

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

WHEREAS, 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 CNI implementation grant**; and the redevelopment of the Beecher Terrace public housing site (“Undertaking”) is a core component of the CNI plan and the subject of this Programmatic Agreement (“Agreement”), and consists of the demolition of 59 existing buildings at Beecher Terrace and new construction of 640 units of mixed-income and multi-generational housing on the Beecher Terrace site supported by new and improved amenities and public infrastructure; and

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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. § 300108, 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 and assistance from LMHA; and

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

Comment [LN(C1)]: These two whereas clauses seem to conflict with the first whereas where LMHA is lead grantee. Double check this for accuracy

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 partnership with LJCMG; and

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

Comment [LN(C2)]: Recommend deleting this section as this Whereas deals with APE as illustrated in Attachment 1

WHEREAS, within the APE, LJCMG has identified the NRHP-eligible Beecher Terrace Historic District [including the Beecher Terrace Housing Complex (JFL-01), the Baxter Community Center (JFWR-3796), Baxter Square Park (JFL-485)], ~~and associated archaeological sites 15Jf923 and 15Jf924,~~ the NRHP-listed Church of Our Merciful Savior (JFWR-1752), the NRHP-listed St. Peters German Evangelical Church (JFWR-1749), and the NRHP-listed Fire Department Headquarters (JFWR-1748) as historic properties within the APE, and Kentucky SHPO has concurred with this finding; and

Comment [LN(C3): Edits for clarity – original version reads as though everything in the paragraph is the Historic District

WHEREAS, LJCMG has determined that Stage I of the undertaking will have direct adverse effects to the Beecher Terrace Historic District ~~and archaeological site 15Jf923, and that later phases of the project may have indirect adverse effects other historic properties including the Baxter Community Center and Baxter Square Park (contributing elements to the Beecher Terrace Historic District), the Church of Our Merciful Savior (JFWR-1752), St. Peters German Evangelical Church (JFWR-1749); and~~

Comment [LN(C4): This whereas edited just to talk about known effects the effect of later phases is dealt with 2 whereas clauses after this

WHEREAS, the first stage (Stage I) of the Undertaking includes all demolition and construction associated with the project as of January 1, 2018, and 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

Comment [LN(C5): This should be updated with all plans current as of 4/30/2018 to reflect the latest set of plans. Attachment 3 has changed since January 1, 2018 there is a drawing that is more accurate than just a conceptual drawing, correct? (There are further comments regarding the drawings later in our comments.) Attachment 2 says that it was revised on 4/24/2018.

~~**WHEREAS, the reestablishment of the original block configuration with the exception of the section of Liberty Court located between the Baxter Community Center (JFWR-3796) and Baxter Square Park (JFL-485) is part of Stage I of the Undertaking; and**~~

Comment [LN(C6): Detail needs to be added to “original block configuration” as part of it is being left for later. See the whereas that I have added here as a suggestion

WHEREAS, future phases of the Undertaking are yet to be determined and as such LJCMG, in consultation with Kentucky SHPO, 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

Comment [LN(C7): Stage and phase still appear to be used inconsistently throughout this document. From an earlier conversation we understood your use of stage to be one set of tasks that would result in an LOR for each stage. Multiple phases could make up a single stage (see attachment 2 with multiple phases of demolition that make up Stage I). Effects and any possible mitigations would be determined for each stage.

WHEREAS, this agreement is not intended to disrupt, alter, or change in any way routine maintenance at Baxter Square Park, which is maintained by the Parks Department, a division of LJCMG, despite the presence of historic properties (Site 15Jf924 and the above ground landscape of Baxter Square Park itself) located within the park ~~as these are activities that are ongoing and separate from this undertaking;~~ and

Comment [LN(C8): Did you mean 800.14(b) that refers to a complex project rather than 800.4(b) that refers to phased identification?

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, in consultation with Kentucky SHPO 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 Oklahoma; the Miami Tribe of Oklahoma; and the Peoria Tribe of Indians of Oklahoma to participate in the development of this PA as Concurring Parties; and

~~**WHEREAS, the Cherokee Nation and the Miami Tribe of Oklahoma have agreed to be Concurring Parties; and**~~

Comment [LN(C9): At all places within the document that you mention Signatories you need to include “Invited Signatories” as well as they have the power to amend and/or terminate the document. Make a global change to add them, I’ve made a few of the changes, but not all, in the PA language.

