

**MONUMENT DONATION AND PLACEMENT AGREEMENT
BETWEEN CITY OF MERIDIAN AND THE EMMA EDWARDS GREEN CHAPTER
OF THE DAUGHTERS OF THE AMERICAN REVOLUTION**

This MONUMENT DONATION AND PLACEMENT AGREEMENT BETWEEN CITY OF MERIDIAN AND THE EMMA EDWARDS GREEN CHAPTER OF THE DAUGHTERS OF THE AMERICAN REVOLUTION FOR PLACEMENT OF MONUMENT IN HEROES PARK (“Agreement”) is made and entered into 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 the Emma Edwards Green Chapter DAR, an unincorporated non-profit organization organized under the laws of the State of Idaho (“Grantor”) (together, “Parties”).

WHEREAS, Grantor is a branch of the National Daughters of the American Revolution, a non-profit, volunteer women’s service organization dedicated to promoting patriotism and preserving American history, comprised of members who can prove lineal descent from a patriot of the American Revolution;

WHEREAS, pursuant to this Agreement and the respective rights and responsibilities of the Parties established hereby, Grantor seeks to donate to City a monument to commemorate the 250th anniversary of the United States, which monument is comprised of a stone with a bronze plaque reading, “This marker commemorates the men and women who achieved American independence. These Patriots, believing in the noble cause of liberty, fought valiantly to found a new nation. 1775-1783” (“Monument”);

WHEREAS, City will accept the Monument and place it in Heroes Park, located at 3064 W. Malta Drive, Meridian, Idaho (“Park”);

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, and in consideration of the recitals above, which are incorporated herein, City and Grantor agree as follows:

- A. Delivery.** Grantor shall gift and convey the Monument to City, at Grantor’s sole expense, at no expense to City. Upon delivery of the Monument, City shall install the Monument in the Park.
- B. Ownership.** Upon delivery of the Monument, City shall assume full ownership thereof and shall, in City’s sole discretion, determine whether, how, when, where, and under what circumstances the Monument is installed, used, or maintained.
- C. Location.** City may move the Monument from its location in Park, in City’s sole discretion, following five (5) days’ notice to Grantor, except that in the event of an emergency, the City may move the Monument immediately, with no notice to Grantor, and shall notify Grantor within five (5) days of such action.

- D. Removal.** City may remove the Monument from Park and/or from public display, in City's sole discretion, either temporarily or permanently, following five (5) days' notice to Grantor, except that in the event of an emergency, the City may remove the Monument immediately, with no notice to Grantor, and shall notify Grantor within five (5) days of such action.
- E. Termination.**
1. Either Party shall have the right to terminate this Agreement, for cause or where termination is in the best interest of that Party. Termination shall be effective upon mailing of written notice of such termination by the terminating party.
 2. Upon termination, Grantor may revoke its gift of the Monument to City, or City may revoke its acceptance of the Monument. The revoking Party shall notify the other Party of the intent to take such action by providing written notice in the manner set forth herein. Grantor shall have thirty (30) days from the date of mailing of the written notice of revocation by either Party to contact the Parks Superintendent and make arrangements to retrieve the Monument. Grantor shall take delivery of the Monument only at the date, time, and manner previously approved by the Parks Superintendent.
- F. Abandonment.** If City provides notice to Grantor of City's revocation of its acceptance of the Monument in the manner set forth herein, and Grantor fails to take delivery of the Monument at the date and time arranged with the Parks Superintendent, or fails to make such arrangements within thirty (30) days of written notice of revocation, Grantor's interest in the Monument shall be deemed abandoned, and the City may keep, sell, give away, repurpose, modify, or destroy the Monument, in City's sole discretion, with no further notice to Grantor.
- G. Term of Agreement.** The term of this Agreement shall be from the Effective Date through 11:59 p.m. on December 31, 2034, unless earlier terminated by either party by the method established herein. This Agreement shall automatically be renewed from year to year thereafter unless notice of termination is given by either Party to the other in the manner set forth herein.
- H. Use of Park.** Grantor shall be on equal footing with the general public regarding use of Park, including, without limitation, reservation requirements, priority of reservation, and payment to City of reservation or other fees. Grantor shall not charge any fee for admission to Park or any portion thereof without the prior written consent of City.
- I. Alterations; waste; signs.** Grantor shall not make, or permit to be made, alterations on or to Monument, Park, or any portion or component thereof, whether temporary or permanent, without first obtaining City's written consent. Grantor shall not commit, permit nor suffer any damage to or waste upon the premises of Park or any of the improvements or appurtenances situated or placed thereon by or on behalf of City or City's agents or invitees. Except as allowed by written permission of City, the Monument shall not feature, and Grantor shall not install or erect signs, posts, poles, fencing, landscaping, vegetation, flags, or other improvements or structures, whether temporary or permanent.
- J. Liens.** Grantor shall convey the Monument free from any liens arising out of any work performed for, materials furnished to, or obligations incurred. Grantor hereby covenants to

