

## **TASK ORDER FOR FABRICATION AND INSTALLATION OF CHATEAU PARK ARTWORK**

This TASK ORDER FOR FABRICATION AND INSTALLATION OF CHATEAU PARK ARTWORK (“Agreement”) is made this \_\_\_ day of \_\_\_\_\_, 2024 (“Effective Date”), by and between the City of Meridian, a municipal corporation organized under the laws of the State of Idaho (“City”), and Ken McCall, on behalf of McCall Studios LLC, a limited liability company organized under the laws of the state of Idaho (“Artist”). (City and Artist may hereinafter be collectively referred to as “Parties.”)

**WHEREAS**, City seeks to cultivate park identity and add theming through public art at Chateau Park, located at 2640 W. Chateau Drive, in Meridian, and to that end, requested that Artist submit a proposal for a design of original artwork to be installed at Chateau Park;

**WHEREAS**, Artist and City have entered into a *Master Agreement for Professional Services: Park Identities Public Art Roster* (“Master Agreement”), which establishes the terms and conditions under which City may invite Artist to provide services including consultations, design, installation, maintenance, and repair of artwork, pursuant to separate project task order(s) setting forth specific conditions, compensation amount, and scope of work;

**WHEREAS**, Artist proposed the fabrication and installation of a composition bench, flower sign, and flower bench, as generally depicted in *Exhibit A* hereto (“Artwork”);

**WHEREAS**, project stakeholders, including representatives of the Meridian Parks and Recreation Department, the Meridian Parks and Recreation Commission, the Meridian Arts Commission, and neighborhood residents, have evaluated Artist’s proposal and recommend installation of the proposed artworks at Chateau Park;

**WHEREAS**, on July 11, 2024, the Meridian Arts Commission reviewed the Artist’s proposal, and recommends to the Meridian City Council that Artist’s proposal be commissioned for full design, fabrication, and installation;

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and agreed, and in consideration of the mutual promises and covenants herein contained, the Parties agree as follows:

### **I. SCOPE OF SERVICES.**

Artist shall design, fabricate, and deliver one (1) composition bench, one (1) flower sign, and one (1) flower bench, as described and depicted in *Exhibit A* (together, the “Artwork”), and shall install such Artwork at Chateau Park. Artwork design, fabrication, and delivery shall comply in all respects with applicable industry and engineering standards, Idaho Standards for Public Works Construction, policies and ordinances of the City of Meridian, and the direction of the Arts and Culture Coordinator.

## **II. COMPENSATION.**

- A. **Total amount.** The total payment to Artist for the design, fabrication, and installation of the Artwork shall be forty-five thousand dollars (\$45,000.00). This amount shall constitute full compensation for any and all design, engineering, fabrication, delivery, installation, site restoration, and other services; travel; materials; shipping; contingency; commission; artist fee; and any and all other costs of work to be performed or furnished by Artist.
- B. **Method of payment.** Artist shall provide to City invoices for services and/or materials provided pursuant to the payment schedule set forth herein, which City shall pay within thirty (30) days of receipt. City shall not withhold any federal or state income taxes or Social Security tax from any payment made by City to Artist under the terms and conditions of this Agreement. Payment of all taxes and other assessments on such sums shall be the sole responsibility of Artist.
- C. **Payment schedule.** Artist shall be paid pursuant to the following benchmarks:
1. **City Approval of Proposal, Project's Projected Detailed Timeline, and Detailed Site Plan:** \$5,000.00 shall be paid to Artist within thirty (30) days of the Arts and Culture Coordinator's approval of Artist's detailed proposal for design, fabrication, and installation of the Artwork at Chateau Park a detailed project projected timeline, and a detailed site plan for the location and positioning of installation of the Artwork at Chateau Park.
  2. **Engineering Approval, and Other Items:** \$10,000 shall be paid to Artist within thirty (30) days of the engineering approval; and a building permit application. Engineering Approval and Other Items shall be defined as:
    - a. Engineered, stamped plan for installation of footings and foundations;
    - b. Plan for transportation of artwork to Chateau Park for delivery and installation;
    - c. Plan for any site restoration regarding landscaping and utilities;
    - d. Plan for engaging an independent testing agency to test and inspect construction materials and methods, if necessary;
    - e. Final construction drawings and structural calculations for Artwork, prepared and stamped by an engineer certified in the state of Idaho;
    - f. Proof of application for a building permit from the City of Meridian Community Development Department/Building Division, and for any permits required by from the City of Meridian Community Development Department/Planning Division.
  3. **Fabrication of Artwork, Phase I:** \$10,000 shall be paid to the Artist within thirty (30) days of a meeting between Artist and the Arts and Culture Coordinator, demonstrating at least fifty percent (50%) completion of fabrication of Artwork. The Arts and Culture Coordinator shall approve, or approve as modified, the Fabrication of Artwork at 50% completion within seven (7) days of Artist's notice of such 50% completion. Prior to issuing approval, the Arts and Culture Coordinator shall determine that the Artwork is in keeping with the standards set forth in this Agreement and with Artist's representations as set forth in the proposal set forth in *Exhibit A*, with the limited exception of non-material design refinements and/or improvements.

