

**PROGRAMMATIC AGREEMENT
AMONG THE LOUISVILLE-JEFFERSON COUNTY METRO GOVERNMENT,
THE LOUISVILLE METRO HOUSING AUTHORITY,
THE KENTUCKY HERITAGE COUNCIL, AND
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING THE BEECHER TERRACE REDEVELOPMENT PROJECT,
LOUISVILLE, KENTUCKY**

WHEREAS, the U.S. Department of Housing and Urban Development (HUD) is providing funding through a \$29.5 Million Choice Neighborhoods Initiative (CNI) implementation grant to the Louisville Metro Housing Authority (LMHA) as the lead grantee and the Louisville-Jefferson County Metro Government (LJCMG) as the co-grantee for the Beecher Terrace Redevelopment Project (Undertaking), which will consist of the demolition of 59 existing buildings at Beecher Terrace and redevelopment of the site over 6 phases and 7 years to yield a total of 758 units, including 316 on site units and 442 off-site units of new mixed-income and multi-generational housing supported by new and improved amenities and public infrastructure; and

WHEREAS, LJCMG has committed \$15 million in Community Block Grant Funds (CDBG funds) to the Undertaking; and

WHEREAS, Section 106 of the National Historic Preservation Act (NHPA), as amended, 54 U.S.C. § 3001, and its implementing regulations at 36 CFR Part 800 (Section 106), require Federal Agencies to take into account the effects of their undertakings on historic properties and provide the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment on those undertakings; and

WHEREAS, HUD regulations at 24 CFR Part 58 implement statutory authorities that permit certain entities to assume HUD's environmental responsibilities for various HUD programs, and included among the statutory authorities under which this responsibility is assumed is compliance with Section 106 of the NHPA; and

WHEREAS, the LJCMG is identified as the responsible entity and has assumed the full responsibility for all of HUD's environmental requirements for the Undertaking pursuant to 24 CFR Part 58, while further committing to ensure compliance in partnership with LMHA; and

WHEREAS, LJCMG is serving as lead agency in accordance with 36 CFR § 800.2(a) (Lead Agency) in cooperation and partnership with LMHA; and

WHEREAS, LJCMG and LMHA have agreed that LMHA will assume responsibilities to perform various actions described in this PA, and that LMHA has participated in this consultation and signed this PA as a signatory to jointly carry out the responsibilities of the PA in cooperation and partnership with LJCMG; and

~~**WHEREAS**, LJCMG and LMHA have determined that the Undertaking has the potential to adversely affect historic properties; and~~

WHEREAS, LJCMG and LMHA, in consultation with the Kentucky State Historic Preservation Office / Kentucky Heritage Council (SHPO) (Kentucky Heritage Council (KHC)), have defined the Undertaking's Area of Potential Effects (APE) as illustrated in Attachment 1, based upon the

Comment [LN(C1)]: Written this way LMHA is equally legally responsible for everything in this document. Is that what is intended? If it is just LJCMG taking on fully responsibility for this then this should be updated. Either way the relationship between the two needs to be tightened up throughout the document as there are several places where only one party is indicated, or both are named, or there are phrases where it says LJCMG or LMHA which introduces an uncertainty in the process that could lead to delays or other problems.

Comment [LN(C2)]: Written this way the number of phases needs to be certain and may need to be described within the document. I suggest revising it to "redevelopment of the site over multiple phases" – you still have the end goal listed (758 units) but this allows some flexibility in phasing and eliminates the need to describe each phase before the document is executed in May 2018.

Comment [LN(C3)]: The location of these units will need to be included in Appendix A. The off-site units have not been consulted on at all yet. Per 3/28/2018 meeting, some of this may be no effect, but also unclear if it is how HUD typically handles these.

Comment [LN(C4)]: This should be 54 U.S.C. § 300108

Comment [LN(C5)]: This WHEREAS may need to be modified based on what was decided about the responsibilities of the LJCMG and LMHA. HUD has delegated all responsibilities to LJCMG and they have no further role in environmental consultation, correct? This may need to be changed if they still have a role in the offsite housing that is part of the undertaking. From the consulting party meeting on 3/28/2018 it sounded like the ...

Comment [LN(C6)]: I moved this section to whereas discussion of LJCMG as lead federal agency as it is more confusing having these so far apart. If LMHA has legal responsibilities under this document then they are a signatory not an invited signatory.

