

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement is made this 24th day of April, 2017, between Prometheus Foundry, LLC, ("Artist"), and the Lexington-Fayette Urban County Government ("LFUCG"), of 200 East Main Street, Lexington, Kentucky 40507.

I. GENERAL TERMS

1. In consideration of the promises exchanged herein, Artist hereby agrees to design, construct, and install two large fabricated metal sculptures at the Wellington Park Sensory Garden, located at 601 Wellington Way, Lexington, Kentucky, in a timely manner and to the satisfaction of LFUCG.
2. Within ninety (90) days of receiving a written Notice to Proceed, Artist shall submit to LFUCG (i) detailed construction drawings of its proposed sculptures based on the conceptual designs attached hereto as Exhibit A and (ii) a detailed schedule describing the dates by which each major phase of the project shall be completed. The construction drawings shall be accompanied by written verification from a licensed structural engineer that the design satisfies all applicable local, state, and federal safety standards and building codes, as well as any other certifications or approvals LFUCG may reasonably require.
3. Upon LFUCG's written approval of the detailed construction drawings and proposed schedule, which approval may be withheld in LFUCG's discretion, Artist shall begin fabrication of the sculptures in accordance with the approved construction drawings.
4. Artist shall notify LFUCG immediately after it has completed fabrication of the sculptures and shall allow LFUCG to inspect the sculptures at Artist's studio as soon as reasonably possible thereafter. If LFUCG is satisfied with the sculptures, it shall provide Artist with written authorization to proceed. If LFUCG is not satisfied with the sculptures, it shall provide Artist a written description of matters to be corrected or modified before proceeding, and shall issue Artist written authorization to proceed once the matters listed have been corrected or modified to LFUCG's satisfaction.
5. After receiving approval for the sculptures as fabricated, Artist shall, in a timely manner, install the sculptures in Wellington Park in the manner prescribed by and to the satisfaction of LFUCG, at the site designated by LFUCG. Artist shall take all reasonable and necessary steps to ensure that its installation of the sculptures does not harm or interfere, in any manner, with any public utility, public right-of-way, or public safety. Artist shall have two hundred seventy (270) days from written approval of the drawings to complete the fabrication and installation of the sculptures.
6. Artist shall repair and correct any deterioration or breakage that may occur on the sculptures in the first year after its installation in a timely manner, at no additional charge, normal wear and tear excluded.
7. Time is of the essence in the performance of this agreement. All major phases of the project shall be completed by the deadlines provided in Artist's schedule as approved by LFUCG.
8. In performing the services hereunder, neither Artist nor its members, employees, officers, or agents shall be deemed or construed to be employees of LFUCG in any manner whatsoever, and shall be acting as independent contractors. Neither Artist nor its members, employees, officers, or agents shall hold themselves out as, or claim to be, officers, agents, or employees of LFUCG by

reason hereof and shall not make any claim, demand or application to or for any right or privilege applicable to an officer or employee of LFUCG. Artist shall be solely responsible for any debts incurred to third parties in the course of this project, and shall save and hold LFUCG harmless therefrom.

9. Artist shall maintain all books, documents, papers, and accounting records, and make such materials available at their respective offices at all reasonable times during the Agreement period and for three (3) years from the date of final payment under the Agreement for inspection by LFUCG, and copies thereof shall be furnished if requested.

10. At the conclusion of the project, the sculptures shall become solely the property of LFUCG.

11. Within thirty (30) days of LFUCG's acceptance of the sculptures, Artist shall provide copies of all pertinent design and construction drawings, specifications, certifications, MSDS sheets, a recommended preventative maintenance manual, and any other information helpful to the long-term care of the sculptures.

12. All communications to LFUCG shall be directed to Michelle Kosieniak, Superintendent of Planning and Design, Division of Parks and Recreation, whom shall serve as LFUCG's agent for the purposes of this project, at the following address:

469 Parkway Drive
Lexington, KY 40504

All communications to Artist shall be directed to Amanda Matthews, CEO, Prometheus Foundry, LLC, whom shall serve as Artist's agent for the purposes of this project, at the following address:

PO Box 12023
Lexington, Kentucky 40759
502.592.3774
prometheusartfoundry@gmail.com

13. Artist will not discriminate against any employee or application for employment because of race, color, religion, national origin, sex, age, or handicap. Artist will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, national origin, sex, age, or handicap. Such action shall include, but not be limited to the following: employment upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeships. Artist agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this non-discrimination clause. Artist will, in all solicitations or advertisements for employees placed by or on behalf of Artist, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, sex, age (between forty and seventy), or handicap.

14. Artist shall self-perform all aspects of the design, fabrication, and installation involved with the project except for those elements that shall be subcontracted. No portion of the project may be subcontracted except with LFUCG's written approval. All work performed by any subcontractor shall be subject to the terms and conditions of this Agreement. Neither Artist's subcontract(s) nor this Agreement shall create a contractual relation or rights or obligations

between LFUCG and any subcontractor in addition to the rights or obligations otherwise existing in the absence of such subcontract and this Agreement. Artist's subcontract(s) shall not relieve Artist from any obligation otherwise assumed by them under this Agreement. Artist shall be fully responsible to LFUCG for the acts or omissions of any subcontractor and the employees of such subcontractor, as if such subcontractor and employees of such subcontractor were directly employed by Artist.