4. **Fabrication of Artwork, Phase II:** \$10,000 shall be paid to the Artist within thirty (30) days of Artists' completion of fabrication of the Artwork. The Arts and Culture Coordinator shall approve, or approve as modified, the Artwork within seven (7) days of Artist's notice of such completion. Prior to issuing approval, the Arts and Culture Coordinator shall determine that the Artwork is in keeping with the standards set forth in this Agreement and with Artist's representations as set forth in the proposal set forth in *Exhibit A*, with the limited exception of non-material design refinements and/or improvements.
5. **Installation of Artwork:** \$5,000.00 shall be paid to the Artist within thirty (30) days of Installation of Artwork, which shall be defined as:
  - a. Complete installation of the completed Artwork at the Site, in coordination with and as confirmed by the Arts and Culture Coordinator;
  - b. Artist's submission to the Arts and Culture Coordinator of a report from an independent testing agency approving construction materials and methods; if requested
  - c. Final inspection and approval of the installation of Artwork at the Site by the Arts and Culture Coordinator and City Building Official; and
  - d. Full restoration of the Site, including restoration of landscaping and any aboveground or underground facilities, to pre-installation conditions.
6. **Submission of Maintenance Plan and Final Acceptance:** \$5,000.00 shall be paid to the Artist within thirty (30) days of Submission of Maintenance Plan and Final Acceptance. Submission of Maintenance Plan and Final Acceptance shall be defined as:
  - a. Artist's submission to the Arts and Culture Coordinator of a recommended maintenance plan for the Artwork
  - b. Execution of a mutually agreed-upon acceptance agreement to include Artist's indemnification of City; express waiver of Artist's right, title, or interest in the Artwork; and waivers of lien from any and all sub-contractors and major materials suppliers; which agreement shall be prepared by the City Attorney's Office.
  - c. Meridian City Council's approval and execution of the acceptance agreement; and
  - d. City Council's adoption of a resolution indicating that the City accepts the delivery of the Artwork as designed, fabricated, and installed.

### **III. TIME OF PERFORMANCE.**

- A. **Monthly Communication.** In addition to the benchmarks set forth in the timeline prepared by Artist as part of the Detailed Plan, the Artist will communicate monthly with the Arts and Culture Coordinator about project updates.
- B. **By 5:00 p.m., March 3, 2025:** Artist shall be responsible for installation of Artwork at Chateau Park. The Arts and Culture Coordinator may extend the date of installation of Artwork for a reasonable amount of time only if such delay is due to circumstances and events beyond the control of Artist or pursuant to a written agreement by the Parties.
- C. **By 11:59 p.m., April 7, 2025:** Provided that Artist has completed Installation, as provided herein, the Parties shall execute Final Acceptance of the Artwork.

- D. Time of the essence.** The Parties acknowledge that services provided under this Agreement shall be performed in a timely manner. The Parties acknowledge and agree that time is strictly of the essence with respect to this Agreement, and that the failure to timely perform any of the obligations hereunder shall constitute a breach of, and a default under, this Agreement by the party so failing to perform.
- E. Inspection.** Upon the Arts and Culture Coordinator's request, the Artist shall provide the Arts and Culture Coordinator and/or City with reasonable opportunities to review the progress of the Artwork to ensure compliance with the timeline and the proposal as described and depicted in *Exhibit A* hereto or as otherwise mutually agreed by the Parties in writing. If during such inspection, or in the course of the approval processes required herein, the Arts and Culture Coordinator or City concludes that the Artwork or any portion or component thereof do not conform to the timeline or to the proposal as described and depicted in *Exhibit A* hereto or as mutually agreed by the Parties in writing, notice of the specific non-conformity and request for Artist to address the specified non-conformity shall be given to Artist in writing as soon as practicable. Artist shall have fourteen (14) days to address and correct any non-conformity. If, upon Arts and Culture Coordinator's re-inspection, the Arts and Culture Coordinator concludes that the Artwork or the nonconforming portion or component thereof remain nonconforming, termination procedures may commence. City's failure to disapprove in writing shall constitute presumptive approval of the Artwork as inspected.

