

CONTRACT # 173-2013**CONCESSION AGREEMENT**

This Concession Agreement entered into on the 9th day of July, 2013, 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 **LEXINGTON YOUTH SOCCER ASSOCIATION, INC.**, a non-profit organization (hereinafter referred to as "LYSA"), party of the second part:

INTRODUCTION

FIRST: On August 29, 1972, the United States of America, acting by and through the Secretary of Interior, signed 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 rights, title and interests 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), the LFUCG developed a park, including the area known as the soccer play area.

THIRD: Under the provisions of the aforementioned deed, and in accordance with the authorization from the Department of the 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 could, with the approval of the Department, grant to third parties, by means of a concession contract, the rights to operate concessions in the soccer play 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.

WITNESSETH:

WHEREAS, LYSA desires to encourage the sport of soccer among young people IN Fayette County by the operation of a soccer play area; and

WHEREAS, LFUCG has land available for this purpose at Masterson Station Park;

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

1. LFUCG agrees to grant a Concession Agreement for use of a portion of Masterson station Park for operation of a soccer program to LYSA for a seven (7) year term from July 1, 2014 to automatically renew upon the same terms and conditions for one (1) additional three (3) year term, all subject to the right of termination contained herein. Should LFUCG, without there being a breach of this Concession Agreement, unilaterally cancel this Concession Agreement pursuant to Paragraph 17 herein, then the provisions noted in Paragraph 18 herein regarding replacement of usable fields shall apply and be negotiated pursuant to a separate document. The portion of Masterson Station Park which is covered by the Concession Agreement is identified and described more fully as follows;

Beginning at a pin, said pin being N 35-55 E 2878.00 feet, the S 6 68-14 E 505.00 feet then N 24-56 E 1224.14 feet from the common property corners of Nancy Lisle and Kentucky Utilities, on the Northeastern right-of-way line of Leestown Road; thence N 24-56 E. 499.86 feet to the fence corner, thence S 64-09 E 868.82 feet to a fence corner, thence N 24-22 E 1221.19 feet to a fence corner, thence N 68-11 W 1136.72 feet to a fence corner, thence N 68-11 W 300.01 feet to a pin, thence S 21-47 W 755.94 feet to a pin, thence S 53-06 W 266.21 feet to a pin, thence S 84-24 W 266.21 feet to a pin, thence N 64-18 W 842.66 feet to a pin, thence S 33-51 W 215.93 feet to a pin, thence S 27-42 W 514.41 feet to a pin, thence S 62-36 E 896.52 feet to a pin, thence N 24-13 E 250.01 feet to a pin, thence S 65-04 E 899.87 feet to the point of beginning.

The Property herein contains 64 acres more or less and is a portion of the property conveyed to Fayette County, Kentucky from the United States of America. It also includes improvements of fencing, irrigation system, concession stand/restroom, parking lot, and soccer fields. (Hereinafter the "Property")

LFUCG will operate a fifty (50) foot access within the 64 acres described above for pedestrian and equestrian purposes along the park boundary line. LYSA shall not grade nor fence this area, which shall remain as a buffer between the park and the adjoining property. This access area may be increased up to one hundred (100) feet pursuant to the Masterson station Park Master Plan. In the event the access area is increased, to the extent applicable, Section 18 applies.

2. LYSA shall contribute a minimum of 15% of its net profits per year to capital improvements towards that portion of Masterson station Park being used as a soccer complex pursuant to this Concession Agreement. For purposes of this Concession Agreement, net profits shall be calculated by subtracting from the revenue generated by LYSA as a result of its use of the soccer play area at Masterson Station

Park, all expenses associated with LYSA's use of the said complex, excluding those expenses related to development and maintenance of said complex. Development and maintenance shall include routine upkeep of the fencing, irrigation system, concession stand/restroom, parking lot/roadways and soccer play area, including aeration, seeding, irrigation, fertilizing, top dressing and other field maintenance activities.

