

**MEMORANDUM OF AGREEMENT**

THIS MEMORANDUM OF AGREEMENT ("Agreement"), is made and entered into on the 10<sup>th</sup> day of February, 2023, by and between the **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**, an urban county government of the COMMONWEALTH OF KENTUCKY created pursuant to KRS Chapter 67A ("LFUCG"), 200 East Main Street, Lexington, Kentucky 40507, and the **UNIVERSITY OF KENTUCKY** ("Organization") on behalf of **THE ARBORETUM, STATE BOTANICAL GARDEN OF KENTUCKY**, located at 500 Alumni Drive, Lexington, Ky. 40503 ("The Arboretum").

**WITNESSETH**

**WHEREAS**, The Arboretum provides an arena for outstanding activities for the citizens of Fayette County; and

**WHEREAS**, The Arboretum enhances the environment of Lexington; and

**WHEREAS**, Organization seeks to expand the Dorotha Smith Oatts Visitor Center located at The Arboretum, in conformity with the proposal submitted to the General Government and Social Services Committee of the Urban County Council on March 8, 2022 ("Project"), in order to expand The Arboretum's program offerings for citizens of Fayette County;

**WHEREAS**, between 2014 and 2021, LFUCG previous allocated a total of Seventy-Two Thousand Dollars (**\$72,000.00**) for the Project;

**WHEREAS**, Organization has demonstrated a need for additional funds to complete this Project;

**WHEREAS**, LFUCG finds that the expansion of the visitor center fulfills a public purpose and therefore desires to provide additional funding to support the Project;

**NOW, THEREFORE**, in consideration of the mutual promises and covenants set forth herein, the receipt and sufficiency of which are acknowledged, the parties hereby agree that LFUCG shall grant Organization the additional sum of **Five Hundred Thousand Dollars (\$500,000.00)**, within thirty (30) days of the effective date of this Agreement, bringing LFUCG's total allocation for this Project to Five Hundred Seventy-Two Thousand Dollars (\$572,000.00) ("**Funds**"), and in exchange for LFUCG providing these Funds, the Organization agrees that: (a) all Funds shall be used toward completion of the Project and for no other purpose; (b) that the Organization shall take steps to ensure that the Project is complete on or before **December 31, 2027**, and that in the event the Organization fails to complete the Project on or before this date, LFUCG shall have the right to seek repayment of all of the Funds it has disbursed through any means

available at law, in equity, or in bankruptcy; (c) that LFUCG will not be responsible for the maintenance or care of the Project; (d) that Organization shall provide to LFUCG, upon request, sufficient documentation of the appropriate expenditure of the Funds; (e) that the Organization shall comply with all applicable procurement laws and regulations in completion of the Project; (f) that Organization shall provide equal opportunity in employment for all qualified persons; prohibit discrimination in employment because of race, color, creed, national origin, sex or age between 40 and 70; promote equal opportunity through a positive, continuing program of equal employment and cause each of its subcontracting agencies to do so, with the understanding that this program of equal employment opportunity shall apply to every aspect of its employment policies and practices; (g) that Organization shall keep and make available to LFUCG any records related to this Agreement as are necessary to support its performance with the terms of this Agreement, and shall allow LFUCG any necessary access to its records or to the Project site in order to monitor the Organization's performance under this Agreement; and (h) in any written or oral communications, the Organization shall identify LFUCG as the source of the above-referenced funds, and shall not specifically identify any individual Councilmember(s) as being responsible for the funds donated by LFUCG.

2. Neither party may assign its rights or duties under this Agreement without the prior written consent of the other party.

3. Each party shall be responsible for any claims or damages that are based upon its respective performance of this Agreement, or that are based upon the actions or inactions of its respective employees or agents.

4. This Agreement shall remain in effect until the Project is complete and open for use by the general public.

5. In no event shall the parties be construed, held, or become in any way for any purpose the employee of the other party, or partners, associates or joint ventures in the conduct of their respective endeavors or otherwise.

6. This Agreement shall constitute the entire agreement between the parties and no representations, inducements, promises or agreements, oral or otherwise, which are not embodied herein, shall be effective for any purpose.

7. By mutual agreement, the parties to this Agreement may, from time to time, make written changes to any provision hereof. Organization acknowledges that LFUCG may make such changes only upon approval of its legislative authority, the Lexington-Fayette Urban County Council, and the signature of its Mayor.

**SIGNATURE PAGE TO FOLLOW**



COMMONWEALTH OF KENTUCKY )  
 )  
COUNTY OF FAYETTE )

The foregoing instrument was acknowledged before me this the 17<sup>th</sup> day of January, 2022, by Dr. Eric Monday, \_\_\_\_\_ Executive Vice President for Finance and Administration, on behalf of the University of Kentucky.

My commission expires: 05.13.2023  
Linda J. Speakman 622443  
\_\_\_\_\_  
Notary Public, State-at-Large, Kentucky

