



**MEMORANDUM OF UNDERSTANDING  
BETWEEN THE CITY OF MCKINNEY, TEXAS  
AND \_\_\_\_\_**

This Memorandum of Understanding (“MOU”) between the City of McKinney, Texas (“City”), and \_\_\_\_\_ (“Artist”), collectively referred to as the “Parties,” sets forth the rights and responsibilities of the City and the Artist for the submission and funding of a maquette (“Maquette”) for an outdoor, public art sculpture (“Mitchell Park Sculpture”) related to the “Call to Artists Mitchell Park Sculpture” project. The “Maquette” includes items identified in Exhibit A.

**1. Term.** The rights granted under this MOU shall commence on November 6, 2018, and shall continue until the Artist submits the Maquette to the City and the City pays the Artist a fee for the Maquette.

**2. City’s Rights/Responsibilities.** The City shall pay the Artist a \$500 fee to create the sculpture Maquette, said fee to be paid within 30 days after the Maquette Submission Deadline, as defined below. The City’s acceptance of the Artist’s Design Concept submission or payment of the fee by the City does not guarantee a contract award for the *Mitchell Park Sculpture*. Upon submission, the Maquette becomes the property of the City. The Maquette Design may be chosen by the City for implementation and use in future projects, with the approval of the Artist. If the McKinney City Council awards the contract for the *Mitchell Park Sculpture* to the Artist, the City and the Artist will enter into a contract finalizing the terms and conditions of the assignment, consistent with this MOU.

**3. Artist’s Rights/Responsibilities.** The Artist shall submit the Maquette to **Janay Tieken, City of McKinney Housing and Community Development Department, 406 N. Tennessee, McKinney, Texas, 75069** on or before November 7, 2018 (“Submission Deadline”). If the Artist’s design concept as represented by the Maquette is selected and approved fabrication and installation for the *Mitchell Park Sculpture*, the Artist shall provide proof of insurance. If the McKinney City Council awards the contract for the *Mitchell Park Sculpture* to the Artist, the expected timeline for completion is on or before March 1, 2019, unless the City, in its sole discretion, establishes a later date based on intervening circumstances. The City reserves the right to modify the design concept as represented by the Maquette, with the Artist’s approval.

**4. Budget.** The total budget for the *Mitchell Park Sculpture*, including designer fees, administrative costs, travel, design, material, equipment, engineering, transportation, and insurance, shall not exceed Forty Thousand Dollars (\$40,000.00).

**5. Indemnification.** The Artist hereby assumes all liability and responsibility for and agrees to fully release, indemnify, hold harmless and defend the City and its officers, agents, servants, and employees, and the building owner, from and against any and all claims, suits, judgments, demands, damages, losses

and expenses, including but not limited to attorney's fees, for injury to or death of a person or damage to property, arising out of or in connection with, directly or indirectly, the actions of the Artist and caused by the negligence or intentional act or omission of the Artist, its officers, agents, employees, or other third parties from whom the Artist is legally liable. The provisions of this paragraph are solely for the benefit of the Parties and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

**6. Notices.** All notices or requests required or authorized hereunder shall be in writing and shall be deemed effective upon receipt (or refusal thereof) when (i) delivered in person, (ii) sent by U.S. Postal Service, postage prepaid, as overnight mail or certified mail, return receipt requested, (iii) delivered by a nationally recognized delivery service for same-day or overnight delivery, or (iv) electronic mail (email) (*with proof of confirmed transmission or acknowledgement of receipt*) to the respective Parties as follows:

To the Artist:

To the City: *CITY OF MCKINNEY*  
Housing and Community Development Department  
PO Box 517  
McKinney, TX. 75070  
Attn: Janay Tieken  
or  
406 N. Tennessee  
McKinney, TX. 75069  
Email: [jtieken@mckinneytexas.org](mailto:jtieken@mckinneytexas.org)

**7. Independent Contractor.** It is understood and agreed by the Parties that the Artist is an independent contractor, and further, that the Artist is not a part-time or full-time, permanent or temporary, employee of the City; therefore, the Artist is not entitled to any benefits otherwise made available or offered by the City to its employees.