3. LYSA shall use the Property for the construction, operation and maintenance of a soccer play area, including soccer fields, parking lots and concession building. The Property shall be used for the purpose of playing and promoting soccer and shall not be used for other purposes without the prior written consent of the LFUCG's Director of the Division of Parks and Recreation or other person designated by LFUCG's Mayor. LYSA shall construct and maintain a fence no less than four (4) feet high around the soccer play area of the Property except for the buffer area described in paragraph one. A drawing of the proposed soccer play area, including playing fields, concession stands and parking lots, is attached hereto and incorporated by reference as Exhibit "A". All uses of the property by LYSA shall be consistent with the approved POU, attached hereto and incorporated herein by reference.

4. (a) LYSA will be required to provide the Division of Parks and Recreation with an annual financial statement which includes information on all sources and uses of funds for the preceding year, prior to September 1st of the following year. Such a reporting shall include income by categories from all sources and a detailed explanation of expenditures to include those involving the Property and improvements at Masterson Station Park, as well as those relating to operations, administration and concessions and other areas, as well as amounts maintained in reserve. LYSA shall prepare its financial report so as to clearly distinguish its revenues and expenses derived from teams and events participating at Masterson Station Park, and those derived from teams and events participating in its programs on other sites. A separate annual report denoting net income and capital improvement expenses relating to Masterson Station Park shall be submitted at the same time, no later than September 1st of each year.

(b) Prior to entering into this Concession Agreement, LYSA shall provide LFUCG with a financial statement summarizing its financial condition. In addition, LYSA shall provide LFUCG with a summary of the various improvements that it has made to the soccer play area at Masterson Station Park since the inception of a certain lease entered into with LFUCG in August 1989.

5. LYSA shall pay before delinquency all charges for water, gas, heat, electricity, telephone service, sewage treatment, and other similar charges incurred by it with respect to and during its holding of this Concession Agreement for operation of a soccer program.

6. LYSA will comply and cause its employees and agents to comply with all rules and regulations adopted by LFUCG in connection with the use of the Property, and with all supplements thereto and amendments thereof which LFUCG may hereafter adopt. All such rules and regulations shall pertain to the safety, care, use and cleanliness of the Property and preservation of good order therein and thereon. No rules or regulations now in effect or hereafter adopted shall be inconsistent with any provision of this Concession Agreement. All rules and regulations and supplements thereto and amendments thereof which LFUCG may adopt shall be in writing, and a copy thereof shall be delivered to LYSA. If LYSA shall fail within seven (7) days after receipt of written notice of any violation by LYSA or its employees or agents of any such rules or regulations, to cure such violation, such failure shall constitute a breach of this agreement, provided such violation could reasonably be cured in such time.

7. LFUCG's Director of the Division of Parks and Recreation or other person designated by the Mayor shall have the right to inspect the Property at any time during LYSA's normal hours of operation. The normal hours of operation shall be:
7:00 a.m. to 10:00 p.m. daily.

8. Any physical improvement or change in the status of the Property which is not included in Exhibit "A" is to be done only with the express prior written approval of LFUCG's Mayor or his/her designee. In addition, LYSA shall submit to LFUCG for written approval all designs, drawings, blueprints and plans for proposed construction of improvement. LYSA shall obtain prior written approval from LFUCG of building materials and contractors to be used by LYSA on the property. All equipment affixed in a permanent form is the property of the LFUCG.

9. In addition, LYSA 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.

10. LYSA shall maintain and keep the Property in good order, condition and repair. LYSA shall provide, at its expense, general custodial care and maintenance of the Property, including repairs for plumbing and electrical fixtures. LYSA may select and retain the services of maintenance companies as long as prior written approval from the LFUCG is obtained.

11. LYSA agrees to maintain the designated area open and available to the public except during times that LYSA and LFUCG agree are to be designated by LYSA for scheduled soccer play and/or other related activities and for such times as in the discretion of LYSA it is necessary to limit and/or restrict the use of the designated area so as to maintain the designated area in a condition suitable for its intended use as a soccer play area and to preserve in satisfactory condition the improvements made by LYSA to the designated area.

