

05-11-2022

MEMORANDUM OF AGREEMENT

THIS AGREEMENT, made and entered into this the 16th day of May , 2022, by and between the LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT, an urban county government formed pursuant to KRS Chapter 67A (hereinafter, the "Government"), 200 East Main Street, Lexington, Kentucky 40507 and LEXARTS INC., a Kentucky non-profit corporation (hereinafter, "LexArts"), 161 North Mill Street, Lexington, Kentucky 40507.

WHEREAS, the Government is an active supporter of both the arts and the equine industry; and

WHEREAS, the Government is known as the "Horse Capital of the World;" and

WHEREAS, LexArts is promoting Horse Mania for 2022, which displays equine public art and which has previously been successful in both 2000 and 2010; and

WHEREAS, the Government is the owner of certain real property or right-of-way located at various locations throughout the urban county identified in Exhibit A attached hereto and incorporated herein by reference; and

WHEREAS, LexArts wishes to temporarily display art in the form of various sculptured horses on said public property; and

WHEREAS, placement of these sculptured horses requires the construction of a concrete base to support and secure each sculpture; and

WHEREAS, the Government is willing to allow temporary encroachment on its property in accordance with the terms and conditions agreed upon by the parties and further set forth herein.

NOW THEREFORE, in consideration of the premises and of the mutual promises and covenants herein contained, it is agreed by and between the parties as follows:

1. The above recitals are incorporated herein as if fully stated.

2. LexArts or its agent shall construct and install, at no cost to the Government, the aforementioned concrete bases and horse sculptures (hereinafter collectively referred to as the "Artwork") at the general locations specified in Exhibit A. In the event that the ultimate location of a particular Artwork installation is not on the Government's property or in the public right-of-way (hereinafter collectively referred to as the "Property") the provisions of this agreement shall not apply, but LexArts will still take measures to ensure that the particular installation does not create public safety issues. The final location within the Property for a particular Artwork installation may vary from the location shown on Exhibit A based upon final review and approval of the Government.

3. The term of this agreement shall commence on June 1, 2022 and shall end on December 15, 2022.

4. Notwithstanding the above, this agreement may be terminated by either party upon thirty (30) days written notice to the other party. If either party provides notice of termination, the Artwork shall be removed from the Property by LexArts and the Property returned to its pre-encroachment condition at no cost to the Government within forty-five (45) days of giving or receiving the termination notice.

5. The Government shall not be responsible for any maintenance of, or damage to, the Artwork.

6. LexArts shall indemnify and hold harmless the Government against and from any and all claims, damages, causes of action and demands of any kind or nature arising out of or in connection with the placement, installation, repair, maintenance, and removal of the concrete bases and/or horse sculptures when the aforementioned acts occur within and upon the Property.

7. LexArts agrees to carry Commercial General Liability Insurance providing coverage with limits of not less than \$1,000,000 per occurrence and a \$2,000,000 aggregate for bodily injury and property damage. Said policy shall be with an insurance company authorized

to do business in the Commonwealth of Kentucky. The policy shall name the Lexington-Fayette Urban County Government as "additional insured."

8. LexArts shall assume full responsibility for any and all damage to the Property that occurs as a result of this agreement.

9 LexArts shall, at no cost to the Government, remove or cause to be removed all bases and sculptures and shall restore the Property to its pre-encroachment condition on or before December 15, 2022.

10. If LexArts fails to remove the Artwork as provided above, and/or fails to return the Property to its pre-encroachment condition, the Government shall remove the Artwork and LexArts hereby agrees to pay the reasonable cost of such removal, return and restoration of the Property.

11. Notwithstanding any of the foregoing paragraphs, should a safety or welfare concern, as determined solely by the Government, necessitate removal of one or more of the Artwork, LexArts, upon written notice from the Government shall, as soon as is practicable, remove or cause to be removed such Artwork. Such a written notice from the Government shall specify the location of the Artwork and the reason necessitating removal. Government will use its best efforts to identify an alternative location for placement of any base and sculpture which is required to be removed from its original location. LexArts shall bear all costs associated with such removal and/or any relocation of the base and sculpture. The terms of Paragraph 10 above shall apply if the Government is required to remove any particular Artwork.

12. This agreement is only for the benefit of the parties herein and is not intended to apply to or benefit any third party.

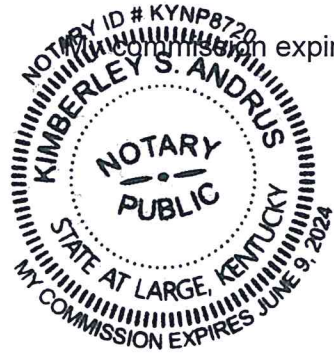
IN WITNESS WHEREOF, the parties hereto have executed this agreement on the day and year first above written.

LEXARTS INC.

BY: *Ame Sweetall*
Ame Sweetall
President and CEO

STATE OF KENTUCKY)
)
COUNTY OF FAYETTE)

The foregoing instrument was subscribed, sworn to, and acknowledged before me this 17 day of May, 2022, Ame Sweetall, as President and CEO, on behalf of LexArts Inc.



My commission expires: June 9, 2024

Kimberley S Andrus
Notary Public
Kentucky, State-at-Large

LEXINGTON-FAYETTE URBAN
COUNTY GOVERNMENT

BY: _____
Linda Gorton, Mayor

ATTEST:

CLERK OF THE URBAN COUNTY COUNCIL

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