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**MEMORANDUM OF AGREEMENT**

**THIS MEMORANDUM OF AGREEMENT** (hereinafter the "MOA") is made and entered into as of the \_\_\_\_ day of December, 2012, by and between the **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**, an urban county government of the Commonwealth of Kentucky pursuant to Chapter 67A of the Kentucky Revised Statutes, 200 East Main Street, Lexington, Kentucky 40507 (hereinafter "Lexington") and the **UNIVERSITY OF KENTUCKY**, a political subdivision of the Commonwealth of Kentucky (hereinafter the "University").

**WITNESSETH:**

**WHEREAS**, the Lexington and the University have a longstanding relationship with regard to the University of Kentucky-Lexington-Fayette County Arboretum Park, 500 Alumni Drive, Lexington, KY 40503 (the "Arboretum"); and

**WHEREAS**, the Arboretum is in need of additional permanent public restroom facilities; and

**WHEREAS**, Lexington wishes to provide the University with funding towards the construction of these restroom facilities.

**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 as follows:

1. That in exchange for Lexington providing the University with one hundred twenty-five thousand dollars (\$125,000.00) in funding, the University agrees as follows: (1) that all funds must be expended for the purposes of constructing public restroom facilities at the Arboretum (the "Facilities"); (2) that it will ensure that the Facilities are constructed by no later than January 1, 2014; (3) that Lexington will not be responsible for the maintenance or care of the Facilities; and (4) that it will provide to Lexington, upon request, sufficient documentation of the appropriate expenditure of the funds.

2. This MOA shall remain in effect until the University has fully complied with the requirements of paragraph 1, above and the construction of the Facilities is completed and they are open for use by the general public.

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

4. The University shall comply with any and all applicable procurement laws and regulations and make available to Lexington any records related to this MOA such as are necessary to support its performance of this MOA.

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. Each party shall provide equal opportunity in employment for all qualified persons, shall prohibit discrimination in employment because of race, color, creed, national origin, sex, age, sexual orientation or gender identity, or handicap, shall promote equal employment through a positive, continuing program of equal employment, and shall cause each of its subcontracting agencies to do so. This program of equal employment opportunity shall apply to every aspect of its employment policies and practices.

8. This MOA does not create a contractual relationship with or right of action in favor of a third party against either Lexington or UK.

9. If any term or provision of this MOA shall be found to be illegal or unenforceable, this MOA shall remain in full force and such term or provision shall be deemed stricken.

10. This MOA shall be governed in all respects by the laws of the Commonwealth of Kentucky and venue for all actions shall lie in Fayette County, Kentucky.

11. This MOA 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. This MOA shall replace any previous agreement between the parties on the same subject matter.

12. The waiver by either party of any breach of any provision of this MOA shall not constitute a continuing waiver or waiver of any subsequent breach by either party of either the same or another provision of this MOA.

IN WITNESS WHEREOF, the parties certify that they have been duly authorized to execute, deliver and perform this Memorandum of Agreement, and have executed it as of the date first herein written.

**LEXINGTON-FAYETTE URBAN  
COUNTY GOVERNMENT**

BY: \_\_\_\_\_  
JIM GRAY, MAYOR

ATTEST:

\_\_\_\_\_  
URBAN COUNTY COUNCIL CLERK

**UNIVERSITY OF KENTUCKY**

BY: Angie Martin  
Angie Martin, VP. for Financial Operations & Treas.

STATE OF KENTUCKY            )  
COUNTY OF FAYETTE         )

Subscribed, sworn to and acknowledged before me by Scott Smith, as Dean of Agriculture, on this the 4th day of December, 2012.

My commission expires: July 2, 2014  
NOTARY PUBLIC, STATE AT LARGE,  
Shyllis A. Mattox

**UNIVERSITY OF KENTUCKY-LEXINGTON-  
FAYETTE COUNTY ARBORETUM PARK**

Marcia Farris  
MARCIA FARRIS, DIRECTOR

00367873

UNIVERSITY OF KENTUCKY, COLLEGE OF AG

3 M. Scott Smith

DEAN, Scott Smith