Comment [LN(C7)]: Recommend doing a global change KHC -> SHPO as this is congruent with other agreement documents that we have executed with Louisville (i.e. HUD projects Programmatic Agreement)

current understanding of the potential effects of the Undertaking on historic properties, defined in 36 CFR § 800.14(l) as properties listed in or eligible for listing in the National Register of Historic Places (NRHP); and

~~WHEREAS, LJCMG and LMHA have determined that the Undertaking has the potential to will adversely affect historic properties; and~~ WHEREAS, LJCMG has determined that the undertaking may have direct adverse effects to the National Register of Historic Places (NRHP)-eligible Beecher Terrace Historic District (JFL-01), [and archaeological sites], in addition to indirect adverse effects to the Baxter Community Center, Baxter Square Park which are contributing elements to the Beecher Terrace Historic District, and the NRHP-listed Church of Our Merciful Savior (JFWR-1752), and St. Peters German Evangelical Church (JFWR-1749) and has consulted with the Kentucky SHPO pursuant to 36 CFR Part 800, the regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. § 470f); and

WHEREAS, the CNI grant program is designed to “transform distressed neighborhoods and public and assisted projects into viable and sustainable mixed-income neighborhoods by linking housing improvements with appropriate services, schools, public assets, transportation, and access to jobs” and to do so with the involvement of “local governments, non-profits, and for-profit developers in undertaking comprehensive local planning with residents and the community” in addition to the involvement of public housing authorities; and

WHEREAS, the comprehensive nature of the CNI grant program as one of many components for the transformation of distressed neighborhoods makes it particularly suited for use of the phased approach for identification and evaluation authorized and provided for in the ACHP regulations, 36 CFR §§ 800.4(b) and 800.14(b); and

WHEREAS, the first stage (Stage I) of the Undertaking will be in the area bounded by Jefferson Street to the north, 9th Street to the east, Muhammad Ali Boulevard to the south, and 13th Street to the west, and will include the demolition of existing buildings 1 through 59 (Attachment 2), the reestablishment of the original block configuration, and construction of one new four-story, L-shaped building accommodating 120 senior-resident apartments and management offices, with associated amenities (Attachment 3); and

WHEREAS, future stages of the Undertaking are yet to be determined and as such LJCMG and LMHA, in consultation with KHC, have agreed to fulfill their responsibility under Section 106 for the Undertaking through the development and implementation of this Programmatic Agreement (PA or Agreement) as authorized under 36 CFR § 800.14(b); and

~~WHEREAS, LJCMG and LMHA have agreed that LMHA will assume responsibilities to perform various actions described in this PA, and that LMHA has participated in this consultation and signed this PA as an invited signatory to jointly carry out the responsibilities of the PA in cooperation and partnership with LJCMG; and~~

WHEREAS, ACHP has elected to participate in this consultation process pursuant to 36 CFR § 800.2(b)(1) and to be a signatory to this PA; and

WHEREAS, LJCMG and LMHA, in consultation with KHC and consistent with 36 CFR § 800.2, have invited: the Delaware Nation, Oklahoma; the Delaware Tribe of Indians; the Eastern Band of Cherokee Indians; the Cherokee Nation; the United Keetowah Band of Cherokee Indians in

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Comment [c8]: I don't think that this has been ruled out of potential direct effect territory. I'm pretty sure that the CNI specifically mentions the redevelopment of Baxter Park to make it 'active'. So, partly this issue has to do with the definition of the undertaking, but also making this document work with the plans submitted to HUD.

Comment [LN(C9)]: Check the ACHP guidance on agreement documents <http://www.achp.gov/agreementdocguidance.html#ch4-2> – properties that are adversely affected should be listed in preamble – I incorporated paragraph from stipulations into here and removed paragraph in stipulations as it is now redundant.

Comment [LN(C10)]: Unclear if these two paragraphs are needed – mentioned in the first WHEREAS establishing that this is an undertaking. I would recommend removing these two as they are superfluous. Large and complicated projects are often suited to phased identification per the 106 regs, don't need to identify the specific funding source in order to justify that.

Comment [LN(C11)]: The use of stage / phase should be consistent. This use is not congruent with its use in the first WHEREAS (6 phases over 7 years).

Comment [LN(C12)]: Original prior to the establishment of Beecher Terrace?

Comment [LN(C13)]: based on my understanding of Stage 1 from the 3/28/2018 meeting Attachment 3 should change only what is part of Stage 1 (or that should be a separate figure) – at minimum Attachment 3 should have some more information to explain what is happening with the yellowed out areas and to show that the design for Baxter Park is not as final as it appears in the current version.