~~**WHEREAS, the Delaware Nation has agreed to be an Invited Signatory; and**~~

Comment [LN(C10): Were they not all extended an invitation to be an invited signatory?

WHEREAS, LJCMG, in consultation with Kentucky SHPO and consistent with 36 CFR § 800.2, have invited the Kentucky Organization of Professional Archaeologists, the Kentucky Office of State

Beecher Terrace PA, 2018.4.23

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 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 **Concurring Parties**; and

Comment [LN(C11): See next comment

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, Lavel White, Katheryn Higgins, Ricky Smith, and Jane Grady), the Commonwealth Preservation Trades Program, Neighborhood Planning and Preservation, Inc., 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 agreed to be Concurring Parties**; and

Comment [LN(C12): Have all of them actually agreed to by a concurring party? This is not the same as receiving and accepting an invitation to be a “consulting party” <http://www.achp.gov/agreementdocguidance.html#ch6-1> is fine to note that these are consulting parties and if a few want to sign and support the agreement just add a whereas for those few

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 (<http://visionrussell.org/historic-preservation/section106/www.visionrussell.org>);

NOW, THEREFORE, LJCMG, Kentucky SHPO, and ACHP (**Signatories**) 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.

This is also something that is tied with LJCMG’s concern about time. If every one of these parties has agreed to sign then great! If all of these parties have only agreed to be consulting parties but not necessarily sign that means you only have to route this agreement to a fraction of the folks you do now versus routing it to two dozen different parties for signature. Much faster to get all of your signatures that way.

Comment [LN(C13): And invited signatories? Unsure of this check with ACHP.

LJCMG shall ensure the following stipulations are implemented.

Comment [LN(C14): Redundant – handled by the Now Therefore immediately preceding this

STIPULATIONS

I. GENERAL

A. Qualified Personnel

All identification and evaluation of historic properties 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, Invited 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 IX and upon request. All POCs will be listed on the Vision Russell website (www.visionrussell.com).

Comment [LN(C15): The vision Russell website needs to have a section dedicated to Beecher Terrace. As of 4/27 the “section 106” tab includes “anything related to preserving the history and culture of Beecher Terrace or the Russell neighborhood”

2. Formal Correspondence

All Lead Agency Section 106 findings and determinations, and all Signatory and Consulting Party comments shall be documented in writing and posted on the Vision Russell website (www.visionrussell.com). This website will be used as the clearinghouse for all formal project communication. Once the LJCMG POC posts to the website, the LJCMG POC will send an email to each Consulting Party POC with a link to the source document on the website. The transmittal email will be free of attachments. The comment period for each document will be specified by the LJCMG POC in the transmittal email. All project review timelines will begin when LJCMG sends the email with the link to the website.

KY SHPO requires hard copies of reports and correspondence. Hard copies will be provided following email transmission for correspondence with KY SHPO and for other signatories specifically requesting hard copy. Architectural drawings and other large submittals will be provided via link to the website only, unless otherwise requested by KY SHPO.

Comment [LN(C16): Jenn pointed out that there may be a need for paper plans in areas that need to be reviewed in a high level of detail (i.e. around Baxter Square Park). There may be a need to make these available to review for consulting parties that don’t have the ability to look at them in digital format.

3. Review Periods

Unless otherwise specified in this Agreement, Signatories and Consulting Parties shall have 30 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 30 calendar days, concurrence will be assumed.~~ If a party has no comments, they are encouraged to reply formally with “no comment” on the Vision Russell website to expedite the review process. 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(C17): Remove this statement – the no response within 30 days only applies to SHPO/THPO. “No comment” does not equal concurrence from invited signatories / consulting parties.

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 Kentucky SHPO 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.

II. STAGE I OF THE PROJECT

A. Definition

LJCMG has deliberately separated Stage I of the project from the later Phases. Stage I of the Undertaking includes all demolition and construction associated with the project as of January 1, 2018. All work associated with Stage I 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); Later Phases of the project will correspond to construction Phases of the redevelopment project as defined by the development team.

Comment [LN(C18): See the earlier comment regarding establishment of the original block configuration.

Comment [LN(C19): Is there something more final than a conceptual drawing to include as attachment 3? Consultation and the agreements regarding mitigations need to be on the draft of the project that is as close to “as-built” as possible. It would be best to only include elements that are included in Stage 1 in this attachment as elements such as the reconfigured Baxter Square part are problematic and could be interpreted as included in the reconfiguration of the site plan, hardscape, landscape described in II.B.

