise FEMA within 30 days of receipt if the submitted documentation is satisfactory or if specific revisions are requested. If the latter, SHPO shall advise FEMA if any revised documentation is to be submitted to SHPO for a second 30-day review. Upon acceptance by SHPO, FEMA shall notify KYEM that the recordation outlined in Stipulation I.A. is complete. An original copy of the final documentation shall be stored at the Kentucky Heritage Council office at 300 Washington Street, Frankfort, KY. Please see Appendix C for an estimated timeline for completion of Stipulation I.A. FEMA shall provide a duplicate set of the documentation to the SHPO to be stored in the Kentucky Department for Libraries and Archives located at 300 Coffee Tree Road, Frankfort, KY 40602-0537.
- E. FEMA shall provide a duplicate set of the documentation cited in Stipulation I.A to the City of Lexington to be stored in the Lexington-Fayette Urban County Government Division of Historic Preservation Office located at 200 East Main Street, Lexington, KY 40507. The documentation will be made available at the request of the public pursuant to applicable federal, state and local laws, regulations, and policies.

- F. Prior to demolition, LFUCG Division of Historic Preservation staff shall be granted access to 277 Lafayette Parkway and 283 Lafayette Parkway, Lexington, Fayette County, Kentucky. An LFUCG historian shall be permitted to perform any final measurements and recordation for the above listed properties. All resulting documentation shall be stored on file in the Lexington-Fayette Urban County Government Division of Historic Preservation Office located at 200 East Main Street, Lexington, KY 40507.
- G. To ensure the protection of any unknown prehistoric or historic archaeological resources that might be located in the project area, FEMA and KYEM will require that the subgrantee perform the Undertaking in a manner that minimizes ground disturbance.

II. PUBLIC PARTICIPATION

- A. The subgrantee placed a public notice in *The Lexington Herald-Leader*, the newspaper of record for the City of Lexington, on August 20, 2012. No public comments were received. Please see Appendix D for a copy of the public notice.
- B. Should a member of the public object at any time during the implementation of the measures stipulated in the MOA, FEMA will take the objection into account and consult as needed with the objecting party, FEMA, the SHPO and KYEM to address the objection.

III. UNEXPECTED DISCOVERIES

- A. The subgrantee will notify FEMA as soon as practicable if it appears that an Undertaking will affect a previously unidentified property that may be a historic property, including human remains, or affect a known historic resources in an unanticipated manner.
- B. If any archeological deposits are identified that likely contain human remains, materials, or artifacts, the subgrantee will notify FEMA, KYEM and SHPO and any consulting parties of the discovery. The subgrantee will ensure work stops in the vicinity of such a discovery and will take all reasonable measures to avoid, minimize harm, and protect the discovery until FEMA concludes the consultation. FEMA shall initiate the review with SHPO, KYEM, Indian Tribes, as appropriate, and any other consulting parties.
- C. If human skeletal remains are uncovered during the Undertaking, the subgrantee will stop work immediately and shall immediately notify FEMA, the local police department, and the coroner's office. FEMA shall notify the SHPO of the discovery. All signatories will work together to ensure compliance with all applicable laws. In addition, all signatories shall follow guidelines in the ACHP's "Policy Statement Regarding Treatment of Burial Sites, Human Remains, and Funerary Objects" (February 23, 2007). If the human remains are American Indian, FEMA, the Tribal representatives and other consulting parties, as necessary, will engage in consultations to resolve the appropriate disposition of the remains. Such a consultation will include a site visit to review the situation, if requested by any Indian tribe, SHPO, or the ACHP.
- D. FEMA will notify the parties of any time constraints for responding, and all parties will seek to mutually agree upon timeframes for consultation regarding the discovery. Following consultation, FEMA will provide all consulting parties with written recommendations that take into account the effects of the Undertaking. If the consulting parties do not object to FEMA's recommendations regarding the treatment of the discovery within the agreed upon timeframe, FEMA will require the subgrantee to modify the scope of work to implement FEMA's

recommendations. If there is a timely objection to FEMA's recommended action, FEMA will consult further with the objecting party.

IV. CHANGES IN SCOPE OF WORK

The subgrantee shall immediately notify KYEM if there are proposed changes to the Undertaking. When notified by the subgrantee, KYEM shall notify FEMA as soon as possible of any proposed change to the approved scope of work. FEMA shall then consult with SHPO to determine if the scope of work change will have an effect to the historic district.