Comment [LN(C14)]: This is a reason that I recommend changing language in first whereas to multiple phases – if you have an idea of what happens during each of the stages then you could be more specific

Comment [LN(C15)]: I moved this section to whereas discussion of LJCMG as lead federal agency

Oklahoma; the Miami Tribe of Oklahoma; and the Peoria Tribe of Indians of Oklahoma to participate in the development of this PA as Consulting Parties; and

WHEREAS, the Delaware Tribe of Indians, the Cherokee Nation, and the Miami Tribe of Oklahoma have elected to be Consulting Parties; and

WHEREAS, LJCMG and LMHA, in consultation with KHC and consistent with 36 CFR § 800.2, have invited: the Kentucky Organization of Professional Archaeologists; the Kentucky Office of State Archaeology; the Kentucky Historical Society; Louisville Council District 4; Louisville Council District 5; Urban Strategies; the Louisville Western Library African American Archives; the Louisville Story Program; the Black Media Collaborative; the University of Louisville; the Kentucky Commission on Human Rights; the Louisville Urban League; the Center for Neighborhoods; St. Peters United Church of Christ; ten members of the public; the Commonwealth Preservation Trades Program; the Kentucky Center for African American Heritage; Neighborhood Planning and Preservation, Inc.; the Louisville Metro Housing Authority Board of Directors; the Concerned Pastors of Russell; the Louisville Central Community Center; The Beech; the Olmsted Parks Conservancy; Vital Sites; the Louisville Historical League; Preservation Kentucky; the Wayside Christian Mission; and the Westside Institute of Technology; to participate in the development of this PA as Consulting Parties;

WHEREAS, the Kentucky Organization of Professional Archaeologists, the Kentucky Office of State Archaeology, Louisville Council District 4, Louisville Council District 5, Urban Strategies, the Louisville Western Library African American Archives, the Louisville Story Program, the Black Media Collaborative, the University of Louisville, St. Peters United Church of Christ, six members of the public, (Darnell Farris, Haven Harrington, Lavele White, Katheryn Higgins, Ricky Smith, and Jane Grady), the Commonwealth Preservation Trades Program, Neighborhood Planning and Preservation, Inc., the Louisville Metro Housing Authority Board of Directors, the Concerned Pastors of Russell, the Louisville Central Community Center, The Beech, the Olmsted Parks Conservancy, the Wayside Christian Mission, and the Westside Institute of Technology have elected to be Consulting Parties; and

WHEREAS, LJCMG has actively engaged the public in the planning and consultation processes for the Undertaking through a series of meetings and community engagement events documented on the project website (www.visionrussell.org) ; and

~~**NOW, THEREFORE, LJCMG, LHMA, KHC, and ACHP (Signatories) acknowledge and agree that the execution of this PA evidences compliance with Section 106 in accordance with 36 CFR §§ 800.6(c) and 800.14.**~~

NOW, THEREFORE, LJCMG, LHMA, KYSHPO, and ACHP agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties.

Comment [LN(C16): Recommend replacing with the paragraph I inserted from the ACHP template for agreement documents.

STIPULATIONS

I. APPLICABILITY

This Agreement shall apply to all aspects of the Beecher Terrace Redevelopment Project that are funded, permitted, or administered wholly or in part by HUD, LJCMG, or LMHA; and are part of the Undertaking and APE as understood at the execution of this Agreement and as shown in Attachments 1, 2, and 3. Should the Undertaking at any time be revised or expanded to include aspects with, in the opinion of any of the Signatories to this Agreement, the potential to adversely affect historic properties outside of the APE as shown in Attachment 1, then the PA shall be amended per Stipulation IX or standard Section 106 consultation per 36 CFR Part 800 shall apply.

Comment [LN(C17): This paragraph seems redundant. Covered in Whereas clauses, other parts in stipulations and in section on Amendments. Recommend removing it. And renumbering following sections accordingly.

II. GENERAL

A. Qualified Personnel

All identification and evaluation of resources for NRHP eligibility that occurs as part of the Undertaking will be conducted by personnel meeting the Secretary of the Interior's Professional Qualification Standards (36 CFR Part 61) in the appropriate discipline(s).

B. Communication Protocols

1. Points of Contact

Each Signatory and Consulting Party shall designate a single point-of-contact (POC) for purposes of sending and receiving communications relating to this PA, and shall be responsible for providing LJCMG with the POC's name and contact information, including an email address. LJCMG shall maintain a list of POCs and their contact information, and shall provide the Signatories and Consulting Parties with the list as part of the annual reporting under Stipulation XII and upon request.

Comment [LN(C18): LJCMG should also provide a single point of contact. At the moment Cinder Miller seems to be POC, once this changes will it be Cynthia Elmore? There are several places in stipulations where it says contact either LJCMG and/or LMHA – single point of contact needed for LMHA as well, unless LJCMG will be responsible for relaying any information to them... which seems like it would be more efficient.

2. Formal Correspondence

All Lead Agency Section 106 findings and determinations, and all Signatory and Consulting Party ~~concurrence and non-concurrence~~ comments shall be documented in writing and transmitted via email, with copies to all Signatories and Consulting Parties. Notifications shall be in writing and transmitted via email. Submissions shall, unless otherwise specified, be electronic and delivered by email.

Comment [LN(C19): What is difference between notifications and submissions? We cannot agree to receiving something solely via email. Hard copies will be needed and any timelines are dependent on the receipt of that hardcopy not on the date an email was sent.

