

ORDINANCE 2020-01-30-0059

APPROVING THE DONATION AGREEMENT WITH ENRIQUE CARBAJAL, AKA SEBASTIAN, AND SIEMPRE MEXICO, INC. FOR THE DONATION OF THE SCULPTURE “LA PUERTA DE LA IGUALDAD” (THE DOOR OF EQUALITY).

* * * * *

WHEREAS, almost 20 years ago, the City of San Antonio received “Antorcha de Amistad” (The Torch of Friendship), a monumental gateway sculpture created by renowned Mexican sculptor Enrique Carbajal, known professionally as Sebastian, as a gift of state from the Mexican government and San Antonio’s Mexican business community; and

WHEREAS, in 2019, the City-wide exhibit “Sebastian in San Antonio: 50+ Years / 20+ Sites / 100+ Works” was coordinated by the Department of Arts & Culture and its collaborative partners in order to celebrate Sebastian’s more than 50-year career; and

WHEREAS, in 2020, a second downtown gateway sculpture by Sebastian entitled “La Puerta de la Igualdad” (The Door of Equality), representing the infinite struggle for justice and equality, is being gifted to the City of San Antonio and the piece was designed to be located at the center of the San Pedro Avenue roundabout; and

WHEREAS, the sculpture is valued at \$800,000.00 and is being donated in recognition of the City’s generosity and work on Sebastian’s City-wide retrospective, as well as a symbol of Sebastian’s love for San Antonio and passion for geometric symbolism; and

WHEREAS, the San Antonio Arts Commission approved the donation of the sculpture in November 2019; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

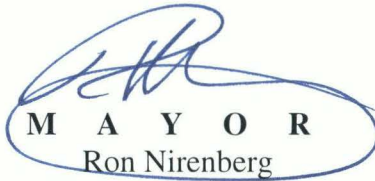
SECTION 1. The terms and conditions of a Donation Agreement between the City of San Antonio, Enrique Carbajal and Siempre Mexico, Inc. for the purpose of transferring possession and ownership of a sculpture entitled “La Puerta de la Igualdad” to the City, to be permanently located at the center of the San Pedro roundabout, are hereby approved and authorized. The City Manager, or his designee, is authorized to execute the Donation Agreement, a copy of which, previously executed by Enrique Carbajal and Siempre Mexcio, Inc., is attached to this Ordinance as **Exhibit I**.

SECTION 2. The City Manager, or his designee, is authorized to accept the donation of the “La Puerta de la Igualdad” sculpture, valued at \$800,000.00, from Enrique Carbajal and Siempre Mexico, Inc.

LB
01/30/20
Item No. 21

SECTION 3. This Ordinance shall take effect immediately upon the receipt of eight affirmative votes; otherwise it shall be effective ten days after its passage.


PASSED AND APPROVED this 30th day of January, 2020.




M A Y O R
Ron Nirenberg

ATTEST:

APPROVED AS TO FORM:

608 

Leticia M. Vacek, City Clerk



Andrew Segovia, City Attorney



City of San Antonio

City Council

January 30, 2020

Item: 21

File Number: 20-1052

Enactment Number:

2020-01-30-0059

Ordinance approving the Donation Agreement with Enrique Carbajal aka Sebastian Sculptor and Siempre Mexico, Inc. for the donation of the sculpture "La Puerta de la Igualdad" (The Door of Equality). [Lori Houston, Assistant City Manager; Debbie Racca-Sittre, Director, Arts & Culture]

passed

Aye: 11 Nirenberg, Treviño, Andrews-Sullivan, Viagran, Rocha Garcia, Gonzales, Cabello Havrda, Sandoval, Pelaez, Courage and Perry

LB
01/30/20
Item No. 21

Exhibit I

ART DONATION AGREEMENT

This Art Donation Agreement ("Agreement") is made this ____ day of _____, by and between Enrique Carbajal ("Artist") and Siempre Mexico, Inc. ("Donors") and the City of San Antonio, Texas, a Texas Municipal Corporation, acting by and through its Department for Arts and Culture ("City").

WITNESSETH:

WHEREAS, Donors are the owners of *La Puerta de la Igualdad (The Door of Equality)* ("Artwork") described in Exhibit I ("Donated Property"); and

WHEREAS, Donors desire to donate the Donated Property to City in accordance with the terms of this Agreement; and

WHEREAS, City acknowledges that the donation of the Donated Property will benefit City and desires to accept the donation of the Donated Property in accordance with the terms of this Agreement;

NOW, THEREFORE, in consideration of the foregoing, which is hereby deemed a contractual part hereof, and in consideration of the mutual promises, covenants and agreements hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties do agree as follows:

1. Closing. As a charitable donation, and without condition other than City's agreements as set forth in this Agreement, Donors agree 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. 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 Donors are donating, and City is accepting the Donated Property in an as-is condition. Donors warrant that the Donated Property is safely constructed in accordance with all applicable laws, regulations, and City ordinances.