V. DISPUTE RESOLUTION

- A. Should any signatory object in writing within the timeframes established under this MOA to any plans, specifications, determinations, or other activities undertaken pursuant to this MOA, FEMA shall consult to resolve the objection. If the objection is resolved within 14 calendar days, the parties will proceed as agreed.
- B. If the objection is not resolved within 14 calendar days, FEMA will request comments from the ACHP pursuant to 36 CFR § 800.7(a)(1).
- C. FEMA will take into account any ACHP comments received within 30 days after ACHP's receipt of FEMA's request for comments. FEMA will provide the other parties and the ACHP with a written resolution. FEMA may authorize the subgrantee to implement that portion of the MOA subject to dispute after resolving the objection. The signatories are still responsible for implementing all actions of this MOA that are not subject to dispute.

VI. ANTICIPATORY ACTIONS

- A. FEMA shall not provide grant assistance to the subgrantee for the Undertaking should the subgrantee or those acting on its behalf engage in anticipatory actions with the intent to avoid the requirements of this MOA or Section 106 of NHPA.
- B. However, after consultation with the SHPO and ACHP, FEMA may determine that circumstances justify granting such assistance despite the adverse effect and in such case shall complete consultation for the Undertaking.

VII. AMENDMENTS

If any of the signatories to this MOA believe that the terms of the MOA cannot be adhered to, or that any amendment to the terms of this MOA must be made, that signatory shall immediately consult with the other signatories for not more than 30 days to develop amendments to this MOA. The MOA shall be amended only upon the written agreement of all signatories.

VIII. DURATION

Unless amended or terminated in accordance with Stipulations VII. or IX., this MOA will remain in effect until FEMA determines, in consultation with the other signatories, that the MOA has been satisfactorily fulfilled. FEMA will notify the other signatories in writing when it determines

that this MOA has been fulfilled and is terminated. The Agreement may be extended by an Amendment in accordance with Stipulation VII. of this MOA.

IX. TERMINATION

- A. If FEMA, SHPO, KYEM or the subgrantee determines that the terms of this MOA cannot be met and proposes termination, that signatory party first will pursue an amendment in accordance with Stipulation VII of this MOA.
- B. If the MOA is not amended, FEMA, SHPO, KYEM or the subgrantee may terminate the MOA by providing a 30-day written notice to the other signatories, provided the signatory seeking termination consults with the other signatories during this period to seek amendments or other actions that would prevent termination. Should the signatories agree on an alternative to termination, they will proceed in accordance with that alternative process or course of action.
- C. Termination of the MOA will require compliance with 36 CFR Part 800. This MOA may be terminated without further consultation by the execution of a subsequent agreement that explicitly terminates or supersedes this MOA.
- D. This MOA will automatically terminate and the terms reconsidered by the signatories if the Undertaking has not been implemented within two years of the date this MOA becomes effective.

X. OTHER PROVISIONS

Nothing in this MOA is intended to conflict with current law or regulation (including but not limited to Titles 36 and 44 of the CFR). If a term of this MOA is inconsistent with such law or regulation, then that term shall be invalid, but the remaining terms and conditions of this MOA shall remain in full force and effect.

XI. EXECUTION AND IMPLEMENTATION OF THIS AGREEMENT

- A. This MOA will be executed in counterpart, with a separate signatory page to be signed by each signatory party.
- B. FEMA will provide each signatory with a signed original of this MOA. The MOA will become effective upon signature of all signatory parties and a copy filed with the ACHP.
- C. Execution and implementation of this MOA evidences that FEMA has taken into account the effects of the Undertaking on historic properties, has afforded the ACHP a reasonable opportunity to comment on the Undertaking and its effects on historic properties, and that FEMA has satisfied its NHPA Section 106 responsibilities for all aspects of the Undertaking.

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SIGNATORY:

FEDERAL EMERGENCY MANAGEMENT AGENCY

William R. Straw, PhD
FEMA, Region IV
Regional Environmental Officer

Date

Jacky Bell
FEMA, Region IV
Hazard Mitigation Assistance Branch Chief

Date

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SIGNATORY:

**TOURISM, ARTS AND HERITAGE CABINET,
KENTUCKY HERITAGE COUNCIL**

Craig Potts
Kentucky Heritage Council
Executive Director/State Historic Preservation Officer

Date

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INVITED SIGNATORY:

KENTUCKY DIVISION OF EMERGENCY MANAGEMENT

Geneva J. Brawner
Kentucky Division of Emergency Management
Acting State Hazard Mitigation Officer

Date

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INVITED SIGNATORY:

LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT

Jim Gray
Lexington-Fayette Urban County Government
Mayor

Date

Bettie Kerr
Lexington-Fayette Urban County Government
Director, Historic Preservation

Date