In cases where findings, determinations, notifications, or submissions are accompanied by electronic documents that result in an email that is over 4MB in size (e.g., architectural drawings, cultural resources reports, etc.), LJCMG or LMHA shall include a link in the email to a secure web location where the referenced documents may be downloaded by the Signatories and Consulting Parties.

Comment [LN(C20): Will the vision Russell website continue to play a role in your outreach? Mentioning posting this online may be needed as well. Especially as the entire history of consultation is available on that website.

3. Review Periods

Unless otherwise specified in this Agreement, Signatories and Consulting Parties shall have 15 calendar days from the time an email, as defined in Stipulation II.B.2, is sent to respond, unless it can be demonstrated that the email was not received within 1 hour of the time at which it was documented as being sent, or unless the recipient has not received or does not have access to the supporting information required to enable review. Should a party fail to respond within 15 calendar days, concurrence will be assumed. The review periods may be changed without an amendment to the PA provided all Signatories concur via email. Signatories and Consulting Parties shall be notified when review periods are changed.

Comment [LN(C21): Most of your times will need to be revised to 30 days. Our office will not commit to responding within 15 days. We may respond quickly but it may take the full 30 days provided by the regs in other cases.

C. Requests for Consulting Party Status

At any point during the administration of this PA, any party may request to be recognized as a consulting party per 36 CFR § 800.2 for this Undertaking. Requests must be submitted in writing to the LJCMG POC. LJCMG shall have 15 calendar days from receipt of a written request to consult with KHC and to determine whether the request will be granted. The requestor, the Signatories, and the Consulting Parties shall be notified of LJCMG's decision via email. Should LJCMG determine that the party will be so recognized, the party will upon notification of the decision and for the duration of this PA be a Consulting Party to the Agreement.

Comment [LN(C22): No. Also the way this is written will be problematic for the next phases of this project – there is no reason to commit to expedited review of things that have not even been defined yet. Better to refer to review periods as outlined in the regs. In interest of time provide opportunities for everyone to respond with “no comment” as well that way you don't have to wait until the end of 30 days. Also if everyone is aware of the schedule and what will be reviewed at which point then the comments will come in more quickly. Several methods of this were discussed in the meeting on 3/28/2018

III. STAGE I

A. Effects to Historic Properties

~~Based upon the conceptual design (Attachment 4), the Signatories to this PA acknowledge that Stage I of the Undertaking will adversely affect historic properties within the APE. Direct adverse effects to the National Register of Historic Places (NRHP)-eligible Beecher Terrace Historic District (JFL-01) will result from: demolition of buildings 1-59; reconfiguration of the site plan, hardscape, and landscape; and new construction within the district boundaries. Indirect adverse effects to the Baxter Community Center and Baxter Square Park, also part of the Beecher Terrace Historic District are also possible. Indirect adverse effects to the setting and feeling of the NRHP-listed Church of Our Merciful Savior (JFWR-1752) and St. Peters German Evangelical Church (JFWR-1749) may occur.~~

Comment [LN(C23): This information should all be in the preamble. I moved it to a WHEREAS

B. Resolution of Adverse Effects

1. Consultation

LJCMG shall have a meeting with the Signatories and Consulting Parties to discuss mitigation measures to resolve adverse effects to historic properties from Stage I of the Undertaking. Signatories and Consulting Parties shall submit recommended mitigation measures in writing to LJCMG within 15 calendar days of the meeting. LJCMG shall consider

the input from the Signatories and Consulting Parties received in the meeting and in writing.

2. Letter of Resolution

Within 15 calendar days of the end of the comment period under Stipulation III.B.1, LJCMG shall submit a proposed mitigation plan (Mitigation Plan) to the Signatories and Consulting Parties for review. The Mitigation Plan shall include specific mitigation measures to avoid or resolve adverse effects to both aboveground and archaeological historic properties within the APE.

Comment [LN(C24): Time deadlines like this where the LJCMG or LMHA are committing to turning something around quickly are fine as they also give the other signatories an idea of when they can expect the materials to comment on.

For each mitigation measure proposed, the Mitigation Plan shall provide the following information: the parties responsible for mitigation tasks and products; a schedule for completion; and which Signatories and/or Consulting Parties will review the products, at what point, and whether they will have approval authority. In determining the appropriate mitigation, LJCMG shall consider the relative importance of the affected historic property(ies) to the Russell neighborhood and the severity of the adverse effect.

LJCMG shall consult with the Signatories on the Mitigation Plan until consensus is reached. The Mitigation Plan shall serve as the basis for a Letter of Resolution (LOR) developed consistent with 36 CFR § 800.6(c).

Comment [LN(C25): This section is going to be slightly tricky as it will need to be updated to reflect the things that are happening in April / May as these meetings take place and the mitigations are ironed out. In theory, most of this will have been completed before the PA is executed as the schedule for the LOR for Stage I is an executed copy in June.