#### **IV. MAINTENANCE AND REPAIR.**

- A. Two years following Final Acceptance.** Artist shall be fully responsible for all parts and workmanship of the Artwork for a period of two (2) years after City's Final Acceptance of the Artwork, and during such time shall replace any defective parts and/or rework any defective craftsmanship in a timely fashion at no cost to City, except that during such period Artist shall not be required to replace or repair any damage to the Artwork caused by City's employees, by vandalism, or by an act of God.
- B. Determination of need for repair.** At all times, including in the first two years following Final Acceptance, City shall make any and all determinations regarding whether the Artwork's parts and/or craftsmanship require maintenance, restoration, or repair. Artist may be asked to provide input regarding such matters, but all decisions regarding the need for maintenance, restoration, or repair shall be made by City.
- C. Maintenance, restoration, and repair.** City shall provide basic maintenance, restoration, and repair of the Artwork at City's cost. In the event that the Artwork is damaged or destroyed, in whole or in part, City may, at its sole election, restore the Artwork, subject to receipt of any insurance proceeds and availability of sufficient funds.

#### **V. CREATION, INTEGRITY, AND OWNERSHIP OF ARTWORK.**

- A. Waiver and relinquishment of rights.** Between Artist's Final Completion and City's Final Acceptance, Artist shall expressly waive any and all right, title, or interest in the Artwork. Artist understands that this waiver shall include waivers of the rights of reproduction, adaptation, publication, and display, except as otherwise permitted by this Agreement. Artist agrees to relinquish any and all rights, title, and interest to the Artwork developed in connection

with this Agreement, and hereby expressly waives any rights Artist has to the Artwork, including, but not limited to, the rights afforded artists under the Copyright Act of 1976 and the Visual Arts Rights Act of 1990, Title 17 U.S.C. §§ 101 *et seq.* Artist understands and agrees that the right of attribution and integrity, as specifically set forth in 17 U.S.C. § 106A, are hereby expressly waived except as otherwise provided herein. To the extent that the provisions of this Agreement differ with the Copyright Act of 1976 and Visual Arts Rights Act of 1990, the provisions of this Agreement will govern and any such differences in the rights and duties created thereunder are expressly waived.

- B. Originality of Artwork.** Artist also warrants that, unless otherwise stipulated in writing, the Artwork is original, that it is an edition of one (1), and that Artist is the sole creator and owner of all rights in the Artwork and the design thereof. Artist shall not sell, license, perform or reproduce the Artwork or a substantially similar copy of the Artwork without the prior written consent of City. However, nothing contained herein shall prevent the Artist from creating future works in Artist's style and manner of working. The Artist shall not reproduce the Artwork, or any portion thereof, in a way which reflects poorly upon, disparages, or discredits the City or the Artwork.
- C. Ownership.** Upon City's Final Acceptance, the Artwork shall be owned by City. Following Final Acceptance, City may remove the Artwork from the Site and/or move the Artwork to another location, at City's sole election and discretion.
- D. No copyright.** Artist shall not make any claim to the copyright of the Artwork.
- E. Photographs of Artwork by City.** City may photographically reproduce the image of the Artwork and all preliminary studies, models and maquettes thereof, as City may desire for educational and public information purposes. Where practicable and to the extent of City's authority, Artist shall be acknowledged on each such photographic reproduction to be the creator of the original subject thereof, provided that photographic reproductions of preliminary studies, models and maquettes shall not be identified as or represented to be the finished Artwork.
- F. Photographs of Artwork by Artist.** Artist may photographically reproduce the image of the Artwork and all preliminary studies, models and maquettes thereof, as Artist may desire for marketing, educational and public information purposes. Where practicable, Artist shall acknowledge on each such photographic reproduction the location of such Artwork, provided that reproductions of preliminary studies, models and maquettes shall not be identified as or represented to be the finished Artwork.
- G. Models of Artwork.** City shall at no time create any model, maquette, replica, copy, or any other three-dimensional reproduction of Artwork or any component thereof for any purpose without first entering into a mutually agreed-upon written agreement with Artist governing the creation, use, and/or sale of such model, maquette, replica, copy, or reproduction. Upon Final Completion, Artist shall not create any new model, maquette, replica, copy, or any other three-dimensional reproduction of Artwork or any component thereof for any purpose without first entering into a mutually agreed-upon written agreement with City governing the creation, use, and/or sale of such model, maquette, replica, copy, or reproduction. This provision shall not

prevent Artist's creation of any model or mock-up for purposes of designing and/or engineering Artwork prior to Final Completion.

