

## CONCESSION/DONATION AGREEMENT

This Concession/Donation Agreement entered into on the \_\_\_\_ day of \_\_\_\_\_, 2012, by and between the Lexington-Fayette Urban County Government, an urban county government of the Commonwealth of Kentucky, (hereinafter referred to as "LFUCG"), party of the first part, and the Fayette County Cooperative Extension District Board (hereinafter referred to as "Cooperative Extension"), party of the second part:

### INTRODUCTION

**FIRST:** On August 29, 1972, the United States of America, acting by and through the Secretary of Interior, executed a Quitclaim Deed releasing, quitclaiming and ceding to Fayette County, Kentucky (predecessor in interest of the Lexington-Fayette Urban County Government (hereinafter the "LFUCG")) its right, title and, interest in portions of the former National Institute of Mental Health Clinical Research Center. The property was conveyed under Section 203(k)(2) of the Federal Property and Administration Series Act of 1949 as amended.

**SECOND:** In accordance with the Program of Utilization for Masterson Station Park (POU, Exhibit A), the LFUCG developed a park, including the area known as the Fairgrounds.

**THIRD:** Under the provisions of the aforementioned deed, and in accordance with the authorization from the Department of Interior through the National Parks Service (hereinafter referred to as "Department"), the Department granted to LFUCG the management and administration of Masterson Station Park.

**FOURTH:** Under the aforementioned Quitclaim Deed, the LFUCG may, with the approval of the Department, grant to third parties, by means of a concession agreement, the right to operate an agricultural pavilion in the Fairgrounds area, as long as (a) it continues to be administered and operated in accordance with the POU; and (b) written approval is obtained from the Secretary of the Interior.

**FIFTH:** Cooperative Extension has constructed a livestock barn (hereinafter "Barn"), at the Fairgrounds in Masterson Station Park, which Barn Cooperative Extension seeks to donate to LFUCG;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties agree as follows:

1. LFUCG agrees to grant Cooperative Extension use of a portion of Masterson Station Park Fairgrounds for operation of the Barn for an eleven (11) year term from the date first above written to automatically renew upon the same terms and conditions for four (4) additional five (5) year terms, all subject to the right of termination contained herein, which is more particularly indicated on and described as "4-H Livestock Barn" (hereinafter "Barn") together with such areas as is necessary for the parking incidental to the Barn, and such right-of-way as is necessary for ingress thereto and egress therefrom.

2. Upon the execution of this Agreement, LFUCG shall be the owner of the Barn. In the event that it is determined that any additional documents are needed to clarify

ownership of the Barn Center, Cooperative Extension agrees to execute such additional documents.

3. LFUCG agrees that Cooperative Extension and its partnering organizations will be able to schedule the use of the Barn on a first come-first serve basis at no cost, said scheduling to be made through LFUCG. The parties understand, agree and acknowledge that prior to such scheduling, a list of the partnering organizations will be supplied to LFUCG by Cooperative Extension, which partnering organizations LFUCG shall have the right to review and approve. Provided, however, as to its review and approval, LFUCG agrees that in the absence of some objection as to an organization within 30 days of submission of said list, approval shall be assumed. Cooperative Extension shall forward a proposed operational plan with date requests to LFUCG on or before November 1 of each year, for the following year. The operational plan submitted by Cooperative Extension must contain a clear delineation and description of the upcoming show season, including a projection as to the number of animals to be housed in the Barn, and the projected duration that the animals will be in the Barn. LFUCG shall approve the operational plan submitted by Cooperative Extension on or before January 1 of each year, for the following year. LFUCG has discretion to deny date requests to Cooperative Extension, based upon unavailability of the Barn due to prior planned events. Provided, however, LFUCG will advise Cooperative Extension of scheduling conflicts on or before December 1. Both parties understand and acknowledge that Cooperative Extension may request additional dates after November 1, and LFUCG shall attempt to honor later requests by Cooperative Extension, as appropriate. 24 hour access to the Barn shall be granted for normal and usual care of any livestock housed in the Barn, including but not limited to feeding and animal care. The 24 hour access subject herein shall only be through the new perimeter gate within Barn and paddock area, as proposed. Access to gates not associated with Barn and paddock area will be available upon request.