15. Artist retains all rights under the Copyright Act of 1976, 17 U.S.C. §§ 101, *et seq.* for the duration of the copyright, except as modified hereunder. Artist grants LFUCG a non-exclusive, perpetual, irrevocable, worldwide, royalty-free license to make two-dimensional reproductions and derivative works of the sculptures for any non-commercial purposes. Artist grants LFUCG all rights necessary to effectuate the purpose of this Agreement, including without limitation the right to display the sculptures.

II. PAYMENT AND TERMINATION

1. For the services herein described, LFUCG shall pay Artist a total sum of thirty seven thousand five hundred dollars (\$37,500.00). LFUCG shall pay Artist 50% of the total sum due upon the execution of this Agreement and the remaining 50% upon Artist's completion of the project.

2. Should LFUCG materially breach the terms of this agreement in such a manner as to render Artist incapable of performing its duties and responsibilities under this Agreement, or should Artist otherwise become incapacitated and incapable of performing its duties and responsibilities under this Agreement, Artist may terminate this Agreement early by providing fifteen (15) days written notice to LFUCG. LFUCG may terminate this Agreement with or without cause upon fifteen (15) days advance written notice to Artist. In the event the Agreement is terminated early by either party, Artist shall immediately refund and return to LFUCG the 50% tendered to Artist at the execution of this Agreement, less the cost of all materials already purchased for the project and less the reasonable value of services already provided by Artist. All materials purchased or produced in the course of the project, including without limitation all raw materials, drawings, depictions, records, models, molds, and fabricated components, shall become the property of LFUCG and be delivered to LFUCG in a timely manner. LFUCG shall reimburse Artist for any additional cost of materials already purchased and the reasonable value of services already provided in excess of 50%.

III. INSURANCE AND INDEMNITY

1. Artist shall procure and maintain for the duration of this project a general liability insurance policy with a coverage limit of no less than \$1 million per occurrence. All Certificates of Insurance forms used by the insurance carrier shall be properly filed and approved by the Department of Insurance for the Commonwealth of Kentucky. LFUCG shall be named as an additional insured in the General Liability Policy using the Kentucky DOI approved forms. The General Liability Policy shall be primary to any insurance or self-insurance retained by LFUCG. Said coverage shall be written by insurers acceptable to LFUCG and shall be in a form acceptable to LFUCG. Insurance placed with insurers with a rating classification of no less than Excellent (A or A-) and a financial size category of no less than VIII, as defined by the most current Best's Key Rating Guide shall be deemed automatically acceptable. Artist agrees to furnish LFUCG with all applicable Certificates of Insurance signed by a person authorized by the insurer to bind coverage on its behalf prior to final award, and if requested, shall provide LFUCG copies of all insurance policies, including

all endorsements. Artist agrees that LFUCG may review, audit and inspect any and all of its records and operations to insure compliance with these Insurance Requirements.

2. Artist understands and agrees that LFUCG is in no way responsible for the safety and property of Artist or its employees, agents, or officers. Artist shall comply with all applicable federal, state, and local safety standards related to the performance of its work or services under this Agreement and take reasonably necessary action to protect the life, health and safety and property of its personnel, the public, and LFUCG in the locations and areas in which Artist is performing services under the Agreement.

3. Artist shall indemnify and defend LFUCG from and against all claims, suits, damages, costs, losses, and expenses of any nature whatsoever in any manner arising out of or in connection with this project, except to the extent that such may be attributable solely to the negligence of LFUCG or its employees or officers. This provision shall survive the termination of this Agreement.

IV. INTERPRETATION & APPLICATION OF AGREEMENT

1. The parties agree that causes of actions between the parties shall be governed by applicable provisions of the Kentucky Revised Statutes, and that venue for any legal action shall be a court of appropriate jurisdiction in Fayette County, Kentucky. The parties further agree that Kentucky law shall apply with respect to the interpretation of all provisions of this Agreement.

2. Nothing in this Agreement shall be construed to give any rights or benefits to any third party.

3. Except as otherwise provided in this Agreement, any dispute that arises between the parties in relation to this Agreement may be resolved by agreement of LFUCG's Agent (Section III(1)) and Artist. In the absence of such an agreement, the dispute shall be submitted to LFUCG's Commissioner, Department of General Services, whose decision shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, capricious, arbitrary, or so grossly erroneous as necessarily to imply bad faith. Pending a final decision of a dispute hereunder, Artist shall proceed diligently with the performance of the Agreement in accordance with the directions of LFUCG.

4. This Agreement, together with the Incorporated Documents, constitutes the entire Agreement between LFUCG and Artists. This Agreement supersedes all prior written or oral understandings. This Agreement and any related exhibits or documents may only be amended, supplemented, modified or canceled by a duly executed written instrument.

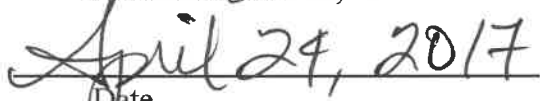
5. If any term or provision of this Agreement shall be found to be illegal or unenforceable, this Agreement shall remain in full force and such term or provision shall be deemed stricken.

6. The failure of either party to enforce any right reserved to it in this Agreement shall not be a waiver of any such right to which the party is entitled.

The parties have executed this agreement the day and year written above.

PROMETHEUS FOUNDRY, LLC (artist)


Amanda Matthews, CEO


Date

LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT

Jim Gray, Mayor

Date