- H. Alteration of Artwork.** If any alteration occurs to the Artwork after installation, whether intentional or accidental and whether caused by City or others, upon written request of Artist, such Artwork shall no longer be represented to be the work of Artist, unless otherwise allowed by Artist in writing. Other than as specified herein, Artist specifically waives the right to claim any other remedy concerning the alteration of the Artwork as provided for under Idaho or federal law, whether by statute or otherwise.
- I. Removal from display.** City shall have the right to remove the Artwork from Site and/or from public display. In the event that City determines that the Artwork or any component thereof shall be sold, Artist shall be provided the first right of refusal to purchase the Artwork or such component from City. Should Artist choose to purchase the Artwork pursuant to this provision, the price of the Artwork shall be the fair market value thereof. This provision shall expire upon the death of Artist and shall not be extended to Artist's estate unless City so elects.
- J. Subcontracting or assignment of obligations.** Artist shall not subcontract or assign any of Artist's obligations under this Agreement that require or that may require Artist's artistic talent or expertise. Artist may subcontract or assign obligations that do not require Artist's artistic talent or expertise, including, but not limited to, such obligations as transport and installation of the Artwork, and other obligations as outlined in Artist's proposal as set forth in *Exhibit B*. Any and all subcontractors or assignees shall be bound by all the terms and conditions of this Agreement.

## **VI. INDEMNIFICATION, WAIVER, AND INSURANCE.**

- A. Indemnification.** Artist shall indemnify, save, and hold harmless the City and any and all of its employees, agents, volunteers, and/or elected officials from any and all losses, claims, and judgments for damages or injury to persons or property, and from any and all losses and expenses caused or incurred by Artist or Artist's servants, agents, employees, guests, and/or business invitees, occurring before City's Final Acceptance of the Artwork.
- B. Waiver.** Artist waives any and all claims and recourse against City, including the right of contribution for loss and damage to persons or property arising from, growing out of, or in any way connected with or incident to Artist's performance of this Agreement, whether such loss or damage may be attributable to known or unknown conditions, except for liability arising out of concurrent or sole negligence of City or its officers, agents or employees.
- C. Insurance to be obtained by Artist.** Artist shall obtain and shall maintain, at Artist's own expense, from the Effective Date of this Agreement through City's Final Acceptance of the Artwork, each and all of the following:
  - 1. General liability insurance.** General liability insurance with a limit of not less than one million dollars (\$1,000,000.00) per each occurrence, combined single limit bodily injury and property damage, covering the actions and omissions of Artist and her employees, agents, and/or workers in fabricating, transporting, and installing the Artwork and/or

components or materials thereof, including coverage for owned, non-owned, and hired vehicles, as applicable.

2. **Workers' compensation insurance.** Artist shall obtain and shall maintain, at Artist's own expense, from the Effective Date of this Agreement through City's Final Acceptance of the Artwork, and throughout the course of this Agreement, workers' compensation insurance, in an amount required by Idaho law, whichever is higher, to cover any and all persons employed by Artist.
  3. **Insurance of Artwork.** Upon completion of the sculptures, through City's Final Acceptance of Artwork, Artist shall procure and maintain, at Artist's own expense, in an all-risk form with limits of not less than fifty thousand (\$50,000), and any deductible not to exceed five hundred dollars (\$500) each loss, with any loss payable to City. Artist agrees to bear all risks of loss of and/or damage to the Artwork until City's Final Acceptance of Artwork.
- D. **Proof of insurance.** Artist shall provide to City, within seven (7) days of the Effective Date of this Agreement, written proof that Artist has obtained all insurance required hereunder. If any change is made to any insurance policy or coverage required under and/or obtained pursuant to this Agreement, Artist or Artist's insurance agent shall notify City immediately.
- E. **Insurance to be obtained by Artist's subcontractors.** Artist shall require any and all subcontractors employed or utilized in the course and scope of the obligations described in this Agreement to obtain and maintain general liability insurance and workers' compensation insurance in the amounts described herein. Artist shall provide to City, within twenty-four (24) hours of hiring or engaging any subcontractor, written proof that her subcontractors have obtained all insurance required hereunder.
- F. **Insurance to be obtained by City.** City shall obtain all necessary property and commercial general liability insurance as may be required in order to protect its insurable interests for its rights and obligations described within this Agreement. Upon City's Final Acceptance of the Artwork, City shall obtain property insurance for the Artwork.
- G. **No cancellation without notice.** On all insurance policies required under this agreement, such policies shall provide that they may not be cancelled or reduced in coverage except upon thirty (30) days advance written notice to all Parties. Any cancellation of insurance without appropriate replacement in the amounts and terms set forth herein may constitute grounds for termination of the contract.