3. **DONORS covenant and agree to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, CITY and the elected officials, employees, officers, directors, volunteers and representatives of CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death, intellectual property infringement and property damage, made upon CITY directly or indirectly arising out of, resulting from or related to DONORS' activities under this Agreement, including any acts or omissions of DONORS, any agent, officer, director, representative, employee, consultant or subcontractor of DONORS, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability**

resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT DONORS AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

The provisions of this INDEMNITY are solely for the benefit of the Parties and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. DONORS shall advise CITY in writing within 24 hours of any claim or demand against CITY or DONORS known to DONORS related to or arising out of DONORS' activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at DONORS' cost. CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving DONOR of any of its obligations under this Section.

4. Delivery and Possession. Donors shall deliver possession of the Donated Property at Closing at which time title shall pass. At such time, the Donated Property shall become part of the City of San Antonio Art Collection. Further, the Parties agree that delivery, placement, and installation of the Donated Property shall be at the sole cost and expense of City.

5. Copyrights. Artist warrants and represents that Artist owns all copyright in the Artwork and grants City a license, as provided for in the Copyright License, which is attached and incorporated as Exhibit IV.

6. Moral Rights. It is the understanding of the Parties that by executing the Artist's Waiver of Moral Rights which is attached and incorporated as Exhibit II, Artist has consented and agreed that upon passage of title in the Artwork to City and upon final acceptance and placement of the Artwork on City property, any removal or relocation of the Artwork, if practical and economically feasible as determined by City, in its sole discretion, will occur in conformity with the City's Public Art Policy. City's decisions regarding removal or relocation of the Artwork are final and may occur at any time. City has the right to remove the Artwork at any time. City's removal of the Artwork may result in the Artwork's distortion, mutilation or modification. In addition, in the event that any element of the Artwork constitutes a public safety hazard, in City's sole discretion, City has the right to remove only the element posing the public safety hazard without prior written notice to Artist. If Donor is not the Artist, Donor shall be responsible for providing City with Artist's consent to a Waiver of Moral Rights, which is attached and incorporated as Exhibit II.

Additionally, City has the right to donate or sell the Artwork at any time.

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 herein without obtaining any further consents or approvals from, or the taking of any other actions with respect to third parties.

8. City Representations. City represents to Donors that as of the date hereof 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 is exempt from Federal income tax and is a political subdivision of the State of Texas as required by Section 170(c)(1) of the Internal Revenue Code of 1986; is similarly exempt and classified under the tax laws of the State of Texas;

(c) 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

(d) No payments have been made, directly or indirectly, by or on behalf of City to or for the benefit of Donors' employee or agent who may reasonably be expected to influence any of Donors' decisions to enter into this Agreement, or the donation contemplated by this Agreement (as used herein "payment" shall include money, property, services and all other forms of consideration).

9. Donors' Representations. Donors' covenants, represents and warrants to City that as of the date of this Agreement and as of Closing, Donors:

(a) warrant and represent that they own 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) warrant and represent that there are no actions, suits, claims, assessments, or proceedings pending or, to the knowledge of Donors, threatened that could materially adversely affect the ownership, operation, or maintenance of the Donated Property or Donors' ability to perform under this Agreement; and

(c) warrant and represent 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.

10. Non-Disclosure. Neither Donors 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.

11. Notices. 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 the Donors:

Enrique Carbajal
Avenida Patriotismo 314
San Pedro de los Pinos, 03800

Siempre Mexico, Inc.
Alejandro Quiroz Pedrazzi
40 N.E. Loop 410, Suite 608
San Antonio, Texas, 78216

If to the City:

City of San Antonio
Department for Arts and Culture
Attn: Contract Manager
203 S. St. Mary's Street, Suite 120
San Antonio, Texas 78205

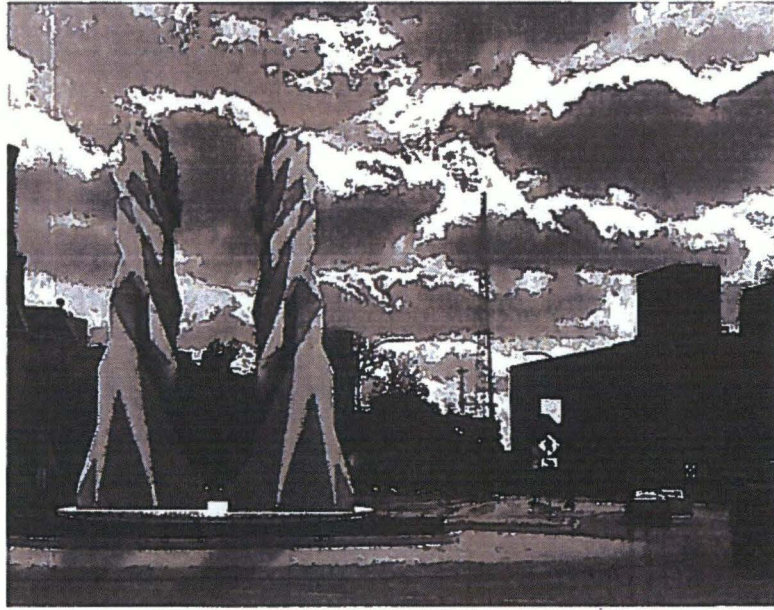
or to such other address and person as shall be designated from time to time by either party in a written notice to the other in the manner provided for in this paragraph. The notice shall be deemed to have been given at the time of delivery if hand delivered, or in the case of registered or certified 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.