satisfy any such lien, judgment or encumbrance at Grantor's sole and separate expense, and in all respects fully to indemnify City against all damages, legal costs and charges, including attorney's fees reasonably incurred, in any suit involving any liens, claims, judgments or encumbrances cause or suffered by Grantor with respect to the Monument or any part thereof.

- K. Indemnification.** Grantor acknowledges that provision of services under this Agreement may carry a risk of property damage, personal injury, illness, and/or death, some of which risks may be unknown, and, with that knowledge, Grantor hereby assumes all such risks and hazards. Grantor specifically indemnifies City and holds City harmless from any loss, liability, claim, judgment, or action for damages or injury to Grantor, to Grantor's personal property or equipment, and to Grantor's employees, agents, or volunteers arising out of or resulting from the installation, maintenance, or condition of Monument not caused by or arising out of the tortious conduct of City or its employees.
- L. Landscape maintenance.** City shall be responsible for tree, turf, and landscape maintenance; mowing; irrigation; weed and pest control; custodial services; and hardscape cleaning and maintenance, both at the Monument and throughout the Park. Grantor shall not mow, spray, prune, or otherwise alter or maintain any natural or hardscape portion of Park.
- M. Park public place.** The parties hereto expressly acknowledge that Park is a public place. Management and scheduling of Park use shall at all times be within the sole purview of City. City shall have the right to use or allow the use of Park for any and all purposes and under any and all conditions.
- N. Force Majeure.** City shall not be liable for failure to perform any duty under this Agreement where such failure is due to or made impracticable by unforeseeable causes beyond the City's control and without the fault or negligence of City, including, but not restricted to, acts of God or the public enemy, fire, flood, natural disaster, epidemic, strike, or order of any court or authorized agency.
- O. No agency.** It is understood and agreed that neither Party shall be considered an agent of the other in any manner or for any purpose whatsoever with regard to any activity undertaken pursuant to this Agreement. Neither Grantor nor any officer, employee or agent thereof shall be deemed an employee of City. Grantor shall have no authority or responsibility to exercise any rights or power vested in City. The selection and designation of the personnel of City in the performance of this agreement shall be made by City.
- P. No waiver.** City's waiver on one or more occasion of any breach or default of any term, covenant or condition of this Agreement shall not be construed as a waiver of any subsequent breach or default of the same or a different term, covenant or condition, nor shall such waiver operate to prejudice, waive, or affect any right or remedy City may have under this Agreement with respect to such subsequent default or breach by Grantor.
- Q. Nonappropriation.** Grantor acknowledges that City is a governmental entity, and fulfillment of any obligations under this Agreement is based upon the availability of public

funding. Notwithstanding anything in this Agreement to the contrary, City's obligations under this Agreement shall be subject to and dependent upon appropriations being made by City Council for such purpose.

