



City of Ketchum

CITY COUNCIL MEETING AGENDA MEMO

Meeting Date: Staff Member/Dept:

Agenda Item:

Recommended Motion:

I move to approve Artist Agreement 25134 with Ed McCarthy outlining the terms of installation and liabilities related to their artwork.

Reasons for Recommendation:

- The Arts Commission conducted a call-for-artist this spring for their annual Art on 4th Exhibit. They selected Ed McCarthy's work "Modern Woman" to be installed in Ketchum Town Square.
- The Artist Agreement outlines the installation responsibilities and liabilities between the artist and the city, which must be approved by City Council.

Policy Analysis and Background (non-consent items only):

Sustainability Impact:

Financial Impact:

None OR Adequate funds exist in account:	Funds to pay the artist come from the Arts Commission's annual budget. Adequate funds exist in the account.
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Attachments:

1. Artist Agreement 25134 with Ed McCarthy
- 2.
- 3.

Artist Loan Agreement 25134 Ed McCarthy

THIS AGREEMENT is made and entered into this ____ day of _____, 2025, by and between the CITY OF KETCHUM, an Idaho municipal corporation (“City”) and Ed McCarthy (“Owner”).

RECITALS

WHEREAS, City is a municipal corporation duly organized and existing under the laws of the State of Idaho; and

WHEREAS, pursuant to Idaho Code §50-301, City is empowered to enter into contracts as may be deemed necessary to promote the welfare of the City and its residents; and

WHEREAS, City has exclusive control of the public rights-of-way; and

WHEREAS, Owner desires to install a certain work of art in the public right-of-way for the enjoyment of the public; and

WHEREAS, City desires to grant Owner permission to do so because such public display of art will promote the public health and welfare of the City of Ketchum.

NOW, THEREFORE, on the basis of the foregoing recitals the parties agree as follows:

1. Incorporation of Recitals. The Recitals set forth above are hereby incorporated into and made an integral part of this Agreement.
2. Grant of Revocable License. City hereby grants to Owner a revocable limited license to display the artwork described in Exhibit A attached hereto and hereby made a part of this Agreement (the “Art”) on/at the location described in Exhibit B attached and made a part of this Agreement (the “Display Site”). The placement of the Art shall be at the sole discretion of City.
3. Transportation, Installation and Removal. Owner shall be solely responsible for all costs and liabilities related to or arising from the transportation of the Art to and from the Display Site and its installation and removal. The City has agreed to provide assistance in placing the artwork on the concrete pad and requires that the sculpture is anchored into the pad. Despite the City’s assistance, the Owner remains solely responsible for all costs and liabilities related to or arising from the installation and removal of the sculpture. Once the Art has been installed on the Display Site to City’s satisfaction and until removal of the Art from the Display Site, City shall provide personal property insurance for the Art in an amount equal to its wholesale value. If Owner fails or refuses to remove the Art and restore the Display Site to a condition as good or better than the condition of the Display Site within thirty days of the end of the Display Period, then City may and

without limiting any other rights or remedies hereunder, but shall not be required to, remove the Art, place it in storage and charge reasonable removal fees, storage fees and insurance costs and to have and enforce a lien for such fees and costs.