4. Cooperative Extension understands and agrees that the operational plan as submitted to LFUCG shall contain a description of procedures to be taken by Cooperative Extension to prevent noxious odors at the Barn and surrounding area, including but not limited to, a regular cleaning schedule for the Barn interior, exterior animal paddocks and surrounding area. Regular cleaning shall include, but not be limited to, the removal of animal waste from Masterson Station Park. Cooperative Extension further agrees to police and clean the Barn, animal paddocks and surrounding area within 12 to 24 hours prior to any scheduled events by either party or upon written request by LFUCG.

5. LFUCG agrees to obtain and carry property insurance on the Barn at full replacement value to cover the cost of repair or replacement in the event the Barn is damaged or destroyed by natural causes or other causes or acts covered through LFUCG claims process.

6. The liability of Cooperative Extension and its partnering organizations will be limited to events and activities that are planned, scheduled, endorsed and/or conducted by Cooperative Extension or its partnering organizations. Cooperative Extension agrees to maintain liability insurance coverage with limits in excess of \$1,000,000.00 per occurrence, with a \$2,000,000.00 aggregate. Cooperative Extension will provide a Certificate of Insurance to LFUCG upon the signing of this Agreement, and annually thereafter upon renewal of the insurance of Cooperative Extension. The insurance coverage maintained by Cooperative

Extension will be subject to review at each and every renewal period to insure compliance with current LFUCG insurance coverage rules and standards.

7. The parties hereto acknowledge that LFUCG has no obligation to reimburse or otherwise compensate Cooperative Extension for the value of the Barn, in the event this Agreement is terminated. Provided, however, in the event of termination of this Agreement, the parties will attempt to reach a reasonable agreement on continued use of the Barn by Cooperative Extension.

8. Cooperative Extension will comply and cause its employees and agents to comply with all local, state and federal regulations in connection with the use of the Barn. LFUCG's Director of the Division of Parks and Recreation or other person designated by the Director of Parks shall have the right to inspect the Barn at any time.

9. Any physical improvement or change in the status of the Barn is to be done only with the express prior written approval of LFUCG's Director of Parks or his/her designee. In addition, Cooperative Extension shall submit to LFUCG for written approval all designs, drawings, blueprints and financial plans for proposed construction or improvement. Cooperative Extension shall obtain prior written approval from LFUCG of building materials and contractors to be used by the Cooperative Extension on the Barn. Any structures or additions under this section shall be incorporated into this section as part of the leased property. All equipment affixed in a permanent form to the property or building is the property of the LFUCG. In addition, Cooperative Extension shall have the right to reasonable ingress and egress on park property for construction purposes, including a temporary easement for erosion control purposes which shall expire upon completion of construction, with prior approval of LFUCG and Division of Parks and Recreation. Upon completion of any construction, Cooperative Extension will be granted regular access to the facility as long as it does not interfere with scheduled rental events within the Fair Grounds.

10. LFUCG and Cooperative Extension shall maintain and keep the Barn in good order, condition and repair. LFUCG shall provide, at its expense, necessary repairs of the Barn, for plumbing and electric, and will maintain the sewer and electrical feed and tie-ins. Cooperative Extension further agrees that it shall be obligated to:

- (a) Provide cleanup and repairs after Cooperative Extension events. Provided, however, LFUCG agrees to provide general maintenance and repairs associated with an LFUCG event within 48 hours of the event or upon written notification.
- (b) Repair damages to the infrastructure and facilities caused by the Cooperative Extension within thirty (30) days after the incidents causing the damages.
- (c) Provide all maintenance and repair to the Barn, animal paddocks and surrounding area to include general custodial care, which custodial care shall include but not be limited to changing light bulbs, maintaining an adequate supply of paper products, keeping sanitary systems operational

and unclogged, as well as mowing, plumbing, interior painting, lighting, fencing and landscape maintenance during the term of this Agreement, and, further, to keep the facilities clean at all times and free of hazardous insect infestations by means of adequate exterminating systems.