B. Effects to Historic Properties

Based upon the conceptual design (Attachment 3), 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 including the Beecher Terrace Housing Project (JFL-01) and archaeological site 15Jf923 will result from: demolition of buildings 1-59; reconfiguration of the site plan, hardscape, and landscape; and new construction within the district boundaries.

C. Resolution of Adverse Effects

1. Consultation

LJCMG shall have a meeting with the Signatories and Consulting Parties to discuss mitigation measures (such as oral histories, funding of local archives,

archaeological data recovery, and interpretive exhibits) 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. All Consulting Parties are encouraged to reply formally on the Vision Russell website with “no comment” if they have no comments. LJCMG shall consider the input from the Signatories and Consulting Parties received in the meeting and in writing to reach consensus in resolving adverse effects.

2. Letter of Resolution

After the conclusion of the comment period under Stipulation II.C.1, LJCMG shall submit a Letter of Resolution(LOR) to the Signatories and Consulting Parties that is consistent with 36 CFR § 800.6(c). The LOR shall include specific mitigation measures to resolve adverse effects to both aboveground and archaeological historic properties within the APE.

For each mitigation measure proposed, the LOR 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.

Comment [LN(C20): This whole section should be reworded to mark the progress that has been made – if this was executed now it would mean having a “new meeting” to discuss mitigation measures, having “15 days” to submit mitigation measures etc. – noting that we have had a few meetings, are well into figuring out the Archaeology DRP, and have ideas for mitigation would be the more accurate way to describe this and it wouldn’t commit us to complete things that have already been done.

III. FUTURE PROJECT PHASES

A. Definition

The Beecher Terrace Redevelopment Project includes a series of phases. Each future phase will be designed and financed independently as part of the overall CNI grant. Input from the Consulting Parties is most meaningful when the project is in concept design, thus LJCMG will initiate consultation at this point in the design process.

B. Project Meetings

1. Quarterly Meetings

To facilitate communication and ensure timely distribution of project information, LJCMG shall host regular quarterly meetings for all Signatories and Consulting Parties. The meetings will provide updates on the status of all phases of the project and will provide Signatories and Consulting Parties advance notice of Concept Design timelines and deadlines. The meetings will also provide updates on phases of the project that are in construction or that are nearing completion to review unanticipated design changes that were required during construction. Additional meetings may be necessary in order to adhere to critical project deadlines, these will be scheduled as necessary.

Comment [LN(C21): This is not consistent with the regs in 36 CFR 800 – in the previous draft of this agreement you had “LJCMG shall consult with Signatories... until consensus is reached” that critical part is missing from this version of the PA. Consultation is not a one-time shot for people to submit comments and LJCMG will decide unilaterally what to do – consensus / agreement needs to be reached. Language related to that is not present in this version of the PA in either place that LORs are discussed.

Recommendation: ACHP should provide examples of where LORs have been used successfully in the past. The steps at which consensus was reached in those examples should be incorporated here. Typically there would be a document that signatories and invited signatories would sign agreeing the consensus has been reached. For the Louisville Bridges project, generally the consensus was reached during a meeting and a letter was issued that accurately described the ‘treatment measures’ that were to be applied to each stage. I’ve asked Jamie Loichinger if she could provide some of those examples on 4/26/2018.

Comment [LN(C22): Stages?

Comment [LN(C23): Stages?

2. Pre-Design Consultation

To ensure that the design team understands and anticipates potential effects, realizing that more effects may be identified through future consultation outlined in III.C, to historic properties at the earliest possible point in design, a representative of the KY SHPO will be invited to no less than two design consultation meetings with the design and development team. The meetings will be scheduled through LJCMG and will be used to anticipate potential adverse effects and identify possible strategies to minimize or avoid effects entirely.

Comment [LN(C24): By including SHPO in these meetings that may help to avoid the worst of the potential effects, but it will not predict all of the effects. More issues may arise during consultation process these need to be considered and responded to.

C. Concept Design / Process for Letter of Resolution

1. Consultation Process and Timeline

LJCMG shall initiate consultation at such time as the geographical and temporal limits of future construction phases of the Undertaking become defined, and a conceptual design is available for review. LJCMG may elect to consult on two or more phases concurrently under this Stipulation, provided all of the phases 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 on the Vision Russell website (www.visionrussell.com). The LJCMG POC will provide a direct link via email to where these documents are hosted on the website. LJCMG will simultaneously define the Area of Potential Effect for the phase and issue a determination of effect on historic properties at this time.