C. Substantial Changes

Should the scope of work for Stage I of the Undertaking as reviewed under Stipulation III.B change substantially prior to its completion, LJCMG and LMHA shall notify the Signatories and Consulting Parties within 15 calendar days of becoming aware of a substantial change. Notification will include a description of the change, LJCMG's and LMHA's opinion on whether it will result in a previously unanticipated adverse effect to historic properties. LJCMG and LMHA may elect to reinitiate consultation under Stipulation III.B.

Comment [c26]: And demolition

Comment [LN(C27): This whole section may be problematic (might be fine with a few tweaks) because it may conflict with several whereas clauses and with the amendment section of the PA. What are the chances of Stage I changing?

Changes shall be deemed substantial if they have the potential to: affect, directly or indirectly, historic properties outside of the APE determined per Stipulation III.B.2; or, to adversely affect historic properties in a manner not anticipated during consultation under Stipulation III.B. Substantial changes may include changes to the zoning, use, limits of disturbance for new construction, site plan, street configuration, parking lot locations, landscaping plan, number of buildings, building locations, or to the height, scale, or mass of buildings.

Comment [LN(C28): In theory – the archaeology mitigation for everything within the Stage I APE will satisfy any archaeological concerns for the future stages. If the APE changes with ground disturbance outside of that 15 block area there may be additional archaeological concerns. The archaeology project will be guided by the DRP that will be part of the Stage I LOR and it is likely that the archaeology project (excavation, analysis, report writing, outreach) will run concurrently throughout the other stages of the project. Timelines for archaeology and the deliverables will be part of the DRP / LOR for Stage I.

Signatories and Consulting Parties shall have 15 calendar days to provide written comments to LJCMG on the change in scope and, if desired, to request that LJCMG and LMHA reinitiate consultation per Stipulation III.B. Should a Signatory provide a written request within 15 calendar days to consult under Stipulation III.B, then LJCMG and LMHA shall proceed accordingly.

IV. FUTURE STAGES

A. Conceptual Design

1. Initiation of Consultation

LJCMG shall initiate consultation per this Agreement at such time as the geographical and temporal limits of future construction stages of the Undertaking become defined, and a conceptual design is available for review. LMHA may elect to consult on two or more stages concurrently under this Stipulation, provided all of the stages are sufficiently developed to do so.

LJCMG shall notify the Signatories and Consulting Parties and shall make the conceptual design available for review by the parties. Between 15 calendar days and 30 calendar days of notification, LJCMG shall have a face-to-face meeting with the Signatories and Consulting Parties to discuss the conceptual design and its effects on historic properties per Stipulation IV.A.3.

2. APE

If the conceptual design includes new construction 4 stories (or XX feet) or less in height, and ground disturbing activity is contained within the area between Jefferson Street, 9th Street, Muhammad Ali Boulevard, and 13th Street the APE for the Undertaking as shown in Attachment 1 will remain unchanged for the stage(s).

If the conceptual design includes new construction more than 4 stories (or XX feet) in height, or ground disturbing activity outside of the area between Jefferson Street, 9th Street, Muhammad Ali Boulevard, and 13th Street, LJCMG shall include in the notification to the Signatories and Consulting Parties its recommendation on an APE for the stage(s) of the Undertaking.

3. Consultation on Conceptual Design

At a face-to-face meeting with the Signatories and Consulting Parties, LJCMG shall present the conceptual design for the stage(s) of the Undertaking, and shall consult with the parties on the APE (if applicable per Stipulation IV.A.2), historic properties in the APE, effects to historic properties, and, if adverse effects to historic properties are expected, changes to the conceptual design that would avoid adverse effects. The meeting shall include a representative of the design team that prepared the conceptual design. Signatories and Consulting Parties desiring to provide written comments to LJCMG shall do so within 15 calendar days of this consultation meeting. LJCMG shall consider the input from the Signatories and Consulting Parties received in the face-to-face meeting and in writing, and shall proceed with Stipulation IV.A.4.

4. LJCMG Determination of Effects

Comment [NL29]: Understanding that large changes are really only possible at the conceptual design stage is helpful. However there will need to be reviews at later stages to ensure that nothing has happened that would pose the potential for an adverse effect that was not apparent in the concept stage.

Comment [LN(C30): So this is just saying that we'll get the plans at least 15 days before the face to face meeting that will discuss them, correct?

Comment [LN(C31): May be problematic as stated because Attachment 1 does not show off-site housing portions of APE, only the on-site. At this stage, we don't know if we will be commenting on these and where they would fall within the Stages. If off-site is in, and it is part of later Stages then this would not cover off-site parts of the undertaking. Attachment 1 really doesn't work for Stage 1 either if off-site housing is part of the Undertaking.

Comment [LN(C32): We cannot commit to this as it may need longer than 15 days to get comments after face to face meeting, however it is likely that comments will come in quickly, but we will not commit to less than 30 days for these future stages.