- (d) Keep all mechanical apparatus free of flammable materials and obstructions.
- (e) Provide access to maintenance and/or supervisory and/or inspection personnel serving the area and/or the National Parks Service.
- (f) Ensure that its employees, vendors, volunteers, and contractors are persons of good moral reputation, respectable and willing to provide the public a service of excellence. All employees, vendors, volunteers, contractors and participants agree to abide by all Federal, State, Local and Parks Division policies and procedures, including, but not limited to, Division Physical Altercation Policy and Youth Athlete & Participant Protection Policies in force at that time.
- (g) Not place, or allow to be placed, temporary or permanent advertisements or commercial propaganda or decorations in the facilities granted under this Concession Agreement, except those necessary and convenient for the efficient operation of its activities. Prior approval from the LFUCG is required for the placement of any advertisement, commercial propaganda, decorations or signage. Cooperative Extension may post signs for sponsorship or underwriting of Cooperative Extension events with the written permission of the Director of Parks and Recreation and if applicable, in conformity with the Parks and Recreation Naming Rights Policy and Division Signage and Banner Policy.
- (h) Require its contractors and vendors to provide a separate Certificate of Insurance in the amount of \$1,000,000.00 to the LFUCG prior to the beginning of each event.
- (i) All insurance policies shall be broad form in nature and shall be written through a company admitted to do business in Kentucky, and the contract should be non-cancellable without at least thirty (30) days advance written notice by registered mail to the LFUCG from the insurance company.
- (j) Operate the granted area in the most competent and professional manner possible.
- (k) Keep the LFUCG duly informed of all matters requiring notification and operate the facilities in such a way as to guarantee the most effective coordination and attention to the interests of the government.
- (l) In the operation of the Barn, as well as in the employment and/or contracting of services, Cooperative Extension shall observe federal norms



prohibiting discrimination under Title VI of the Civil Rights Act of 1969, as amended, and the Rehabilitation Act of 1973. In other words, it shall abstain from discriminating against any person or group due to its race, sex, color, national origin, religion, political affiliation, sexual orientation, or physical, mental or sensory disabilities.

- (m) In any construction that takes place to the Barn at Cooperative Extension's direction, Cooperative Extension shall be required to pay or contract with general contractors and subcontractors to pay the prevailing wage rate, if applicable, pursuant to state or federal requirements at the time the contract is entered into.

11. Cooperative Extension shall indemnify, defend and save the LFUCG, its agents, volunteers, employees, and elected or appointed officials harmless from any and all claims, demands, damages, actions, costs and charges to which the LFUCG may be subject or which the LFUCG may have to pay by reason of any injury to any person or property, or loss of life or property resulting from or in any way connected with, the character, condition, or use of the premises or any means of ingress thereto or egress therefrom covered by the Agreement unless such injury or loss arises solely from the negligence of the LFUCG or results from events LFUCG controls, schedules or staffs.. Any damage caused by livestock in care of Cooperative Extension or its partnering organizations within the Fairgrounds to include facilities not part of this Agreement will be the sole responsibility of Cooperative Extension. All personal property of the Cooperative Extension, its agents, employees, visitors, licensees, contractors or suppliers, in and on said Premises, shall be and remain at their sole risk, and LFUCG shall not be liable to them for any damage to, or loss of, such personal property arising from theft or from any act of negligence of any other persons, or resulting from fire, explosion, falling plaster, rain or snow, or from the leaking of the roof, or from the bursting, leaking or overflowing of water, sewer or steam pipes, or from heating or plumbing fixtures or from electrical wires or fixtures, or from any other cause whatsoever. LFUCG shall not be liable to Cooperative Extension for the interruption of Cooperative Extension's business or activities in any way, by reason of fire or other casualty, regardless of fault.

