

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT (hereinafter the "MOA") is made and entered into as of the ____ day of August 2018, by and between the **BLUE GRASS COMMUNITY FOUNDATION, INC.**, a Kentucky non-profit corporation with its principal office located at 499 East High Street, Lexington, Kentucky 40507 (hereinafter "Foundation") and 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").

WITNESSETH:

WHEREAS, the Foundation, as part of its "Breaking the Bronze Ceiling Campaign," is raising funds for the installation of one (1) or more monuments celebrating the history of women in Fayette County, Kentucky (the "Project"); and

WHEREAS, Lexington finds that the Project fulfills a public purpose and is desirous of providing funding in the amount of \$100,000.00 to be utilized in connection therewith; and

WHEREAS, the Foundation is agreeable to accepting the funding and ensuring that any requirements connected to the funding are followed.

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 consideration of Lexington providing the Foundation with One Hundred Thousand Dollars (\$100,000.00) in funding on or before the date the Foundation proposes to sign a contract for the Project, on seven (7) days prior notice thereof to Lexington, the Foundation agrees as follows: (1) that all funds must be expended for the purposes of the Project; (2) that it will take sufficient and appropriate steps to ensure that the Project is completed; (3) that Lexington will in no

way be responsible for the Project other than the financial contribution described herein; (4) that if there is formal recognition of contributors to the Project, the Lexington-Fayette Urban County Government will be recognized in like manner to similar contributors; and (5) that it will provide to Lexington, upon request, sufficient documentation of the appropriate expenditure of the funds, which shall include, at a minimum, a written summary report of all of the expenditures made toward the Project as well as a final report.

2. This MOA shall remain in effect until the Foundation has fully complied with the requirements of this MOA and the Project is completed, unless terminated by Lexington in writing for nonperformance at an earlier time.

3. That in the event the Foundation is unable to complete the Project within three (3) years from the date of this Agreement, or chooses for any reason to discontinue the project before the installation of the monument(s), the Foundation shall immediately return all of the funding provided by Lexington pursuant to this Agreement to Lexington. Should the Project be discontinued *after* non-refundable expenses for the Project work have been incurred for reasons beyond the Foundation's control, then Lexington will receive its proportionate share of: (a) monies remaining in the Foundation's project account *plus* (b) any insurance and/or bonding proceeds received by the Foundation and designated for Lexington.

4. That the Foundation shall ensure that all duties and services necessary for the timely, satisfactory completion of the Project are performed. Foundation shall keep itself fully informed of all national and state laws and all municipal ordinances and regulations in any manner affecting the work or performance of this MOA, and shall at all times observe and comply with such laws, ordinances and regulations, whether or not such laws, ordinances or regulations are mentioned

herein, and shall indemnify Lexington, its officers, agents and employees against any claim or liability arising from or based on Foundation's violation of any such laws, ordinances or regulations.

5. That the Foundation shall be solely responsible for any claims or damages that are based upon its performance of this MOA, the Project, or that are based upon the actions or inactions of its employees or agents. Foundation agrees to indemnify, save, hold harmless and defend the Lexington-Fayette Urban County Government and its elected and appointed officials, employees, agents, volunteers, and successors in interest from and against all liability, damages, and losses, including but not limited to, demands, claims, obligations, causes of action, judgments, penalties, fines, liens, costs, expenses, interest, defense costs and reasonable attorney's fees that are in any way incidental to or connected with, or that arise or are alleged to have arisen, directly or indirectly, from the above.

6. That the Foundation shall keep and make available to Lexington any records related to this MOA such as are necessary to support its performance of this MOA. Books of accounts shall be kept by the Foundation and entries shall be made therein of all money, goods, effects, debts, sales, purchases, receipts, payments and any other transactions of the Foundation related to this MOA and shall be made available to Lexington upon request.

8. That neither party shall be construed as, held to be, or become in any way for any purpose the employee of the other party, nor shall the parties become, or be held or construed to be, partners, associates or joint ventures in the conduct of their respective endeavors or otherwise.

9. That the Foundation 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 any agency receiving funds

provided pursuant to this MOA to do so. This program of equal employment opportunity shall apply to every aspect of its employment policies and practices

10. That neither party may assign any of its rights and duties under this MOA without the prior written consent of the other party. Notwithstanding the foregoing, Lexington understands that the monument(s) erected in accordance herewith will ultimately be fabricated and installed by persons or entities other than the Foundation.

11. That this MOA does not create a contractual relationship with or right of action in favor of a third party against either the Foundation or Lexington.

12. That, 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.

13. That 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.

14. That, by mutual agreement, the parties to this MOA may, from time to time, make written changes to any provision hereof. The Foundation acknowledges that Lexington may make such changes only upon approval of its legislative authority, the Lexington-Fayette Urban County Council, and the signature of its Mayor.

15. That 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.

16. That 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

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.

BY: _____
JIM GRAY, MAYOR

BY: [Signature]
_____, PRESIDENT

My commission expires: 12/21/2019


NOTARY PUBLIC, STATE AT LARGE, KY

