



RAYMORE PUBLIC ART COMMITTEE

Thursday, Oct. 3, 2019

9 a.m.

City Hall, Executive Conference Room
100 Municipal Circle
Raymore Mo, 64083

- 1. Call to Order**
- 2. Call for Artists Review**
- 3. Project Updates**
- 4. Adjournment**

Any person requiring special accommodations (i.e. qualified interpreter, large print, hearing assistance) in order to attend this meeting, please notify the City Clerk at (816) 331-0488 no later than forty-eight (48) hours prior to the scheduled commencement of the meeting.



CONCEPTUAL DESIGN DEVELOPMENT AGREEMENT

This **CONCEPTUAL DESIGN DEVELOPMENT AGREEMENT** (together with all attached Schedules) (the "Agreement") is made and entered into this _____ day of _____ by and between the **City of Raymore, Missouri** ("Client"), and _____ ("Artist"). The Client and the Artist being collectively referred to herein as the "Parties".

WHEREAS, Client is developing a **SCULPTURE** ("Project") located at **HAWK RIDGE PARK** ("Site");

WHEREAS, Artist is in the business of creating original works of art;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

- 1. Scope of Services.** The Artist shall provide design services (the "Services") and deliverables ("Deliverables") as set forth in Schedule "A", which is incorporated by reference into this Agreement. The services shall result in Deliverables embodying a conceptual design (the "Conceptual Design") for artwork (the "Artwork") from which a plan for fabrication and installation (the "Final Design") can be derived at a later date pursuant to a separate agreement, should Client select Artist's Design.
- 2. Schedule of Performance.** The Parties agree that time is of the essence. Artist shall adhere to the meeting schedule as set forth in Schedule "A" and shall provide the Conceptual Design to Client no later than _____, **2020**.
- 3. Extension of Time.** The Client agrees to grant a reasonable extension of time to Artist in the event that there is a delay caused by the Client, conditions beyond Artist's control, or pursuant to those circumstances set out in Section (18) "Force Majeure" below. Extensions of time shall comply with the requirements of Section (15) "Modifications" below.
- 4. Compensation.** Client agrees to pay Artist **\$2,500** for the Conceptual Design. The payment schedule is set forth in Schedule "B", which is hereby incorporated by reference into this agreement.
- 5. Reimbursable Expenses.** Artist is responsible for all expenses for the Conceptual Design. Client will reimburse Artist for reimbursable expenses ("Reimbursable Expenses") which shall be invoiced by Artist and shall include supporting documentation. These Reimbursable Expenses may include travel, lodging and/or food for completion of the

Project, but only if the Artist does not reside within the Greater Kansas City Metropolitan Area. Artist shall obtain specific advance approval from Client in writing for any reimbursable expenses.

6. Invoicing. Invoices for Services and Reimbursable Expenses shall be submitted to **Mike Ekey, Assistant City Manager, 100 Municipal Circle, Raymore, MO 64083.** Payment as set forth under this Agreement will be made payable to Artist and will be remitted by check to the address indicated in Section 22 "Notices" below. Unless disputed in writing by Client before due, Client will pay Artist within (30) calendar days of Client's receipt of Invoice and supporting documentation for any Reimbursable Expenses from Artist.

7. Representation and Warranties. Artist represents and warrants that the Services and Deliverables rendered pursuant to this Agreement shall result in an original design that, to the best of Artist's knowledge, does not infringe on any third party intellectual property rights. Client shall make available for Artist's examination and use all applicable information regarding the Site and Project, including but not limited to: plans, specifications, reports, narratives, publications, statistics, records, and other information pertinent to Artist's performance under this Agreement and represents and warrants the accuracy and completeness of the same. Further, Client shall provide its reviews and approvals of Artist's design services in a prompt and timely manner.

8. Approval Process. Within 60 days of Artist's delivery of the Conceptual Design to Client, Client shall notify Artist as to how Client wishes to proceed with regard to Artist's Conceptual Design.

- a. If Client would like to see additional development of the Conceptual Design prior to determining whether Client will proceed with the Final Design, the parties may execute an addendum to this Agreement setting compensation and requirements for such additional development.
- b. If Client selects Artist's Conceptual Design for development into a Final Design, subject to approvals pursuant to Section 9 below, the parties shall enter into a separate agreement for the Final Design of the Artwork.
- c. If Client does not select Artist's Conceptual Design, Client may not use any part of Artist's Conceptual Design for future development without the specific written approval of Artist.