Following the initial consultation meeting under Stipulation IV.A.3, LJCMG may elect to revise the conceptual design in response to input received from the parties. Thereafter, LJCMG shall submit a letter to the Signatories and Consulting Parties that includes: the selected conceptual design for the stage(s) LJCMG intends to develop further, and its findings with respect to the APE (if applicable per Stipulation IV.A.2), historic properties within the APE, and effects to historic properties.

a. No Effect/No Adverse Effects

Should LJCMG find that the stage(s) of the Undertaking will have no effect or no adverse effect on historic properties, the Signatories and Consulting Parties shall have 15 calendar days to concur with the findings. If the Signatories concur or do not respond within 15 calendar days, then LJCMG shall proceed with Stipulation IV.B.

Comment [LN(C33): Same comments regarding timeline as above.

If a Signatory notifies LJCMG that it does not concur with its findings within 15 calendar days, then LJCMG shall do one of the following:

- i. Revise the conceptual design and/or its findings with respect to the APE, historic properties within the APE, or the effects of the Undertaking and resubmit per Stipulation IV.A.4; or
- ii. Proceed with Stipulation IV.C to resolve adverse effects to historic properties.

b. Adverse Effects

Should LJCMG find that the stage(s) of the Undertaking will have an adverse effect on historic properties, it shall proceed with Stipulation IV.B to resolve adverse effects.

B. Resolution of Adverse Effects

1. Consultation

If it is determined that the stage(s) will have an adverse effect on historic properties under Stipulation IV.A or Stipulation IV.B of this Agreement, LJCMG shall have a face-to-face meeting with the Signatories and Consulting Parties to discuss mitigation measures to resolve adverse effects to historic properties from those stage(s) of the Undertaking. Signatories and Consulting Parties shall submit recommended mitigation measures in writing to LJCMG within 30 calendar days of the face-to-face meeting. LJCMG shall consider the input from the Signatories and Consulting Parties received in the face-to-face meeting and in writing.

Comment [LN(C34): Depending on the nature of effects there may be more than one meeting needed here.

2. Letter of Resolution

Within 30 calendar days of the end of the comment period under Stipulation IV.C.1, LJCMG shall submit a proposed mitigation plan (Mitigation Plan) to the Signatories and Consulting Parties for review. The Mitigation Plan shall include specific mitigation measures to avoid or resolve adverse effects to both aboveground and archaeological historic properties within the APE.

For each mitigation measure proposed, the Mitigation Plan shall provide the following information: the parties responsible for mitigation tasks and products; a schedule for completion; and which Signatories and/or Consulting Parties will review the products, at what point, and whether they will have approval authority. In determining the appropriate mitigation, LJCMG shall consider the relative importance of the affected historic property(ies) to the Russell neighborhood and the severity of the adverse effect.

LJCMG shall consult with the Signatories on the Mitigation Plan until consensus is reached. The Mitigation Plan shall serve as the basis for an LOR developed consistent with 36 CFR § 800.6(c).

D. Substantial Changes

Should the scope of work for the stage(s) of the Undertaking reviewed under Stipulation IV.A or Stipulation IV.B change substantially prior to its completion, LJCMG shall notify the Signatories and Consulting Parties within 15 calendar days of becoming aware of a substantial change. Notification will include a description of the change, and LJCMG's opinion on whether it will result in a previously unanticipated adverse effect to historic properties. LJCMG may elect to reinstate consultation under Stipulation III.A or Stipulation IV.B, as appropriate.

Changes shall be deemed substantial if they have the potential to: affect, directly or indirectly, historic properties outside of the APE determined per Stipulation IV.A.2; or, to adversely affect historic properties in a manner not anticipated during consultation under Stipulation IV.A or Stipulation IV.B. Substantial changes may include changes to the zoning, use, limits of disturbance for new construction, utility tie-ins, site plan, street configuration, parking lot locations, landscaping plan, number of buildings, building locations, or to the height, scale, or mass of buildings.

Signatories and Consulting Parties shall have 30 calendar days to provide written comments to LJCMG on the change in scope and, if desired, to request that LJCMG reinstate consultation per Stipulation IV.A or Stipulation IV.B. Should a Signatory provide a written request within 30 calendar days to reinstate consultation, then LJCMG shall proceed accordingly.

V. ROUTINE MAINTENANCE OF BAXTER PARK

Routine maintenance of Baxter Park as defined in Appendix X shall be exempt from review under this PA.

VI. UNANTICIPATED DISCOVERIES

Comment [LN(C35): This refers to development of MOAs is there any reason why LORs are needed? Seems simpler to stick with what is outlined in the regs MOAs as that also outlines everything associated with those documents versus defining what is entailed with a LOR.

