

DONATION AGREEMENT

THIS DONATION AGREEMENT (this "Agreement") is made this ___ day of _____, 2019, by and between the City of San Antonio, Texas, acting by and through its Executive Director of the Department of Arts & Culture ("Donor"), and the City of Gwangju, South Korea ("City"), acting by and through its _____.

WITNESSETH:

WHEREAS, Donor is the owner of one (1) approximately 16 foot tall lighted metal sculpture, created by Catherine "Cakky" Brawley ("Artist"), entitled "Light of Friendship, Kindred Cities" ("Artwork"), as described in more detail in Exhibit I, which is attached and incorporated into this Agreement; and

WHEREAS, Donor desires to donate the Artwork to City to celebrate the relationship between San Antonio and Gwangju and to foster continued ties, in accordance with the terms of this Agreement; and

WHEREAS, City acknowledges that the donation of the Artwork will benefit City and City desires to accept the donation of the Artwork 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 Artwork 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).

2. Condition of Artwork. City acknowledges and agrees that Donor is donating, and City is accepting the Artwork in new condition. City releases Donor from any and all liability related to the Artwork upon installation.

3. Delivery and Possession. Donor shall deliver possession of the Artwork at Closing at which time title shall pass. At such time, said Artwork shall become part of the City of Gwangju Art Collection. The parties agree that delivery of the Artwork shall be at the sole cost and expense of Donor. Placement and fastening/installation of the Artwork on the grounds at the Gwangju Convention Center located at 1159-2 Chipyeong-dong, Seo-gu, Gwangju, Korea ("Location") shall be the responsibility of City. Donor shall provide City with \$17,000.00 once invoice is received and processed, to cover cost of placement and fastening/installation of artwork at Location.

4. Copyrights. City shall have ownership and possession of the Artwork upon the transfer of title from the Donor to 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 the Artwork, including potentially those patents, related to materials used in the fabrication of the Artwork. Through the Public Art Design and Fabrication Agreement executed by Donor and Artist, Artist granted both Donor and City licenses to make any and all reproductions or derivatives, in whatever form, of the Artwork for

educational, public relations, arts promotional, commercial or any other purpose and such uses will not result in any additional payments to Artist.

5. Moral Rights. A Waiver of Moral Rights, previously executed by Artist under the Public Art Design and Fabrication Agreement with Donor, is attached and incorporated into this Agreement as Exhibit II.

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 Donor's City Council.

8. Korean Pavilion. All of the City of Gwangju's maintenance responsibilities under the 2010 Memorandum of Agreement concerning the gift to San Antonio of the Traditional Korean Pavilion are transferred to the City of San Antonio.

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

(a) has duly authorized the acceptance of the gift of the Artwork and the execution and performance of this Agreement;

(b) 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 Artwork which would give rise to a broker's commission or finder's fee, commission or fee; and

(c) will assist Donor to get the Artwork through customs at the port of entry.

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

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

(b) 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 Artwork or Donor's ability to perform under this Agreement; and

(c) represents that all bills and other payments due with respect to the ownership of the Artwork have been paid or will be paid prior to the Closing Date.

11. 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 Artwork at the Location, with a plaque with an inscription indicating that it was donated by Donor; however, should the Artwork be altered, damaged or modified, Donor may request removal of such plaque;

(b) will be responsible for maintenance of the Artwork in accordance with the information provided in the Technical and Maintenance Record provided by Artist, which is attached and incorporated into this Agreement as Exhibit III; and

(b) will host a ceremony, at City's cost, on or about October 24, 2019 accepting the Artwork (the "Acceptance Ceremony"). The Acceptance Ceremony will be attended by as many of Donor's and City's officials as reasonably practicable.

11. 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, City acknowledges and understands that Donor is subject to the Texas Public Information Act ("Act") and that the financial terms are subject to this Act.

12. 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:

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

If to City:

Gwangju Metropolitan City
111 Naebang-ro, Seo-gu,
Gwangju, 61945, Korea

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.

13. 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, both parties shall maintain such books and records (collectively, "Records") as are necessary to substantiate that all warranties made under this Agreement are true and accurate in all respects and that they are 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. Either party 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 belonging to the other party.

14. 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 Artwork.

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

16. 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.

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

CITY OF SAN ANTONIO, TEXAS

CITY OF GWANGJU, SOUTH KOREA

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

Name
Title

ATTEST:

City Clerk

Approved as to Form:

City Attorney

- Exhibit I: Description of Artwork
- Exhibit II: Artist's Waiver of Moral Rights
- Exhibit III: Technical and Maintenance Record

EXHIBIT I

DESCRIPTION OF ARTWORK

Light of Friendship, Kindred Cities

Gwangju and San Antonio each possess unique, individual histories and rich cultural and artistic identities. Both cities also have an important and iconic natural element that is an integral part of their identities: Gwangju - Mudeung Mountain, standing as a backdrop and protector, and San Antonio - the San Antonio River, running through the heart of the city as source of life. These natural wonders are constantly evolving, living elements that transcend time between generations.

