

DONATION AGREEMENT

THIS DONATION AGREEMENT (this "Agreement") is made this 1st day of April, 2018, by and between the City of Mexico City, acting by and through Miguel Ángel Mancera Espinosa, Governor of Mexico City, Mexico ("Donor"), and the City of San Antonio, Texas ("City"), acting by and through its Executive Director of the Department for Arts and Culture.

WITNESSETH:

WHEREAS, Donor is the owner of one (1) approximately fourteen foot (14') bronze, steel and concrete sculpture, created by international artist Jorge Marín ("Artist"), entitled "Alas de México" (the "Donated Property"), as described in more detail in Exhibit I, which is attached and incorporated into this Agreement; and

WHEREAS, Donor desires to donate the Donated Property to the City to celebrate the relationship between the two cities and City's Tricentennial Celebration, in accordance with the terms of this Agreement; and

WHEREAS, City acknowledges that the donation of the Donated Property will benefit City and its Tricentennial Celebration; and

WHEREAS, City desires to accept the donation of the Donated Property in accordance with the terms of this Agreement;

NOW, THEREFORE, in consideration of the foregoing and in consideration of the mutual promises, covenants and agreements set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

1. Closing. As a charitable donation, and without condition other than City's agreements set forth in this Agreement, Donor agrees to transfer to City all of its interest in the Donated Property at a closing (the "Closing") on a mutually agreed upon date subsequent to the date of this Agreement, but not later than the Acceptance Ceremony (as defined below). The transfer of the Donated Property may be by gift affidavit or other document of conveyance, should such be reasonably requested by City.

2. Condition of Donated Property. City acknowledges and agrees that Donor is donating, and City is accepting the Donated Property in new condition. Donor warrants that the Donated Property is safely constructed in accordance with all applicable laws, regulations, and City ordinances.

3. Delivery and Possession. Donor shall deliver possession of the Donated Property at Closing at which time title shall pass. At such time, said Donated Property shall become part of the City of San Antonio Art Collection. Further, the parties agree that delivery of the Donated Property shall be at the sole cost and expense of Donor. Placement and fastening of the sculpture on city property shall be the responsibility of City.

Upon the transfer of title from the Owners to the City under the terms of this Agreement

4. Copyrights. City shall have ownership and possession of the Artworks upon the transfer of title from the Donor to the City under the terms of this Agreement, including exclusive right to display the Artwork. Artist retains copyrights and intellectual property and/or patents related to their Artwork, including potentially those patents, related to materials used in the fabrication of the Artwork. Through a separate Copyright License Agreement, Artist will grant City a license to make any and all reproductions or derivatives in whatever form of the Artwork for educational, public relations, arts promotional, or any other non-commercial purpose and such uses will not result in any additional payments to Donor or Artist. Donor shall be responsible for getting Artist to sign such a Copyright License Agreement, in substantially the same form as Exhibit II, which is attached and incorporated into this Agreement.

5. Moral Rights. It is the understanding of the parties that by executing the Artist's Waiver of Moral Rights which is attached and incorporated into this Agreement as Exhibit III, the Artist has consented and agreed that upon passage of title in the Donated Property to City and upon final acceptance and permanent placement of the Donated Property on City property, namely Hemisfair Park Fountains in Hemisfair Park, City's future demolition, renovation or redevelopment of said City property may require the removal of the Donated Property and may result in the Donated Property's destruction, distortion, mutilation or modification.

6. Force Majeure. The parties to this Agreement shall be excused from performing an obligation under this Agreement if the performance of that obligation is prevented by a condition beyond the control of the parties, such as an act of God, war, public emergency, strike or other labor disturbance. An obligation affected beyond the control of the parties shall be suspended only for the duration of the condition. All parties to this Agreement shall take all reasonable steps during the existence of the condition to assure performance of their contractual obligations when the condition no longer exists.

7. Mutual Representations. The parties represent that they each have the full right, power, and authority to execute and deliver this Agreement and to consummate the transaction provided for without obtaining any further consents or approvals from, or the taking of any other actions with respect to third parties, subject to the approval of City's City Council.

8. City Representations. City covenants and represents to Donor that, as of the effective date of this Agreement and as of Closing:

(a) City is a municipality validly existing and in good standing under the laws of the State of Texas, has duly authorized the execution and performance of this Agreement, and such execution and performance will not violate any term of its City Charter;

(b) City has not had any dealings, negotiations or consultations with any broker, agent, representative, salesperson, employee or other intermediary in connection with this Agreement or the donation or acceptance of the Donated Property which would give rise to a broker's commission or finder's fee, commission or fee; and

(c) No payments have been made, directly or indirectly, by or on behalf of City to or for the benefit of Donor or any of Donor's employees or agents who may reasonably be expected to influence any Donor's decisions to enter into this Agreement, or the donation contemplated by this Agreement.