**8. Assignability.** This MOU shall not be assignable by the Artist without the prior written consent of the City, and such consent shall not be unreasonably withheld, conditioned, or delayed.

**9. Waiver.** The failure of the City or the Artist to exercise any right given hereunder or to insist upon strict compliance with any term, condition, or agreement specified herein, shall not constitute a waiver of either Party's right to exercise such right or to demand strict compliance with any such term, condition, or agreement under this MOU.

**10. Governing Law.** This MOU shall be governed by and construed under the laws of the State of Texas. Venue shall lie exclusively in Collin County, Texas.

**11. Counterparts.** This MOU may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together will constitute one instrument.

**12. Amendments.** The City or the Artist may amend this MOU at any time during the term provided for herein, upon ten (10) days written notice of intent to amend, provided such amendments make specific reference to this MOU, and are executed in writing, signed by a duly authorized representative of both

parties.

**13. Severability.** The provisions of this MOU are severable and are intended by the Parties to be severable. If any word, sentence, clause, phrase, paragraph, section, or subdivision of this MOU is for any reason held by a court of competent jurisdiction to be contrary to law or contrary to any rule or regulation having the force and effect of the law, all remaining provisions of the MOU shall be enforced as if the invalid provision had never been included.

**14. Entire Agreement.** This MOU embodies the entire agreement between the Parties. All prior oral and written agreements relating to the subject of this MOU have been reduced to writing and are incorporated in this MOU.

**15. Legal Authority.** The Artist represents that he possesses the practical ability and legal authority to enter into and sign this MOU, to receive and manage the funds authorized by this MOU, and to perform the services he is obligated to perform hereunder. The City warrants that the person signing this MOU on its behalf has been authorized by the City to execute this MOU and to bind City to all terms herein set forth.

Agreed to and executed this the \_\_\_\_ day of November, 2018 (“Effective Date”).

**ARTIST:** \_\_\_\_\_

**CITY OF MCKINNEY, TEXAS**

By: \_\_\_\_\_  
Paul G. Grimes, City Manager

## **EXHIBIT A**

### **PROJECT DESCRIPTION**

The Artist/Artist-team will be asked to submit a Maquette for an original work which will be installed in Mitchell Park in McKinney, Texas. The Dr. Glenn Mitchell Memorial Park is located just west of the historic downtown McKinney Square and is a “family-friendly”, passive park. The site is bounded on all four sides by public streets, including the primary east-west traffic corridors leading in and out of Historic downtown McKinney: Virginia and Louisiana Streets.

The park measures 200 feet by 200 feet. It is divided into four equal quadrants by two intersecting walkways. At the junction of the two walkways is a large fountain, surrounded by park benches and complimented by four live oak trees, one at each interior apex of the four quadrants. The Park provides a peaceful respite to residents and visitors alike.

The land comprising Dr. Glenn Mitchell Park originally housed a church with native pecan trees along the Virginia Street side. Several of these mature pecan trees remain, forming a semicircle, roughly the shape of a comma, along the Virginia & Church Street corner. The City desires a sculpture that is of an appropriate and visible scale, while complementing the natural beauty of the park.

The goal of the sculpture is to enhance the visual experience of downtown visitors, pedestrians, shoppers, and restaurant diners as they view or come upon the work. The ideal submission should incorporate the utmost in design safety and be made with low-maintenance, high-quality materials, suitable for permanent exposure to exterior environments.

The work should reflect the pedestrian-friendly nature of the downtown McKinney area, which includes shops, galleries, restaurants, farmers markets, and frequent public events and celebrations.

The Maquette shall be a 1/10 scale model of the proposed sculpture. Any material appropriate for shipping and display may be used to create the Maquette

Along with the Maquette, please include:

- Dimensions, type of material and any engineering requirements for the base to which the sculpture will be mounted, if applicable
- Types of materials to be used for sculpture
  - Weather resistant
  - Care instructions
  - Cost of maintenance agreement
- Offsite or on-site construction
  - Approximate time frame for fabrication and installation