Mudeung Mountain is represented in the center of the sculpture and faces both East and West, thus watching over Gwangju and San Antonio. While at the base, the San Antonio River surrounds and embraces both cities.

The use of these natural elements in the work symbolizes the intertwining bond, growth and friendship between Gwangju and San Antonio. The imagery is presented within a traditional votive luminaria candle to represent energy, light, warmth, wisdom and a vow of friendship.

The sixteen foot sculpture consists of brushed, formed and welded aluminum over a steel frame. Three unique kinetic LED sequences illuminate the San Antonio River at the base, Mudeung Mountain in the center, and the flame atop the sculpture.

EXHIBIT II

ARTIST'S WAIVER OF MORAL RIGHTS

WHEREAS, the City of San Antonio employed the artist Catherine "Cakky" Brawley ("Artist"), to create _____ ("Artwork") as a gift to the City of Gwangju; and

WHEREAS, the Artwork is intended to be *permanently* located in Gwangju, South Korea ("Location"); **NOW THEREFORE:**

Artist consents and agrees to the permanent placement of the Artwork at the Location. Artist acknowledges that the incorporation and installation of the Artwork at the Location 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, will be the sole decision of the City of Gwangju. Artist agrees that a decision made under this paragraph regarding if, when and how to remove the Artwork is final.

Artist expressly consents to both the installation into and removal from the Location of the Artwork and expressly waives her 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 24th day of May, 2018.

ARTIST



Catherine "Cakky" Brawley

EXHIBIT III

TECHNICAL AND MAINTENANCE RECORD

GENERAL INFORMATION

Location: Kim Dae-jung Convention Center, Gwangju, South Korea

Artist: Cakky Brawley

Title:

Materials: Aluminum, steel, LED lighting components

Dimensions: 16' (height) x 6' 3" diameter

LED Lighting Sequence: The LED fixtures have been programmed per artist's design and should not be changed unless authorized by the City of San Antonio and the artist.

Installation: October 2019

METAL

Material & Construction: Formed, welded, riveted & brushed aluminum

Maintenance: As needed, spray with appropriate aluminum or stainless steel cleaner ONLY and wipe with soft cloth.

LED SYSTEM COMPONENTS

Controller: Nicolaudie Architectural: STICK-DE3 wall mounted DMX controller. USB+ETHERNET connection. PC/Windows: ESA, ESA2, ESA PRO and SUITE2 software. MAC: ESA2 software.

<https://nicolaudie.com>

LED Fixtures & Cables:

BOTTOM (San Antonio River):

- LED Fixtures: Coloronix, SS2-RGB-3L-12-B45 Linear, fixture length: 24", Quantity: 7

MIDDLE (Mudeung Mountain):

- LED Fixtures: Coloronix, SS2-RGBW-8R-10-B25 Flood, fixture diameter: 8.25", Quantity: 2. Coloronix, SS2-RGBW-8R-04-B25 Flood, fixture diameter: 5.5", Quantity: 2
- Power Connector Cables: SWR-PWR-WL-80 80", Quantity: 3
- Data Connector Cables: SWR-DMX-WL-80 80", Quantity: 3

TOP (Flame):

- LED Fixtures: SS2-RGBW-8R-04-B25 Flood, fixture diameter: 5.5", Quantity: 8
- Power Connector Cables: SWR-PWR-WL-80 80", Quantity: 7
- Data Connector Cables: SWR-DMX-WL-80 80", Quantity: 7

Misc. Cables:

- Power Cable: SWR-PWR-WL-60-PI
- Data Cable: SWR-DMX-WL-300

www.coloronix.com

LED Fixture Attachment & Wiring Connections: The fixtures are attached to the sculpture with screws and connected to one another with a jumper cable.. Each fixture angle is adjustable and currently aimed in appropriate direction. The BOTTOM fixtures “jump” to the MIDDLE fixtures via a hole in the top portion of the ring. The MIDDLE fixtures then connect to the TOP fixtures with cables. The fixtures connect to the controller which is mounted on a wall located in the Convention Center.

Maintenance: To remove/replace fixtures:

BOTTOM: To access the fixtures, remove screws on both sides of the aluminum base panels, move metal sculpture component and set aside, unscrew fixture and disconnect jumper cables.

MIDDLE: To access the fixtures, remove screws on both sides of the aluminum cylinder, move metal sculpture component and set aside, disconnect jumper cables and unscrew fixture.

TOP: The top fixtures are accessible without removing any sculpture components. Disconnect jumper cables and unscrew fixture.