9. Further Approvals. In the event that further approvals or reviews are necessary for Client to select Artist's Design for Final Design, Artist, as part of this Agreement and for no further compensation except for Reimbursable Expenses, shall prepare the necessary materials for and be available to personally present the same to the appropriate body/bodies for approval to proceed with the Final Design of the Artwork. Client will give Artist no fewer than 14 days notice of the scope of materials needed and time and location of the meeting.

10. Intellectual Property. Artist retains all copyrights and other intellectual property interests in the Conceptual Design and in any plans, drawings, renderings, schematics, design studies and models and the like prepared by Artist in connection with this Agreement. The Artist is responsible, at his /her option, for registering any copyrightable material in his or her name with the U.S. Register of Copyrights, at no additional costs to Client. It is specifically understood that, given the Artist's retention of all intellectual property rights, in the event that Client elects not to proceed with Artist in the further

development of the Conceptual Design, Client does not have the right to take the Conceptual Design to a third party for further development, including but not limited to fabrication and/or installation.

11. Transfer to Title. If the Artist is selected to prepare a Final Design, Artist shall transfer title of Services and Deliverables to Client, when final payment on this Agreement has been paid in full by Client.

12. Indemnification. Client agrees to indemnify and hold harmless Artist, his/her successors and assigns from any claim or suit arising or resulting from the breach by Client or its agents of any contractual obligations set forth in this Agreement including, but not limited to, Client's warranties set forth in Section 7 "Representations and Warranties" above and from negligent conduct of Client, its agents, assigns. Artist agrees to indemnify and hold harmless Client, its successors and assigns from any claim or suit arising out of a breach by Artist of any contractual obligations set forth in this Agreement including, but not limited to, Artist's warranties set forth in Section 7 "Representations and Warranties" above.

13. Independent Contractor. Artist is furnishing his/her services as an independent contractor, and nothing herein creates any association, partnership or joint venture between the Parties hereto or any employer-employee relationship.

14. Modification. Any modification of this Agreement shall be in writing and signed by all the Parties.

15. Termination. Either Party may terminate this Agreement upon thirty (30) days written notice to the other Party delivered by certified mail or in person. Termination of this Agreement for any cause shall be without prejudice to any obligations or liabilities of either Party accrued prior to or because of such termination. If this Agreement is terminated by Client, Client shall be liable under the payment provisions of this Agreement only for payment for Services rendered before the effective date of termination. Artist may terminate this Agreement upon ten (10) day's notice to Client if Client is in material breach of this Agreement and fails to cure the breach before the end of the ten (10) day notice period.

16. Death or Incapacity of Artist. Should the Artist become ill, disabled, injured, or otherwise incapacitated at any time between the execution of this Agreement and the date of completion, the Artist or one of the Artist's representatives will notify Client promptly (with the understanding that pursuant to paragraph 2 of this Agreement, time is of the essence). In the event of Artist's physical incapacity or death prior to the completion of the Agreement, all payments made up to the point of incapacity or death will be retained by Artist or Artist's estate and all work performed to date of incapacity or death will be compensated. If the Conceptual Design is substantially completed and it is feasible for the work to be fully completed without undue delay, Client may elect to proceed under the terms of this Agreement with the written consent of Artist's estate. In the event that Client elects to proceed with the completion of the Conceptual Design, all remaining work to be completed in accordance with this Agreement will be delegated to Artist's studio personnel.

17. Force Majeure. The Parties will be excused from performing under this Agreement if performance is prevented by a condition beyond the control of the Parties such as acts of God, war, civil insurrection, government action or public emergency (but only for as long as such unforeseen occurrences exist). Both Parties will take all reasonable steps to assure performance of their contractual obligation when the unforeseen occurrences have ceased to

exist, but resumption of performance will be subject to negotiation between the Parties if more than six (6) months have passed since either suspension of obligations under this Agreement, or substantially changed circumstances.

18. Non-assignability. Artist will not assign, transfer or subcontract the creative and artistic portions of the Conceptual Design, Final Design, or the Artwork to another party without the prior written consent of Client.

19. Severability. Each paragraph and provision of this Agreement is severable from the entire Agreement, and if any provision is declared invalid, the remaining provisions will remain in effect.

20. Governing Law and Venue. This Agreement and all matters arising out of or relating to this Agreement will be construed and enforced according to the laws of Missouri. Unless otherwise agree, any litigation shall take place in the Circuit Court of Cass County, Missouri, and the Parties will accept the exclusive jurisdiction of these courts. Each Party agrees to service of process through the procedure defined in Section 22 "Notices" below.