9. Donor's Representations. Donor covenants and represents to City that, as of the effective date of this Agreement and as of Closing, Donor:

(a) warrants and represents that it owns good and indefeasible title to the Donated Property and that there are no other sales contracts outstanding for acquisition, license or lease of the Donated Property;

(b) warrants and represents that there are no actions, suits, claims, assessments, or proceedings pending or, to the knowledge of Donor, threatened that could materially adversely affect the ownership, operation, or maintenance of the Donated Property or Donor's ability to perform under this Agreement;

(c) warrants and represents that all bills and other payments due with respect to the ownership, operation, and maintenance of the Donated Property have been paid or will be paid prior to the Closing Date; and

10. Closing Conditions. The Closing of this transaction shall be subject only to evidence to Donor's satisfaction that City:

(a) will permanently and prominently place and display the Donated Property at Hemisfair Park Fountains in San Antonio, Texas, with a plaque with an inscription indicating that it was donated by Donor and will be responsible for maintenance of the Donated Property in accordance with the information provided in the Technical and Maintenance Record attached and incorporated into this Agreement as Exhibit IV; and

(b) will host a ceremony, at City's cost, on or about May 4, 2018 accepting the Donated Property (the "Acceptance Ceremony"). The Acceptance Ceremony will be attended by as many of City's elected officials as reasonably practicable.

13. Non-Disclosure. Neither Donor nor City shall ever disclose to any third party the financial terms of this Donation Agreement, except as may be required by law or except as may be approved in writing by the other party. No press release shall be issued by either party without the prior written consent of the other party (which consent may be withheld or delayed in such party's sole and absolute discretion), and in no event shall any press release disclose the financial terms of this Agreement. Notwithstanding the foregoing, Donor acknowledges and understands that City is subject to the Texas Public Information Act ("Act") and that the financial terms are subject to this Act.

14. Notices.

(a) Any notice required or permitted under this Agreement shall be given in writing and shall be effective for all purposes if hand delivered to the party designated below or if sent by (a) certified or registered United States mail, postage prepaid; or (b) by expedited delivery service, either commercial or United States Postal Service, with proof of delivery; or (c) by telecopy (provided that such telecopy is confirmed by expedited delivery service or by mail in the manner previously described), addressed as follows:

If to Donor:

Representing Government of Mexico City:
Claudio Ruz Gutiérrez
Director General de Protocolo y Diplomacia

Coordinación General de Asuntos Internacionales
Jefatura de Gobierno GDF
República de Chile No.6, Centro Histórico
Delegación Cuauhtémoc
C.P. 06010 México, DF
Mexico

If to the City:

City of San Antonio
Department of Arts & Culture
Attn: Debbie Racca-Sittre
115 Plaza de Armas, Suite 102
San Antonio, Texas 78205

or to such other address and person as shall be designated from time to time by either party in a written notice to the other in the manner provided for in this paragraph. The notice shall be deemed to have been given at the time of delivery if hand delivered, or in the case of registered or certified mail, three (3) business days after deposit in the United States mail, or if by expedited delivery, upon first attempted delivery on a business day. A party receiving notice that does not comply with the technical requirements for notice under this paragraph may elect to waive any deficiencies and treat the notice as having been properly given.

15. Books and Records.

Except as otherwise specifically provided in this Agreement, each party shall be responsible for any expenses incurred by such party in connection with this Agreement.

For a period of at four (4) years from the effective date of this Agreement, City shall maintain such books and records (collectively, "Records") as are necessary to substantiate that all warranties made by City in this Agreement are true and accurate in all respects and it is in full compliance with this Agreement. All Records shall be maintained in accordance with generally accepted accounting principles consistently applied or as otherwise required by law. Donor and/or their representatives shall have the right at any time during normal business hours, upon two (2) business days' notice, to examine said Records.

16. No Waiver; Survival of Provisions. No provision of this Agreement shall be waived or released except by a written waiver or release signed by the party against whom such waiver is asserted. The provisions of this Agreement shall survive the conveyance of the Donated Property, and shall not be merged, or deemed to be merged, in any deed delivered by Donor at Closing.

17. Successors. The provisions of this Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the parties.

18. Counterparts. This Agreement may be signed in separate counterparts each of which shall be an original, but all of which shall constitute one and the same instrument.

Signatures on following page

IN WITNESS WHEREOF, the parties have executed this Agreement, in duplicate originals, as of the date first above written.