12. LYSA further agrees that it shall be obligated to:

- (a) Keep the facilities clean at all times and free of hazardous insect plagues by means of adequate exterminating systems.
- (b) Provide access to maintenance and/or supervisory and/or inspection personnel serving the area and/or the National Parks Service.
- (c) Ensure that its employees are persons of good moral reputation, respectable and willing to provide the public a service of excellence.
- (d) Not place, or allow to be placed, temporary or permanent advertisements or commercial propaganda in the facilities granted under this Concession Agreement, except those necessary and convenient for the efficient operation of its activities. Prior approval from the LRUCG is required for the placement of any advertisement, commercial propaganda or signage.
- (e) Provide and maintain Commercial General Liability Insurance with combination of primary and umbrella coverage limits of not less than \$1,000,000 per occurrence with a \$2,000,000 aggregate for bodily injury and property damage and an endorsement naming LFUCG as an "additional insured" thereunder.
- (f) Operate the granted area in the most competent and professional manner possible.
- (g) 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.
- (h) In the operation of the Property, as well as in the employment and/or contracting of services, LYSA 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.
- (i) In any construction that takes place on the Property at LYSA's direction, LYSA shall be required to comply with all applicable labor laws valid at the time of construction.

13. The LYSA shall save and hold the LFUCG harmless from and against all liability, claims and demands on account of personal injuries (including, without limitation of the foregoing, workmen's compensation and death claims) or property loss or damage of any kind whatsoever, which arise out of or are in any manner connected with, or are

claimed to arise out of or be in any manner connected with, the operation of a soccer play area by LYSA, or any agents or employees of LYSA, pursuant to this Agreement. LYSA shall not be responsible for liability, claims or demands for personal injury, property loss or damage unrelated to the performance of this Concession Agreement.

14. LYSA 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. LYSA 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.

15. LYSA agrees to adhere to and comply with any and all federal, state and local safety 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 and Severe Weather policies of the Division of Parks and Recreation. LYSA shall within thirty (30) days of the commencement of this Agreement provide written copies of their safety policy statement regarding their intent to comply with the safety regulations and a written safety program defining procedures to assure compliance with the safety regulations and laws. If the plan is not in compliance with aforementioned federal, state and local safety laws, regulations and ordinances, LYSA shall be given thirty (30) days to produce a compliant safety policy & program. If LYSA fails to comply, LFUCG may terminate this Agreement immediately.

16. LYSA 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.

17. Either LFUCG or LYSA may terminate this Agreement at any time, for any reason, upon one (1) year written notice.

18. Should LFUCG, through the implementation of the recently approved master plan for Masterson Station Park or for any other reason within LFUCG's control, deem it necessary to make alterations, modifications and/or improvements in or around the designated area in such a manner as to effectively render certain portions of the designated area unusable as a soccer play area, LFUCG agrees to provide, at its expense, to LYSA for its use as a soccer play area an equivalent soccer play area at Masterson Station Park, if feasible, and if not feasible, at another LFUCG property, before rendering any portion of the existing soccer play area unusable for its intended purpose. In the event of such circumstance, specific terms regarding providing of an equivalent soccer play area including but not limited to location, size, facilities and timing, shall be negotiated in a separate document which shall serve as an amendment to this Concession Agreement.

19. LYSA agrees at the end of this Agreement term to vacate the Property without any demand and without any notice, removing all equipment of a temporary nature, necessary for the operation of LYSA and leaving the Property in as good a condition as it was at the time of entry thereon by LYSA, except for reasonable use and wear thereof, acts of God, or damage by casualties beyond the control of LYSA, and on vacating shall leave the Property free and clear of all rubbish and debris. If LYSA fails to perform its obligations set out herein, LFUCG has the option of doing so at the expense of LYSA. At or prior to the expiration of this Concession Agreement, the parties may enter into negotiations for another Concession Agreement for use of the Property for soccer purposes, but it is expressly understood that any such Concession Agreement must receive the review and approval of the United States Department of the Interior and the Lexington-Fayette Urban County Council.

20. 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.

21. Failure of LYSA 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.

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**

BY:



JIM GRAY, MAYOR

**LEXINGTON YOUTH SOCCER
ASSOCIATION**



CHARLIE BRUBECK, PRESIDENT