If any of the APE falls outside of the APE impacted by Stage I of the project then additional consultation will be needed for potential archaeological impacts. There will be building foundations and other objects of antiquity associated with 15Jf923 within the 16 block area impacted by Stage I, but the impacts from Stage I and future stages will be mitigated by archaeological work outlined in the Data Recovery Plan and included in the Stage I LOR. If the phase has no effect on historic properties, LJCMG shall note this explicitly.

Comment [LN(C25): redundant

Approximately 15 calendar days after notification, LJCMG shall host a face-to-face meeting with the Signatories and Consulting Parties to discuss the conceptual design and its effects on historic properties

30 days after issuing notification, the period for receipt of comments on the concept design, and the determination of effects will close.

2. Face to Face Meeting on Conceptual Design

At the face-to-face meeting with the Signatories and Consulting Parties, a representative of the design and development team shall present the conceptual design for the phase(s) of the Undertaking. In addition, a representative of LJCMG shall review the APE, the historic properties located in the APE, the effects to historic properties (if any), and, if adverse effects to historic properties are expected, all parties will discuss changes to the conceptual design that could avoid or minimize adverse effects.

The intent of the meeting will be to solicit input from the Consulting Parties regarding strategies to avoid or minimize adverse effects if they exist. However, if LJCMG anticipates that the phase may have adverse effects that cannot be avoided, LJCMG will introduce proposed mitigation strategies and will begin the process of soliciting input regarding the resolution of effects from the Consulting Parties. The meeting will attempt to reach consensus among the Signatories and Consulting Parties regarding the suite of mitigations options that may be used to resolve the adverse effects.

Consulting Parties will have 30 days following the face-to-face meeting to provide additional mitigation options to LJCMG for their consideration.

3. Resolution of Effects

Following the close of the 30-day comment period mentioned in Stipulation III.C.1, LJCMG will address all Consulting Party comments. At this point, LJCMG may elect to revise the conceptual design in response to input received from the parties to avoid adverse effects. If adverse effects cannot be avoided, LJCMG shall circulate a Letter of Resolution (LOR) to all Consulting Parties. The LOR will be based on feedback received from the Consulting Parties and it shall be circulated following the close of the comment period mentioned in Stipulation III.C.2. The LOR shall be developed consistent with 36 CFR § 800.6(c) and it shall include: the selected conceptual design for the phase(s) LJCMG intends to develop further, its findings with respect to the APE, historic properties within the APE, effects to historic properties, and the proposed resolution of the effects.

The LOR shall include specific mitigation measures to resolve adverse effects to both aboveground and archaeological historic properties within the APE. For each mitigation measure proposed, the LOR 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.

D. Comment Options and Periods

1. Option of No Comment

For every phase of construction, every Consulting Party and Signatory will be provided the option of noting specifically that they have no comment. A no comment check box will be provided on the project web site for this purpose.

2. Requests for Additional Time

Comment [LN(C26): We still feel that a discussion of mitigation options at this stage is problematic as that makes the discussion of avoidance / minimization options pointless due to the appearance that LJCMG is going to proceed with their plans regardless of public input.

We would like to know ACHP's thoughts on this part of the consultation process and at what point it is appropriate to discuss mitigation options. Perhaps it will be something ironed out by the LOR templates that I hope ACHP can provide.

Comment [LN(C27): See comments regarding needing to see as final plans as possible and the problems with reaching consensus prior to the LOR being issued that I made earlier.

If a Signatory requests additional time to review project documents, LJCMG will automatically issue a one-time-30 day extension per construction phase to provide additional time for consultation if necessary.

Comment [LN(C28): Redundant – handled by I.B.3 – tweak I.B.3 of the document to include these aspects to streamline the document.

IV. UNANTICIPATED DISCOVERIES

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 in which human remains were discovered 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 the Office of State Archaeology, Kentucky SHPO and LJCMG.

Comment [LN(C29): Added clarification so that work can continue in other parts of the project area and unanticipated discovery doesn't grind everything to a halt.