CITY OF SAN ANTONIO, TEXAS

MIGUEL ÁNGEL MANCERA ESPINOSA

Debbie Racca-Sittre
Executive Director,
Department of Arts & Culture

Claudio Ruz Gutiérrez
Director General of Protocol and Diplomacy
General Coordination for International Affairs
Mexico City Government

ATTEST:

City Clerk

Approved as to Form:

City Attorney

Exhibit I: Description of Artwork

Exhibit II: Copyright License

Exhibit III: Artist's Waiver of Moral Rights

Exhibit IV: Technical and Maintenance Record

EXHIBIT I

DESCRIPTION OF ARTWORK



Title/Date: *Alas de México (Wings of Mexico)*, 2010-2018
Artist/Author: Jorge Marín
Medium: Bronze, steel and concrete
Dimensions: 14' X 11' X 8.5' feet
Value: \$50,000.00

The *Wings of Mexico (Alas)* is an interactive sculpture composed of a pair of large cast bronze feathered wings suspended on a frame that is installed on a large base with steps. Viewers are allowed to climb up onto the platform and steps to pose for photographs with the wings behind them.

Wings of Mexico was first exhibited in Mexico City along the Paseo de la Reforma in 2010. This sculpture is one of several in an edition that have been installed in exhibitions and permanent installations in major cities world-wide. Permanent installations are in Singapore, Tel Aviv, Los Angeles, Quebec, Berlin as well as Mexico City.

EXHIBIT II

ARTIST'S WAIVER OF MORAL RIGHTS

WHEREAS, the government of Mexico City ("Donor") employed the artist Jorge Marín ("Artist"), to create a sculpture entitled "Alas de México" ("Sculpture"), to be given as a gift to the City of San Antonio ("City"), in order to promote and foster the bonds of friendship between the two cities and in celebration of City's Tricentennial Celebration; and

WHEREAS, City intends to permanently locate the Sculpture on City property at Hemisfair Park Fountains in San Antonio, Texas ("Location"); **NOW THEREFORE:**

Artist consents and agrees to the donation of the Sculpture for permanent placement on City property at the Location. Artist acknowledges that the incorporation and installation of the Sculpture at the Location may subject the Sculpture to destruction, distortion, mutilation, or other modification if and when removed. Removal or relocation of the Sculpture, if practical and economically feasible, as determined by City in its sole discretion, will occur in conformity with City guidelines and policies. Artist agrees that a City decision made under this paragraph regarding if, when and how to remove the Sculpture is final.

Artist hereby expressly consents to both the installation into and removal from the Location of the Sculpture and expressly waives his Moral Rights to the Sculpture. It is agreed that if the Sculpture, or any portion thereof, is removed from the Location causing it or any part thereof to be destroyed, distorted, mutilated or modified in any way, the Sculpture may not thereafter be referred to as "a Sculpture by the Artist".

Artist understands that to the extent City is required to move or relocate the Sculpture and a suitable location on City Property cannot be located, or in the event that City no longer has the ability to display the Sculpture, the Sculpture shall be returned to Donor, should it so desire, with the relocation costs at Donor's sole cost and expense. Artist further understands that if City is required to relocate or disassemble the Sculpture, City will notify Artist, or his descendants or assigns, immediately.

Executed to be effective this the ____ day of _____, 2018.

ARTIST

Jorge Marín
Creator of the "Alas de México"

EXHIBIT III

COPYRIGHT LICENSE

This Copyright License (this "License") is made this _____ day of _____, 2017, by and between:

Artist: Jorge Marín		
Address: Av Alvaro Obregon No. 257 Col. Roma Mexico		
City: Ciudad de México	State: Mexico City	Zip: 06700

and the City of San Antonio, a Texas Home Rule Municipal Corporation ("CITY"), having its principal address at 100 South Flores, San Antonio, Texas 78205 (collectively referred to as the "Parties").

WHEREAS, ARTIST is the author and sole copyright owner of the following separate Work(s) entitled or known as:

Title: <i>Alas de México (Wings of Mexico)</i> , 2010-2018
Type of Work: Sculpture

WHEREAS, CITY wishes to reproduce, publish and distribute the Work(s);

WHEREAS, ARTIST desires to grant permission to CITY to reproduce, publish and distribute the Work(s) and has therefore agreed to license certain rights in the Work(s) to CITY as documented herein;

NOW, THEREFORE, in consideration of the goodwill associated with CITY's usage and for other good and valuable consideration, the receipt and sufficiency which is hereby acknowledged, the Parties agree as follows:"

ARTIST grants to CITY a royalty-free, non-assignable, non-exclusive, perpetual license to (a) reproduce the Works; (b) distribute copies of the Works to the public; (c) display the Works publicly; and (d) prepare derivative works based upon the Works. Pursuant to such License, ARTIST authorizes CITY to make, and to authorize the making of, photographs and other reproductions of the Work(s) for educational, public relations, arts promotional and other non-commercial purposes.

The Parties have read and understood this License, and hereinafter sign in their respective, representative capacities, effective as of the date written above.

CITY:

ARTIST:

Debbie Racca-Sittre
Director, Department of Arts & Culture

Jorge Marín
Artist

EXHIBIT IV
TECHNICAL AND MAINTENANCE RECORD

To be provided by Artist or Donor