- R. Non-Discrimination.** Throughout the course of this Agreement, Grantor shall not discriminate against any person as to race, creed, religion, sex, age, national origin, sexual orientation, or any physical, mental, or sensory disability.
- S. Attorney fees.** If either party brings any action or proceedings to enforce, protect or establish any right or remedy under the terms and conditions of this Agreement, the prevailing party shall be entitled to recover reasonable costs and attorneys' fees, as determined by a court of competent jurisdiction, in addition to any other relief awarded.
- T. No assignment.** Grantor shall not assign, sublet or transfer any benefit conveyed by this Agreement without the express written consent of City. Should Grantor cease to exist as an organization, this Agreement and all rights granted to Grantor hereunder shall be void. Upon amendment of Grantor's bylaws or charter, this Agreement shall be voidable, at City's option.
- U. Notices.** All notices to be provided under this Agreement shall be in writing and addressed as follows:
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| If to Grantor: | If to City: |
| Emma Edwards Green Chapter DAR | City of Meridian |
| Helen Ditto, Registered Agent | Director, Parks and Recreation Department |
| 648 W. Ashton Drive | 33 East Broadway |
| Meridian ID 83646 | Meridian ID 83642 |
- Notice shall be provided in writing and sent by U.S. mail, postage prepaid, to the party to be notified at the address specified above. Notice shall be deemed to have been given upon deposit in the U.S. mail.
- V. Choice of law.** This Agreement was negotiated in Idaho, is entered into and is intended to be performed in the State of Idaho. The Parties agree that the laws of Idaho shall govern the interpretation of this Agreement.
- W. State of Idaho requirements.** The following provisions are required by the State of Idaho. The inclusion of these provisions in this Agreement does not indicate City's support or opposition to these provisions nor agreement by City that these clauses are relevant to the subject matter of this Agreement; these provisions are included solely to comply with the laws of the State of Idaho.
1. Pursuant to Idaho Code § 67-2346, as applicable, Grantor certifies that Grantor is not currently engaged in, and will not for the duration of this Agreement engage in, a boycott of goods or services from Israel or territories under Israel's control. The terms "company" and "boycott Israel" shall have the meanings ascribed to them in Idaho Code § 67-2346.
 2. Pursuant to Idaho Code § 18-8703, as applicable, Grantor certifies that it is not, and will not for the duration of this Agreement become, an abortion provider or an affiliate of an

abortion provider, as those terms are defined in the “No Public Funds for Abortion Act,” Idaho Code §§ 18-8701 *et seq.*

3. Pursuant to Idaho Code § 67-2359, as applicable, Grantor certifies that Grantor is not a company currently owned or operated by the government of China and will not for the duration of this Agreement be owned or operated by the government of China. The terms “company” and “government of China” shall have the meanings ascribed to them in Idaho Code § 67-2359.

X. City Council approval required. The validity of this Agreement shall be expressly conditioned upon City Council action approving the Agreement. Execution of this Agreement 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.

Y. Entire agreement. This Agreement contains the complete, final, and exclusive agreement of the Parties and supersedes any and all prior agreements, understandings, negotiations, discussions, statements, promises, or inducements made by either party, or agents of either party, whether oral or written, whether previous to the execution hereof or contemporaneous herewith. The terms of this Agreement may not be enlarged, modified or altered except upon written amendment or addendum signed by both parties hereto. No modification or rescission of this Agreement shall be binding unless executed in writing by both City and Grantor in the manner set forth herein. If any provision of this Agreement is found by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remainder of this Agreement shall not be affected, and shall continue in full force and effect.

IN WITNESS WHEREOF, the parties shall cause this Agreement to be executed by their duly authorized officers to be effective as of the day and year first above written.

GRANTOR:



Helen Ditto

Organizing Regent, Emma Edwards Green Chapter DAR

CITY OF MERIDIAN:

Attest:

BY:

Robert E. Simison, Mayor

Chris Johnson, City Clerk