21. Notices. All notice, submittals, requests, and reports required under this Agreement will be hand delivered or sent by certified mail or emailed as follows:

For Artist: Name:
 Address:
 E-mail:

For Client: Name: **Mike Ekey, Assistant City Manager**
 Address: **100 Municipal Circle, Raymore, MO 64083**
 E-mail: **MEkey@Raymore.com**

Notice is deemed to have been received either upon the date recipient signs the return certificate, or five (5) days after the notice is transmitted to recipient via regular U.S. Mail or E-Mail, whichever is sooner. A change in the designation of the person or address to which submittal, requests, notices, and reports will be delivered is effective when the other Party has received notice of the change by certified mail.

22. Dispute Resolution. In the event of any disputes arising from the terms of or performance under this Agreement, the Parties shall first attempt resolution through good faith discussion and/or mediation. If discussion and/or mediation does not resolve the dispute(s), the Parties may resort to litigation and equitable relief to resolve disputes that still exist after good faith discussion and/or mediation. In addition, either Party may seek equitable relief (injunction and/or specific performance) at any time when immediate enforcement or cessation of performance under this Agreement is required to avoid foreseeable damages to relief-seeking Party's interests, including but not limited to intellectual property interests.

23. Attorney Fees and Costs. There will be no recovery of fees or costs for resolution which occurs through good faith discussion and/or mediation. The prevailing Party in any court action or proceeding shall be entitled to receive from the other Party all costs and

expenses, including reasonable attorneys' fees, incurred by the prevailing Party in connection with such action or proceeding.

24. Entire Agreement. This Agreement constitutes the entire agreement between the Parties and supersedes all previous agreements in this matter. There are no other written or oral agreements, representations, or understandings with respect to the subject matter of this Agreement. This Agreement and its terms may be amended, modified, or waived only by written agreement, signed by both Parties.

25. Non-waiver. No waiver will be binding on a Party unless it is in writing and signed by the Party making the waiver. A Party's waiver of a breach of a provision of this Agreement will not be a waiver of any other provision or a waiver of any subsequent breach of the same provision.

26. Execution by Counterpart and Facsimile. This Agreement may be executed in counterpart and by facsimile.

ACCEPTED AND AGREED AS OF THE DATE FIRST SHOWN ABOVE:

CLIENT

ARTIST

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

SCHEDULE "A"
DESIGN SERVICES & TIMELINE

1. Initial Design Development – Design Meeting

Artist will present Artist's exploration of design ideas for collaborative and individual efforts for the art program to a staff committee at a date and time to be agreed upon by the Artist and the Client. Such meeting must take place prior to _____.

2. Conceptual Design Presentation

Artist will submit a conceptual design to Mike Ekey by 5 p.m. on _____. City staff will provide any initial comments about the design to the Artist by 5 p.m. on _____.

Artist will present the Conceptual Design to the Public Art Committee for review, discussion, and/or approval at a meeting to be held on _____ at City Hall, 100 Municipal Circle, Raymore, MO 64083.

An additional presentation of the conceptual design to the City Council is scheduled on _____ at 7 p.m. at City Hall.

Presentation materials to illustrate the Conceptual Design may include:

- Drawings, sketches, models, images, computer renderings/animations, photographs
- Location of artwork, including site plans
- Physical properties of Artwork, including general size and scale of Artwork
- Narratives or other information related to the concept
- Desired impact of artwork
- Relationship to project goals
- Public access to Artwork
- Potential relationships and connections to other sites
- Preliminary assessment of requirements for sub-consultants, such as structural, lighting, electrical, mechanical, hydraulic, engineers/consultants
- Preliminary discussion of safety and maintenance considerations
- Preliminary assessment of installation methodology
- Preliminary discussion of budget
- Preliminary discussion of estimated schedule for fabrication and installation
- Opportunities to integrate artwork into construction

SCHEDULE "B"
PAYMENT SCHEDULE

Conceptual Design fees will be paid pursuant to an invoice submitted by Artist to Client according to the following schedule:

- **First Payment:** \$1,000 to be paid upon execution of this Agreement and receipt appropriate invoice and supporting from Artist
- **Second Payment:** \$1,500 to be paid upon presentation of complete Conceptual Design on _____ and receipt of appropriate invoice documentation for reimbursable expenses from Artist.
- Reimbursable Expenses shall be paid as submitted pursuant to this Agreement.