~~B. In the event that previously unidentified archaeological resources are discovered during ground disturbing activities or unanticipated adverse effects occur on previously identified archaeological sites 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 LJCMG and Kentucky SHPO of the discovery.~~

~~C. LJCMG and Kentucky SHPO, or an archaeologist approved by them, will inspect the work site within two business days of notification to Kentucky SHPO 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 Kentucky SHPO, 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.~~

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~~1. After the initial inspection, if Kentucky SHPO 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 Kentucky SHPO, will determine the NRHP eligibility of the resource.~~

~~3. If LJCMG, in consultation with Kentucky SHPO, 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 Kentucky SHPO 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.~~

Comment [LN(C30): deleted this – see language inserted in III.C.1: There will be building foundations and other objects of antiquity associated with 15Jf923 within the 16 block area impacted by Stage I, but the impacts from Stage I and future stages will be mitigated by archaeological work outlined in the Data Recovery Plan and included in the Stage I LOR.

V. DISPUTE RESOLUTION

Should any Signatory to this Agreement object in writing to LJCMG regarding any action carried out in accordance with this Agreement, LJCMG shall consult with the Signatory(ies) to resolve

the objection. If LJCMG determines that such objection cannot be resolved after consulting for 30 calendar days or other mutually agreeable timeframe, LJCMG shall forward all documentation relevant to the dispute, including LJCMG proposed resolution of the dispute, to the ACHP, copying the Signatories and Consulting Parties.

The ACHP shall provide LJCMG with its advice on the resolution of the objection within 30 days of receiving adequate documentation. Prior to reaching a final decision on the dispute, LJCMG 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. LJCMG will then proceed according to ~~ACHP's~~ final decision.

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

LJCMG'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.

VI. 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.

VII. TERMINATION

If any Signatory or Invited 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 VI 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.

VIII. DURATION

This Agreement shall become effective when executed by the last of the Signatories (Effective Date). 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 VI.

IX. 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. LJCMG shall make this annual report available for public review by posting it on the agency's and the Vision Russell websites.

Execution of this Agreement by LJCMG, Kentucky SHPO, 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]

Comment [LN(C31): Attachment 1 and 2 are fine, Attachment 3 has issues – see earlier comments.

DRAFT

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

Louisville-Jefferson County Metro Government

By: _____

Date: _____

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LOUISVILLE, KENTUCKY

Kentucky Heritage Council

By: _____
Craig Potts, State Historic Preservation Officer

Date: _____

Comment [LN(C32): This needs to have a signature line for the TAH legal council who will need to review and sign this before Craig.

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Advisory Council on Historic Preservation

By: _____

Date: _____

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Louisville Metro Housing Authority (Invited Signatory)

By: _____

Date: _____

DRAFT

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The Delaware Nation (Invited Signatory)

By: _____

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The Kentucky Organization of Professional Archaeologists (Concurring Party)

By: _____

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The Kentucky Office of State Archaeology (Concurring Party)

By: _____

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Louisville Council District 4 (Concurring Party)

By: _____

Date: _____

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Louisville Council District 5 (Concurring Party)

By: _____

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Urban Strategies (Concurring Party)

By: _____

Date: _____

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The Louisville Western Library African American Archives (Concurring Party)

By: _____

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The Louisville Story Program (Concurring Party)

By: _____

Date: _____

CONCURRING PARTY SIGNATURE PAGE SIGNATORY PAGE
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The Black Media Collaborative (Concurring Party)

By: _____

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The University of Louisville (Concurring Party)

By: _____

Date: _____

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Saint Peter's United Church of Christ (Concurring Party)

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The Commonwealth Preservation Trades Program (Concurring Party)

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Neighborhood Planning and Preservation, Inc. (Concurring Party)

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The Concerned Pastors of Russell (Concurring Party)

By: _____

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The Louisville Central Community Center (Concurring Party)

By: _____

Date: _____

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The Beech (Concurring Party)

By: _____

Date: _____

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The Olmsted Parks Conservancy (Concurring Party)

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The Wayside Christian Mission (Concurring Party)

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The Westside Institute of Technology (Concurring Party)

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The Miami Tribe of Oklahoma (Concurring Party)

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Member of the Public-Darnell Farris (Concurring Party)

By: _____

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Member of the Public-Haven Harrington (Concurring Party)

By: _____

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Member of the Public-Level White (Concurring Party)

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Member of the Public-Katheryn Higgins (Concurring Party)

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Member of the Public-Ricky Smith
(Concurring Party)

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LOUISVILLE, KENTUCKY**

Member of the Public-Jane Grady (Concurring Party)

By: _____

Date: _____