12. Prior to Closing, Donors shall provide Technical and Maintenance Instructions, which shall be attached and incorporated as Exhibit III.

13. City shall install a plaque with an inscription indicating that Donated Property was donated by Donors, which shall include Artist's name, year in which the Donated Property was completed, Donated Property title, Donors' name, and the original commissioning agency, if any.

Signatures on following page

Exhibit I
Description of Artwork



La Puerta de la Igualdad (The Door of Equality), 2020
Sebastian Escultor
Iron
33' x 6' per column
Value: \$800,000

La Puerta de la Igualdad (The Door of Equality) will feature two 30' tall royal blue columns that stand side by side as tightly wound geometric pillars that rise into the sky leaving the center open to symbolize the infinite struggle for justice. The torqued twisted steel columns showcase the grind of the work done by human rights champions. These pillars are equal in strength and beauty representing the vision of equality. The piece, set as a gateway, symbolizes that San Antonio's door is always open, a nod to our tenacious history.

**Exhibit II
Waiver of Moral Rights**

WHEREAS, Artist created Artwork and Artwork was donated to the City of San Antonio; and

WHEREAS, the Artwork is intended to be located on City property in City facilities in San Antonio, Texas **NOW THEREFORE:**

Artist consents and agrees to the placement of the Artwork on City property in City facilities. Artist acknowledges that the incorporation and installation of the Artwork at City facilities may subject the Artwork to destruction, distortion, mutilation, or other modification if and when removed. Removal or relocation of the Artwork, if practical and economically feasible as determined by City in its sole discretion, will occur in conformity with the guidelines and review requirements listed in the City's Public Art San Antonio Policies and Guidelines. Artist agrees that a City decision made under this paragraph regarding if, when and how to remove the Artwork is final.

Artist hereby expressly consents to both the installation into and removal from City facilities of the Artwork and thereby expressly waives his Moral Rights to the Artwork. It is agreed that if the Artwork, 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 Artwork may not thereafter be referred to as "an Artwork by the Artist".

Executed to be effective this the ___ day of _____, 20__.

ARTIST


Enrique Carbajal
Artist and Donor

**Exhibit III
Technical and Maintenance Instructions**

The City of San Antonio will be responsible for the maintenance of the artwork at no additional cost to the Artist.

ARTIST: Enrique Carbajal, Sebastian Escultor

TITLE OF WORK: *La Puerta de la Igualdad (The Door of Equality)*

LOCATION OF WORK: San Antonio International Airport, 9800 Airport Blvd., San Antonio, TX 78216.

SPECIAL METHODS AND MATERIALS UTILIZED IN EXECUTION OF ARTWORK

A. MATERIALS AND CONSTRUCTION METHOD.

The sculpture was built with iron (A-36) plates, welded together, and painted with IMRON 3.5 HG PLUS (Dupont) Color RH-3705 C Purple 7019.

B. TECHNIQUE OR CONSTRUCTION METHOD

The sculpture is anchored to a concrete base.

C. FINISH (fixative coating, fire retardants, and sprays)

The sculpture is painted with IMRON 3.5 HG PLUS (Dupont) Color RH-3705 C Purple 7019 with 30% matte finish and mixed by COLOR TONE PAINT, INC. (619 Fredericksburg Rd., San Antonio, Texas, 78201). Phone number: 210-736-3143. Do not exceed 10% solvent. Cataliz 1: Paint 4.

D. FOUNDATION / INSTALLATION

The sculpture will be anchored to a concrete base.

E. YEARLY MAINTENANCE AND CARE OF ARTWORK

The artwork should be power-washed once a year.

F. PLACEMENT OF ARTWORK (cautions regarding sunlight, heat, etc.)

N/A

G. PACKING / SHIPPING INSTRUCTIONS

N/A

H. ADDITIONAL / PERTINENT INFORMATION

N/A

Exhibit IV
COPYRIGHT LICENSE

Artist provides expressed permission and a license to the City of San Antonio to utilize the likeness and images of the sculpture entitled *La Puerta de la Igualdad (The Door of Equality)* that has been donated by Donors for non-commercial purposes ("Donated Property").

For non-commercial purposes, Artist understands the applications of public interest for the City of San Antonio, being the tourism promotion, educational purposes and artistic events that can fulfill the goals of enhancing the United States-Mexican relations.

ARTIST


Enrique Carbajal
Artist and Donor