Comment [LN(C36): I understand this section better based on the 3/28/2018 meeting however some parts of this are still problematic and it would be cleaner to shorten all of this and just refer to consultation per the regs 36 CFR 800 while acknowledging that certain parts of this have been figured out and would likely collapse 800.3-800.6.

Comment [LN(C37): This refers to routine maintenance that occurs now under Department of Parks within LJCMG – this should be revised into a Whereas statement

- A. In the event that human remains are encountered during ground disturbing activities within the APE, LJCMG must immediately stop all work in the area and cordon off the area. In accordance with KRS 72.020, the County Coroner and the Louisville Police Department must be contacted immediately. If the County Coroner and the Louisville Police Department determine that the human remains are not of forensic interest, the unexpected discovery must be reported to KHC and LMHA.
- B. In the event that previously unidentified archaeological resources are discovered during ground disturbing activities within the APE, LJCMG will immediately halt all construction work involving subsurface disturbance in the area of the resource and in the surrounding area where further subsurface resources can reasonably be expected to occur and immediately notify the LMHA and KHC of the discovery.
- C. LJCMG and KHC, or an archaeologist approved by them, will promptly inspect the work site and determine the area and nature of the affected archaeological resource. Construction work may then continue in the area outside the archaeological resource as defined by LJCMG and KHC, or their designated representatives as long as the resumed construction activities do not impede the archaeological investigations or create a dangerous working environment in the area of the archaeological resources.
 - 1. After the initial inspection, if KHC deems it warranted, an archaeologist who meets the Secretary of the Interior's Professional Qualification Standard, as set forth in 36 CFR Part 61 will contact the Office of State Archaeology (OSA) to obtain a site number.
 - 2. Within 10 working days of the OSA registering the site, LJCMG, in consultation with KHC, will determine the NRHP eligibility of the resource.
 - 3. If LJCMG, in consultation with KHC, determines that the resource is eligible or potentially eligible for inclusion in the NRHP, LJCMG will prepare a plan for its avoidance, protection, or recovery of information. LJCMG and KHC must approve such plan prior to implementation.
 - 4. Work in the affected area must not proceed until either: the development and implementation of appropriate data recovery or other recommended mitigation procedures, or the determination is made that the located resources are not eligible for inclusion in the NRHP.
- D. Any disputes over the evaluation or treatment of previously identified resources will be resolved as provided in Stipulation VIII pertaining to Dispute Resolution.

Comment [LN(C38): And LJCMG?

Comment [LN(C39): Redundant. See dispute resolution section.

Comment [LN(C40): Unsure if this section is even needed as Emergency Actions are more pertaining to other more general (not undertaking specific) PAs.

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VII. EMERGENCY ACTIONS

A. Definition

~~Emergency actions are those actions deemed necessary as an immediate and direct response to an emergency situation, which is a disaster or emergency declared by the President, a tribal~~

government, the governor of the state, the Mayor of the City of Louisville, or the Louisville Metro Council, or another immediate threat to life or property. Emergency actions under this Agreement are only those implemented within 21 calendar days from the declaration of the emergency situation.

B. Review in Advance of Emergency Action

If the emergency action has the potential to affect historic properties, LJCMG or LMHA shall notify the Signatories and Consulting Parties no less than 7 calendar days prior to the emergency action and provide a plan to address the emergency. The Signatories and Consulting Parties shall have 7 calendar days to review the plan and to respond to LJCMG or LMHA with an alternate plan. If no Signatory offers an alternate plan within 7 calendar days, then LJCMG or LMHA may implement the proposed plan. If one or more Signatories offer an alternate plan, LJCMG or LMHA will consider the alternative plan(s) and will notify the Signatories and Consulting Parties of its intended approach.

Signatories and Consulting Parties shall have 30 calendar days to provide written comments to LJCMG or LMHA on the emergency action and its effect on historic properties. If a Signatory concludes that a historic property will be or has been adversely affected by the emergency action and mitigation is warranted, then LJCMG will consult with the Signatories to develop an MOA per 36 CFR § 800.6(c).

C. Post-Action Review

If LJCMG or LMHA determines that the emergency action must be taken in less than 7 calendar days, then it will notify the Signatories and Consulting Party as far in advance as possible of the manner in which the emergency will be addressed. Signatories and Consulting Parties shall have 30 calendar days to provide written comments to LJCMG or LMHA on the emergency action and its effect on historic properties. If a Signatory concludes that a historic property has been adversely affected by the emergency action and mitigation is warranted, then LJCMG will consult with the Signatories to develop an MOA per 36 CFR § 800.6(c).

D. Immediate Rescue and Salvage Operations

Immediate rescue and salvage operations conducted to preserve life or property are exempt from these and all other provisions of this Agreement.