12. Cooperative Extension shall be responsible for the care and security of any livestock on the Masterson Station Park premises, which shall include, but not be limited to, segregation of livestock from regular patrons of the Fairgrounds facility. The parties hereto expressly understand and agree that LFUCG reserves the right to take any action necessary to ensure the safety of its citizens and employees, including termination of animals by LFUCG or its authorized personnel, after all emergency procedures have been exhausted.

13. Cooperative Extension understands and agrees that failure to comply with any and/or all of the provisions of this Concession Agreement shall constitute an event of default. The default shall exist at the time of the failure to comply with the provisions of this Agreement, whether or not either party has notice. Cooperative Extension also understands and agrees that LFUCG may elect at LFUCG's option any single remedy or penalty or any combination of remedies and penalties, as available.

14. Cooperative Extension agrees to adhere to and comply with any and all federal, state and local safety and labor laws, regulations, and ordinances, including but not limited to, all building and fire codes established to ensure safety of occupants as well as the Altercation Policy and the Severe Weather Policy of the Division of Parks and Recreation. Cooperative Extension shall upon ratification of this Agreement provide written copies of their safety policy statement regarding their intent to comply with the safety regulations referred to herein to assure compliance with the safety regulations and laws.

15. Cooperative Extension shall be responsible for keeping the premises and adjacent common property including curbs, fences and sidewalks clear, safe and free from all hazards and for reporting problems and hazards to the Director of the Division of Parks and Recreation.

16. Either LFUCG or Cooperative Extension may terminate this Agreement at any time, for any reason, upon six (6) months written notice.

17. Cooperative Extension agrees at the end of this Agreement term to vacate the Barn without any demand and without any notice or if Cooperative Extension terminates this Agreement before the term of the Agreement is expired, removing all equipment of a temporary nature, and leaving the Barn in as good a condition as it was at the time of entry thereon by Cooperative Extension, except for reasonable use and wear thereof, acts of God, or damage by casualties beyond the control of Cooperative Extension and on vacating shall leave the Barn free and clear of all rubbish and debris. If Cooperative Extension fails to perform its obligations set out herein, LFUCG has the option of doing so at the expense of the Cooperative Extension. This provision is null and void if LFUCG and the Cooperative Extension enters into a new agreement for the use of the Fairground facilities.

18. Any executory agreement hereafter made between the Parties hereto shall be ineffective in changing, modifying, or discharging this Agreement in whole or in part unless the executory agreement is in writing and signed by the party against whom enforcement of the change, modification, or discharge is sought.

19. Cooperative Extension will serve and/or sell only those soft drinks that are sold and delivered by the authorized LFUCG Division of Parks and Recreation beverage supplier. No competing beverage drink products will be allowed to be stored or sold within the Barn by Cooperative Extension or their sub-contractors, at any time, nor accept or display any promotion items from any other soft drink or beverage supplier. With the written permission of the Director of Parks and Recreation, Cooperative Extension may give away soft drinks donated to them to the public regardless of the manufacturer. Violations of this policy shall constitute grounds to void this Agreement.

20. Cooperative Extension may not sublease any or all of the Fairgrounds for any length of time without prior written approval by the LFUCG.

21. Failure of Cooperative Extension to observe any of the provisions of this Agreement shall constitute a breach of the Concession Agreement for which LFUCG may terminate the Agreement and take immediate possession of the premises.

22. Cooperative Extension will supply an emergency contact list to LFUCG, which list will be updated annually, which list shall include veterinary, Cooperative Extension and maintenance contacts, with said contacts being available at any time whatsoever, as needed and necessary.

23. The parties acknowledge and agree to conduct an annual review of operational plans to review best management practices.

Provided, that nothing herein contained shall be deemed to be against the laws of the Commonwealth of Kentucky, United States of America or any local ordinance.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the date first written above.

LEXINGTON-FAYETTE URBAN  
COUNTY GOVERNMENT

FAYETTE COUNTY COOPERATIVE  
EXTENSION DISTRICT BOARD

By: \_\_\_\_\_  
Mayor

By: Jan Pen chairman