

**THE ARBORETUM
THIRD AMENDED AGREEMENT**

between

The University of Kentucky and the Lexington-Fayette Urban County Government

THIS THIRD AMENDED AGREEMENT (hereinafter referred to as the "Third Amended Agreement"), made and entered into this 26th day of April 2014, by and between the Commonwealth of Kentucky, by and through the UNIVERSITY OF KENTUCKY (hereinafter referred to as the "University"), whose mailing address is 107 Main Building, Lexington, Kentucky 40506-0032, and the LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT (hereinafter referred to as the "LFUCG"), whose mailing address is 200 East Main Street, Lexington, Kentucky 40507.

W I T N E S S E T H:

WHEREAS, the University is the owner of an approximate 100-acre tract of land South of Alumni Drive on its main campus in Lexington, Fayette County Kentucky, and

WHEREAS, on or about October 14, 1986, the LFUCG and the University entered into an Agreement (the Agreement and all amendments thereto being referred to hereinafter as the "Agreement") for the University to develop the 100-acre tract of land as an arboretum park for use by faculty, students, staff, and the general public on property owned by the University, with 50 acres limited with respect to time and use (hereinafter referred to as the "Reserved Land"); and

WHEREAS, on or about March 24, 1987, the LFUCG and the University entered into an Amended Agreement, for the sole purpose of correcting the legal description of the 50-acre tract of the Reserved Land (land reserved as an Arboretum Park); and;

WHEREAS, on or about April 26, 2014, the LFUCG and the University entered into this Extension and Amendment of Agreement, or the Third Amended Agreement, to extend the length of the Agreement and to otherwise clarify the terms therein; and

WHEREAS the Parties desire to extend and sustain their partnership to develop and operate the University of Kentucky – Lexington-Fayette County Arboretum, hereinafter referred to as the "Arboretum:"

WHEREAS, it is the desire of the University to sustain this tract as an Arboretum for use by faculty, students, staff, and the general public; and

WHEREAS, it is the desire of the LFUCG that the residents of Fayette County and visitors to the area also have the use and benefit of the Arboretum as a public facility; and

WHEREAS, the LFUCG and the University heretofore have made contributions from time-to-time to the development and operation of the Arboretum on said 100-acre tract.

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, the receipt and sufficiency of which are hereby acknowledged, and in further consideration of the benefits to the parties and the public under the terms of this Third Amended Agreement, the parties do hereby agree as follows:

(1) That except as otherwise modified or amended herein the previous terms of the Agreement shall remain in full force and effect.

(2) Subject to the terms and conditions contained herein, the University does hereby reserve for public use (by faculty, students, staff, and the general public) as the Arboretum the hereinafter described tract of land, for an additional period of fifty (50) years beyond the expiration of the original agreement, that is, through 2086.

(3) The tract reserved for the Arboretum as described in the Agreement is hereby revised and extended to add approximately fifty (50) acres, for a total of one hundred (100) acres, more or less, as described and defined in Attachment I, which is incorporated herein by reference as if fully stated.

(4) During the term of this Third Amended Agreement, the above-described tract of land or property shall be subject to the following restrictions:

- a) The property shall be devoted exclusively to passive recreation and open space purposes. "Passive recreation" shall be defined to permit the construction of nature walks, picnic facilities, hiking paths, bicycle paths, an outdoor amphitheater, and other improvements, shelters and buildings consistent with the natural arboretum, including fencing and lighting, but shall not include construction of athletic fields, swimming pools, tennis courts, or similar athletic and recreational facilities.
- b) The property shall remain open to the general public under supervision of the University for such passive recreation and open space uses at reasonable hours and days per week as determined by the University upon consultation with the LFUCG.
- c) The property shall be known as the "University of Kentucky-Lexington-Fayette County Arboretum" unless otherwise agreed to by the parties.

(5) The University shall retain primary authority for operation and maintenance of the Arboretum. As permitted by budget conditions and subject to budget review and approval processes of each party, the LFUCG and University will continue to contribute to Arboretum operations and will share in future costs for operations and maintenance, which may be provided through in-kind services or through funding from time-to-time. University approval shall be required for any future construction or expansion at the Arboretum.

(6) There shall be an eleven (11) member Arboretum Advisory Board to advise the University on the development and operation of the Arboretum. The Board shall be composed of the Mayor of the LFUCG and the President of the University, or their designees, as co-chairs, and four (4) members appointed by the President of the University and four (4) members

appointed in accordance with Section 7.02 of the LFUCG's Charter, and the President of the Friends of the Arboretum.

(7) The University shall employ an Arboretum Director (hereinafter the "Director") to oversee horticultural and botanical operations, programming, planning and development of the Arboretum. In collaboration with the College of Agriculture, Food and Environment, the Director will lead community outreach and educational programming, and support research and instruction activities at the Arboretum. The Director shall meet regularly with the Arboretum Advisory Board and fully inform them of Arboretum operations and programs. The University will provide appropriate administrative support for the Director, who will report to the President's designee (currently the Dean of the College of Agriculture).

(8) Nothing in this Third Amended Agreement shall be deemed to include or grant any right, title, interest, claim or demand in or to said real estate of the University other than the right of the public to use it for passive recreation and open space purposes, as granted herein. Further, this Third Amended Agreement is not for the purpose of sale, lease, or building development within the meaning of KRS Chapter 100.


(9) If either party defaults in the performance of this Third Amended Agreement, the party not in default shall have the right to seek specific performance from the defaulting party.

(10) This Third Amended Agreement shall run with the land and shall be binding on all parties and all persons claiming under it for the extended period (through 2086) as hereby amended above unless an instrument is signed by each party, or their successors and assigns, further amending said Third Amended Agreement in whole or in part.

(11) This Third Amended Agreement contains the entire agreement between the parties, and no statement, promises or inducements made by either party or their respective agents that is not contained herein shall not be binding upon them. Any further amendment or modification must be in a writing signed by both parties .

IN WITNESS WHEREOF, the parties hereto have signed this Third Amended Agreement to be effective the date and year first written above.

COMMONWEALTH OF KENTUCKY,
UNIVERSITY OF KENTUCKY

By: 
Eli I. Capilouto
President

Date: 4/26/14

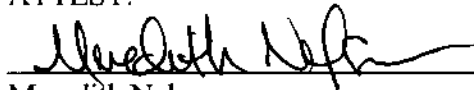
LEXINGTON-FAYETTE URBAN COUNTY
GOVERNMENT

By: _____

Jim Gray
Mayor

Date: _____

ATTEST:



Meredith Nelson
Clerk of the Urban County Council



University of Kentucky
ARBORETUM BOUNDARY - 100 ACRES

University of Kentucky
Campus Physical Plant Division
January 2014





Facilities Management
Office of the Vice President
225 Frank D. Peterson Service Bldg.
Lexington, KY 40506-0005
859 257-5929
fax 859 323-2120
www.uky.edu

May 5, 2014

Mayor Jim Gray
Office of the Mayor
200 E. Main Street
Lexington, KY 40507

RE: Arboretum Third Amended Agreement

Dear Mayor Gray:

We are excited to have extended the partnership between LFUCG and UK at the Arboretum for another 50 years. Thank you for your participation in the ceremony and for your support. Attached is a copy of the signed agreement for your records.

Sincerely,

A handwritten signature in black ink that reads "Judy Needham". The signature is written in a cursive, flowing style.

Judy Needham
Facilities Planning Manager

JN

c: President Eli Capilouto Vice Mayor Linda Gorton Eric Monday Bob Wiseman Molly Davis
Nancy Cox Urban County Clerk Scott Smith Thalethia Routt David Barberic