

**FIRST-TIME HOMEBUYERS PROGRAM AGREEMENT BETWEEN
LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT
AND
LEXINGTON HABITAT FOR HUMANITY**

THIS AGREEMENT, made and entered into on this ____ day of _____ 2021, 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 **LEXINGTON HABITAT FOR HUMANITY**, a Kentucky non-profit corporation pursuant to KRS Chapter 273, and whose mailing address is 700 East Loudon Avenue, Lexington, Kentucky 40505 (hereinafter referred to as "SUBRECIPIENT".)

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

WHEREAS, the GOVERNMENT'S 2020 Consolidated Plan provides for the allocation of \$100,000 in funds to the SUBRECIPIENT for down-payment assistance for Lexington Habitat for Humanity's First-Time Homebuyer's Program for low-income families;

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

WHEREAS, federal regulations require the PARTICIPATING JURISDICTION to enter into a written agreement with a SUBRECIPIENT ensuring compliance with all applicable federal regulations.

WHEREAS, the SUBRECIPIENT has established a program to assist low-income families to become homeowners.

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

ARTICLE I

A. Use of HOME Funds

1. The SUBRECIPIENT agrees to implement a First-Time Homebuyers Program in accordance with the HOME Investment Partnerships Program regulations as stated in 24 CFR Part 92, and in accordance with the guidelines adopted and approved by the GOVERNMENT, which are incorporated herein as Exhibit A, HOME First-Time Homebuyer Assistance Guidelines, dated July 2019, except as otherwise specified in this agreement and the Program Design adopted and approved by the Government, which is incorporated herein as Exhibit B, Lexington Habitat for Humanity Board Approved Policies, effective July 30, 2019.
2. SUBRECIPIENT agrees to provide homebuyer down payment assistance to at least 5 households with these funds.
3. SUBRECIPIENT is prohibited from charging servicing, origination, processing, inspection, or other fees for the costs of administering a HOME program, except as permitted by § 92.214(b)(1).

B. Duration of the Agreement

The terms of the Agreement shall expire on December 31, 2021.

C. *Request for Disbursements of Funds*

1. The SUBRECIPIENT may not request disbursement of funds until the funds are needed for payment of eligible costs (i.e., down payment assistance). The SUBRECIPIENT agrees that it will submit the information as requested in Exhibit C, HOME Program Loan Approval Form, for the GOVERNMENT to approve a client file for HOME participation, at least 15 business days prior to date of closing. The GOVERNMENT retains the right to amend the form as needed with a 5 day notice. If additional clarifications or additional information is needed to approve the file, the approval will be delayed.
2. The amount of the request of HOME funds will be limited to the amount needed and must be reduced by the amount of any Program Income on hand.

D. *Program Income*

The SUBRECIPIENT agrees to return all Program Income received within 10 days of receipt.

E. *Maximum Per Unit Subsidy*

For eligible first time home buyers below 80% of median income, the maximum home purchase subsidy may be \$20,000 for 1 person households, \$25,000 for households of 2 and \$30,000 for households of 3 or more if needed. The HOME subsidy may be used to fund acquisition costs up to 106% of fair market value to include eligible closing costs. The minimum HOME subsidy cannot be less than \$1,000. All incomes shall be verified within six months of closing. The SUBRECIPIENT shall fully document the need for the subsidy.

F. *Period of Affordability*

SUBRECIPIENT agrees that all housing assisted under the terms of this agreement will meet the affordability requirements in accordance with 24 CFR Part 92.254. The period of affordability shall be a minimum of five years.

G. *Determination of Income*

1. HOME Investment Partnerships Program regulations mandate that all HOME funds expended by a PARTICIPATING JURISDICTION must be invested in housing for low-income families, as defined at 24 CFR 92.2. Generally, this means families with incomes of 80 percent or less of the area median, as adjusted for family size.
2. SUBRECIPIENT agrees to determine the anticipated annual income of all adults in using the Part 5 definition of annual income as defined in 24 CFR 5.609.

H. *Records, Retentions and Reports*

1. The SUBRECIPIENT shall maintain all records required by the federal regulations specified in 24 CFR Part 92.508 that are pertinent to the activities to be funded under this Agreement. Such records shall include but not be limited to the original HOME client files, counseling files, post-closing files, and servicing files.
2. The records must be available for review and maintained for a minimum of five years after the period of affordability has ended and be available when requested in advance by the GOVERNMENT, HUD, Comptroller General, and any of their duly authorized representatives.
3. SUBRECIPIENT agrees to report on an annual basis by July 30 of each calendar year, an Equal Employment Report and an Unserved Report, as incorporated in Exhibit D to this Agreement.
4. SUBRECIPIENT agrees to provide any additional reports as may be required by the GOVERNMENT.

I. **Reversion of Assets**

If applicable, the SUBRECIPIENT shall transfer to the PARTICIPATING JURISDICTION any HOME funds on hand at the time of expiration and any accounts receivable attributable to the use of HOME funds upon expiration of the agreement.

J. **Additional Provisions**

1. SUBRECIPIENT shall 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 SUBRECIPIENT 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. SUBRECIPIENT is not responsible for negligent acts of the GOVERNMENT, its officers, agents, and employees.
2. SUBRECIPIENT shall insure that all potential recipients of HOME first-time homebuyer funds receive homeownership counseling, and a minimum of one year post-purchase counseling.
3. As stated in Section 92.254(a)(2)(iii) of the Final Rule published on July 24, 2013, HUD issues annual homeownership value limits for HOME PARTICIPATING JURISDICTIONS. Effective June 1, 2021, the SUBRECIPIENT shall insure that the maximum fair market value for a new unit does not exceed \$243,000 and the maximum fair market value of an existing unit shall not exceed \$187,000 for FY21. This limit remains in effect until HUD issues a new limit.