VIII. DISPUTE RESOLUTION

Should any Signatory to this Agreement object in writing to LJCMG or LMHA regarding any action carried out in accordance with this Agreement, LJCMG and LMHA shall consult with the Signatory(ies) to resolve the objection. If LMHA determines that such objection cannot be resolved after consulting for 30 calendar days or other mutually agreeable timeframe, LJCMG and LMHA shall forward all documentation relevant to the dispute, including LJCMG's and LMHA's proposed resolution of the dispute, to the ACHP, copying the Signatories and Consulting Parties.

Within 45 calendar days after receipt of all adequate documentation, the ACHP will do one of the following: provide counsel to LJCMG and LMHA on how to resolve the objection; or, provide LJCMG and LMHA with comment pursuant to 36 CFR § 800.7(c). ACHP comment shall be taken into account by LJCMG and LMHA in accordance with 36

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Comment [LN(C41): Especially critical that we highlight who the point person is here. The lack of clarity introduced by "or" means that LMHA could be notified and thinks LJCMG is taking care of it when in fact they were never notified. That single point of contact that is expected of all other signatories would be helpful here for clarity on what exactly gets done.

CFR § 800.7(c)(4). Any ACHP recommendation or comment will be understood to pertain only to the subject of the dispute. LJCMG's responsibility to carry out all actions under this Agreement that are not subjects of the dispute will remain unchanged.

If the ACHP does not respond to LJCMG regarding the dispute within 15 calendar days, LJCMG may proceed with its proposed resolution of the dispute, and shall notify the Signatories and Consulting Parties accordingly.

Comment [LN(C42): This part should be integrated into the ACHP template that I've pasted in the text just below.

A. Forward all documentation relevant to the dispute, including the [Agency abbreviation]'s proposed resolution, to the ACHP. The ACHP shall provide [Agency abbreviation] with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, [Agency abbreviation] shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, signatories and concurring parties, and provide them with a copy of this written response. [Agency abbreviation] will then proceed according to its final decision.

B. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, [Agency abbreviation] may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, [Agency abbreviation] shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and concurring parties to the MOA, and provide them and the ACHP with a copy of such written response.

C. [Agency abbreviation]'s responsibility to carry out all other actions subject to the terms of this PA that are not the subject of the dispute remain unchanged.

IX. AMENDMENT

This Agreement may be amended when an amendment is agreed to in writing by all Signatories. The amendment shall be effective on the date a copy signed by all of the Signatories is filed with the ACHP. ~~This Agreement may not otherwise be amended.~~

Comment [LN(C43): Redundant.

X. TERMINATION

If any Signatory to this Agreement determines that it cannot or will not fulfill its responsibilities under this Agreement, that Signatory shall immediately consult with the other Signatories in an attempt to develop an amendment per **Stipulation IX** of this Agreement. If within thirty calendar days, or another time period agreed to by all Signatories in writing, an amendment cannot be reached, any Signatory may terminate this Agreement upon written notification to the other Signatories.

If this Agreement is terminated, then prior to work continuing on the Undertaking, LJCMG must either: execute a new programmatic agreement under 36 CFR § 800.14(b); or, follow the process under 36 CFR §§ 800.3 through 800.7 to individually and separately review the actions that comprise the Undertaking. LJCMG shall notify the Signatories and Consulting Parties in writing as to the course of action it will pursue.

XI. DURATION

This Agreement shall become effective when executed by the last of the Signatories (Effective Date). Execution of this Agreement by the Signatories, and implementation of its terms, will evidence that LJCMG has afforded the Signatories and Consulting Parties an opportunity to comment on [Phase I of the undertaking and its effects as well as laid out a path for Section 106 consultation on the future stages of](#) the Undertaking and its effects, provided that further consultation and resolution of potential adverse effects will occur following execution of this Agreement in accordance with its terms, and that LJCMG will thereby have taken into account the effects of the Undertaking.

This Agreement shall remain in effect for a period of 10 years. One year prior to its expiration, the Signatories shall consult to determine whether it should be extended through an amendment per [Stipulation IX](#).

XII. ANNUAL REPORTING

On or before January 31 of each year or until the Signatories agree in writing that the terms of this Agreement have been fulfilled, or the Agreement is terminated or expires, LJCMG shall prepare and provide an annual report to the Signatories and the Consulting Parties addressing the following topics: progress in carrying forth and completing Stipulations; any problems or unexpected issues encountered during the preceding year; any changes that LJCMG believes should be made in implementation of this Agreement. LMHA shall make this annual report available for public review by posting it on the agency's and the Vision Russell websites.

SIGNATURES

Execution of this Agreement by LJCMG, LMHA, KHC, and the ACHP and implementation of its terms evidence that LJCMG has taken into account the effects of the Undertaking on historic properties and afforded the ACHP an opportunity to comment.

[signatures follow]

APPENDICES

- [Current version of Attachment 1 does not include where the 'off-site' housing is.](#)
- [In Attachment 1 – clarify which resource numbers are archaeological sites.](#)
- [_____](#)

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