## VII. TERMINATION.

- A. **Termination for cause.** If City determines that Artist has failed to comply with any term or condition of this Agreement, violated any of the covenants, agreements, and/or stipulations of this Agreement, falsified any record or document required to be prepared under this Agreement, engaged in fraud, dishonesty, or any other act of misconduct in the performance of this Agreement; or if either Party willfully or negligently defaults in, or fails to fulfill, its material obligations under this Agreement; the other Party shall have the right to terminate the Agreement by giving written notice to the defaulting party of its intent to terminate, and shall

specify the grounds for termination. The defaulting party shall have thirty (30) days after receipt of such notice to cure the default. If the default is not cured within such period, this Agreement shall be terminated upon mailing of written notice of such termination by the terminating party.

1. **Default by City.** In the event of termination for non-performance or default by City, City shall compensate Artist for work actually completed by Artist prior to the date of written notice of termination and any verified additional services and materials actually performed or supplied prior to the date of written notice of termination, less payments of compensation previously made, not to exceed the total amount of compensation allowed hereunder.
  2. **Default by Artist.** In the event of termination for non-performance or default by Artist, except that caused by the death or incapacity of Artist, all finished and unfinished drawings, photographs, plans, timelines, and/or any and all other work products prepared and submitted or prepared for submission under this Agreement shall, at City's option, become City's property. Notwithstanding this provision, Artist shall not be relieved of any liability for damages sustained by City attributable to Artist's default or breach of this Agreement. City may reasonably withhold payments due until such time as the exact amount of damages due to City from Artist is determined. Artist shall not be relieved of liability to City for damages sustained by City by virtue of any breach or default of this Agreement by Artist. This provision shall survive the termination of this Agreement and shall not relieve Artist of liability to City for damages.
- B. **Termination without cause.** City may terminate this Agreement for any reason at any time by providing fourteen (14) days' notice to Artist.
- C. **Termination upon death or incapacity of Artist.** This Agreement shall automatically terminate upon the death or incapacity of Artist. In the event of termination caused by the death or incapacity of Artist, all finished and unfinished drawings, photographs, plans, timelines, and/or any and all other work products prepared and submitted or prepared for submission under this Agreement shall, at City's option, become its property, and the right to fabricate and/or complete fabrication of the Artwork shall pass to City. Notwithstanding this provision, neither Artist nor Artist's estate shall be relieved of any liability for damages sustained by City attributable to Artist's default. City may reasonably withhold payments due to Artist or to Artist's estate until such time as the exact amount of damages due to City from Artist or Artist's estate is determined. Artist shall not be relieved of liability to City for damages sustained by City by virtue of any breach or default of this Agreement by Artist. This provision shall survive the termination of this Agreement and shall not relieve Artist or Artist's estate of liability to City for damages.
- D. **Non-waiver of breach.** A waiver of any breach or default of any provision of this Agreement shall not be construed as a waiver of a breach of the same or any other provision hereof.

### VIII. GENERAL PROVISIONS.

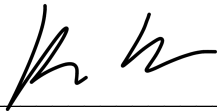
- A. **Master Agreement applies.** All provisions of the Master Agreement are incorporated by reference and made a part of hereof as if set forth in their entirety herein.



- B. **Exhibits.** All exhibits to this Task Order are incorporated by reference and made a part of hereof as if set forth in their entirety herein.
  
- C. **Entire agreement.** This Task Order constitutes the entire agreement between the Parties regarding the Scope of Services described herein. This Task Order supersedes any and all statements, promises, or inducements made by either party, or agents of either party, whether oral or written, whether before or after the execution hereof, regarding the Scope of Services described herein. The terms of this Task Order may not be enlarged, modified or altered except upon written amendment signed by both parties hereto.
  
- D. **City Council approval required.** The validity of this Task Order shall be expressly conditioned upon City Council action approving the Task Order. Execution of this Task Order by the persons referenced below prior to such ratification or approval shall not be construed as proof of validity in the absence of Meridian City Council approval.

**IN WITNESS WHEREOF**, the parties hereto have executed this Task Order on the Effective Date first written above.

**ARTIST:**



\_\_\_\_\_  
Ken McCall  
Manager, McCall Studios LLC

**CITY OF MERIDIAN:**

BY: \_\_\_\_\_  
Robert E. Simison, Mayor

Attest: \_\_\_\_\_  
Chris Johnson, City Clerk