4. Term and Display Period. The term of this Agreement shall run from June 16, 2025, until the Art is removed and the Display Site is restored to the reasonable satisfaction of the City. Owner shall display the Art on the Display Site from the time of installation until April 1, 2026 (the "Display Period"). Unless a street closure is required to remove the Art, Owner may remove the Art at any reasonable time prior to such date. Either party may terminate the Display Period at any time for any or no reason upon seven days' notice to the other Party.
5. Payment to Artist. Upon final installation of artwork that is satisfactory to the city, the artist will be paid an amount of \$3,500.
6. Ownership/Authority/Copyright and Reproduction Rights. Owner hereby represents that it owns all right, title and interest in and to the Art or that it has full Authority to execute this Agreement. At no time during the course of this Agreement shall City have any right, title or interest in or to the Art unless specifically agreed to in writing by both Owner and City. City shall not make any commercial use of the Art without the Owner's written consent; however, City may publish and distribute photographs of the Art as installed on the Display Site for noncommercial purposes.
7. Release and Indemnification. Owner hereby releases, holds harmless and agrees to indemnify and defend the City, its elected officials, appointed officials, agents, employees and volunteers from and against any and all damages, injuries to persons or property, including damage to the Art, personal injuries (without limitation including death) liabilities, claims or obligations in any manner related to or arising from the transportation of the Art to the Display Site, its installation, and its removal. Such release and indemnification shall not apply to any damages, injuries to persons or property, including the Art, personal injuries (without limitation including death) liabilities, claims or obligations arising from the negligence of City, its elected officials, appointed officials, agents, employees or volunteers.
8. No Third Party Beneficiaries. By entering this Agreement, the parties do not intend to create any right, title or interest in or for the benefit of any person other than City and Owner. No person shall claim any right, title or interest under this Agreement or seek to enforce this Agreement as a third party beneficiary of this Agreement.
9. Compliance With Laws/Public Records. Owner, its agents and employees shall comply with all federal, state and local laws, rules and ordinances. This Agreement does not relieve Owner of any obligation or responsibility imposed upon Owner by law. Without limitation, Owner hereby acknowledges that all writings and documents, including without limitation email, containing information relating to the conduct or administration of the public's business prepared by Owner for City regardless of physical form or characteristics may be public records pursuant to Idaho Code Section 74-101 *et seq.*

10. Notice. All written communications under this Agreement shall be addressed as follows:

CITY:
City of Ketchum
Attn: City Administrator
P.O. Box 2315
Ketchum, Idaho 83340-2315

OWNER:
Ed McCarthy
12 Last Chance Road
Winthrop, WA 98862

11. Miscellaneous.

- a. Amendments. This Agreement may only be changed, modified, or amended in writing executed by all parties.
- b. Headings. The headings in the Agreement are inserted for convenience and identification only and are in no way intended to describe, interpret, define, or limit the scope, extent, or intent of this Agreement or any provision hereof.
- c. Attorney Fees and Costs. In the event that either party hereto is required to retain the services of an attorney to enforce any of its rights hereunder, the non-prevailing party shall pay to the prevailing party all reasonable costs and attorney fees incurred in such enforcement, whether or not litigation is commenced and including reasonable costs and attorney fees on appeal.
- d. Successors and Assigns. This Agreement shall be binding upon all successors, assigns, vendees, successors-in-interest, and heirs of Owner.
- e. Remedies. In the event of default by either party hereunder, the non-defaulting party shall be entitled to seek all available legal and equitable remedies, including, without limitation, specific performance.
- f. No Presumption. No presumption shall exist in favor of or against any party to this Agreement as a result of the drafting and preparation of the document.
- g. Governing Law. This Agreement shall be governed by the laws and decisions of the State of Idaho.
- h. Entire Agreement. This Agreement contains the entire Agreement between the parties respecting the matters herein set forth and supersedes all prior Agreements between the parties hereto respecting such matter.
- i. Execution and Fax Copies and Signatures. This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the

same instrument. Fax copies of this Agreement and the original and fax signatures thereon shall have the same force and effect as original copies and signatures.

- j. Authority. The parties executing this Agreement warrant, state, acknowledge, and affirm that they have the authority to sign the same and to bind themselves to the terms contained herein.

IN WITNESS WHEREOF, the parties have signed this Agreement the day and year first above written.

CITY OF KETCHUM,
an Idaho municipal corporation

OWNER

By: _____
Neil Bradshaw
Mayor

By: _____
Its: _____

ATTEST:

Trent Donat
City Clerk

EXHIBIT A: Sculpture “Modern Woman” by Ed McCarthy to be installed in Ketchum Town Square