ARTICLE II: Other Program Requirements

- A. **Discrimination:** Under any program funded in whole or in part with HOME funds, SUBRECIPIENT 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, or sex.
- B. **Fair Housing and Equal Opportunity:** SUBRECIPIENT agrees to comply with the requirements of the *Fair Housing Act* (42 U.S.C. 3601-3620) and implementing regulations at 24 CFR Part 100-115; *Equal Opportunity in Housing* (Executive Order 11063, as amended by Executive Order 12259) (3 CFR, 1958-1963 Comp., p. 652 and 3 CFR, 1980 Comp., p. 307) and implementing regulations at 24 CFR Part 107; *Title VI of the Civil Rights Act of 1964*, as Amended (42 U.S.C. 2000d et seq) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR part 1; and *Age Discrimination Act of 1975*, as Amended (42 U.S.C. 6101-07) and implementing regulations at 24 CFR part 146.
- C. **Handicap Accessibility:** SUBRECIPIENT agrees to comply with the requirements of the Americans with Disabilities Act (42 U.S.C. 12131; 47 U.S.C. 155, 201, 218, and 225); the requirements of *Section 504 of the Rehabilitation Act of 1973* (29 U.S.C. 794) and implementing regulations at 24 CFR part 8.
- D. **Employment and Equal Opportunity:** SUBRECIPIENT agrees to comply with the requirements of *Equal Employment Opportunity, Executive Order 11246 as amended* (3 CFR 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).
- E. **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.

- F. **Minority/Women-Owned Businesses:** To the maximum extent possible, SUBRECIPIENT 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.
- G. **Lead-Based Paint:** SUBRECIPIENT agrees to comply with HUD Regulations governing Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at part 35, subparts A, B, J, K, M and R of this title for all housing assisted with HOME funds. The SUBRECIPIENT agrees to provide the GOVERNMENT with copies of lead based paint tests, risk assessments, plans for corrections, proof of contractors' certifications of lead-based paint safe work practices training, and clearance tests for all pre-1978 houses being rehabilitated.
- H. **Environmental Review:** The SUBRECIPIENT agrees to provide property addresses to the Government prior to commitment of HOME funds for purposes of completing environmental review requirements under 24 CFR Part 58.
- I. **Uniform Relocation Act:** The SUBRECIPIENT agrees to comply with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4201-4655) and 49 CFR part 24. Upon request, the SUBRECIPIENT agrees to provide documentation to the GOVERNMENT of previous occupancy of the property to include names of occupants, dates of occupancy, and circumstances of vacancy.
- J. **Conflict of Interest:** The SUBRECIPIENT agrees to comply with the Conflict of Interest rules as identified in 24CFR 85.36 and 24 CFR 84.42, regarding written standards governing the performance of their employees engaged in awarding and administering contracts.
- K. **Accounting Standards and Cost Principles:** The SUBRECIPIENT 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.

ARTICLE III

- A. The GOVERNMENT agrees to reserve \$100,000 of its HOME funds allocation for use by eligible clients of SUBRECIPIENT in the implementation of a First-Time Homeownership Program.
- B. The GOVERNMENT agrees to monitor the performance of SUBRECIPIENT to assure compliance with all applicable federal regulations; however, monitoring does not relieve SUBRECIPIENT of primary responsibility for compliance.
- C. The GOVERNMENT agrees to prepare and submit any and all required reports to HUD.
- D. The GOVERNMENT agrees to assist SUBRECIPIENT staff in interpreting HOME regulations, resolving eligibility and contract problems, and the inspection of properties to be purchased by prospective clients, to insure those homes meet local housing codes.
- E. The GOVERNMENT agrees to fund approved first-time homebuyers in the form of repayable and non-repayable loans as described in the HOME First-Time Homebuyer Assistance Guidelines, dated July 2019. The Government will prepare and close all HOME loans for the SUBRECIPIENT. The HOME funds must be available at the closing.

ARTICLE IV

- A. No right, benefit, or advantage inuring to SUBRECIPIENT and no burden imposed on SUBRECIPIENT hereunder may be assigned or otherwise transferred without the prior written approval of the GOVERNMENT.
- B. This agreement or any part hereof, may be amended from time to time hereafter only in writing executed by the GOVERNMENT and SUBRECIPIENT.
- C. This agreement, in accordance with 24 CFR 85.43 can be terminated if the SUBRECIPIENT 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 PARTICIPATING JURISDICTION.
- D. 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.
- E. All notices hereunder shall be sufficiently given and shall be deemed given when delivered or mailed by certified mail, postage prepaid, return receipt requested, or emailed to the parties at their respective addresses as first set out herein.

[INTENTIONALLY LEFT BLANK. SIGNATURE PAGE TO FOLLOW]

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

LEXINGTON-FAYETTE, URBAN COUNTY GOVERNMENT

BY: Linda Gorton

Linda Gorton, Mayor

DATE: 8/20/2021

ATTEST:

Mackenzie Gommers
Clerk of Urban County Council

LEXINGTON HABITAT FOR HUMANITY

BY: Rachel Childress

Rachel Childress, Executive Director

DATE: 8-24-2021