

## CITY OF SANTA FE

## DONATED ARTWORK AGREEMENT

THIS AGREEMENT is made and entered into by and between the City of Santa Fe (the "City") and Jorge Luis Bernal (the "Donor Artist"). The date of this Agreement shall be the date when it is executed by the City and the Donor Artist, whichever occurs last.

RECITALS

Whereas, Donor Artist has agreed to donate a ceramic and steel sculpture, "Tree of Knowledge" (Exhibit A) (the "Artwork") to be located in the rear courtyard of the Southside Library, 6599 Jaguar Drive, Santa Fe, NM 87501 (the "Site"); and

Whereas, the Donor Artist has agreed to provide the Artwork at no cost to the City; and

Whereas, the City has agreed to accept the Artwork;

Therefore, both parties agree to the following terms and conditions:

1. TITLE, OWNERSHIP AND REPRODUCTION RIGHTS

A. Title to the Artwork shall pass to the City upon execution of this Agreement.

B. The Donor Artist retains all rights under the Copyright Act of 1976, 17 U.S.C. § 101 et seq., as the sole author of the Artwork for the duration of the copyright.

C. The Donor Artist grants to the City and its assignees an irrevocable license to make two-dimensional reproductions of the Artwork for non-commercial purposes, including, but not limited to, reproductions used in brochures, media, publicity, online applications, social media, and exhibition catalogues or other similar publications.

D. The Donor Artist is responsible, at his expense, for registering with the United States Register of Copyrights, a copyright of the Artwork in the artist's name.

E. The City is not responsible for any third party infringement of artist's

copyright and not responsible for protecting the intellectual property rights of artist.

2. IDENTIFICATION PLAQUE

The Donor Artist shall be responsible for the cost of selection, fabrication and installation of an identification plaque naming the Artist, title of the Artwork and date of donation.

3. EXPECTED LIFE OF THE ARTWORK

The City and the Donor Artist agree that the expected life of the Artwork is ten (10) years from installation.

4. MAINTENANCE

A. The City shall have the exclusive right to determine whether repairs to, or restoration of the Artwork will be made. Such determination will take into account the expected life of the Artwork as defined in Article 3 of this Agreement.

B. The City shall make a reasonable attempt to contact the Donor Artist for advice concerning problems relating to the maintenance of the Artwork. Should the City decide to make repairs to, or restoration of the Artwork during the agreed lifespan of the Artwork, the City may enter into an agreement with the Donor Artist perform the work; may opt to do the work itself; or may contact with another party to do the work.

5. REMOVAL OR DESTRUCTION

A. The Donor Artist acknowledges that by its nature, public art is may be subject to unforeseen or unavoidable damage or destruction.

B. The Donor Artist therefore agrees that the City shall have the absolute right to remove, relocate, move, transport or transfer (such actions as being referred to herein after as "Alterations") the Artwork at such time as the City shall deem it necessary.

C. The City shall make a good faith effort to provide the Donor Artist with prior written notice of the City's intention to undertake any alterations of the Artwork.

6. FUTURE SITE DEVELOPMENT

A. The City and the Donor Artist acknowledge that future site development within the immediate vicinity of the Artwork may change the intended appearance and character of the Artwork and/or necessitate its removal.

7. DONOR'S ADDRESS

The Donor Artist shall notify the City of changes in address. The failure to do so shall be deemed a waiver by the Donor Artist of the rights provided in this Agreement which require the express consent or notification of the Donor Artist, if such failure prevents the City from locating the Donor Artist.

8. INDEMNIFICATION

The Donor Artist shall indemnify, hold harmless and defend the City from all losses, damages, claims or judgments, including payments of all attorneys' fees and costs on account of any suit, judgment, execution, claim, action or demand whatsoever arising from Donor Artist's performance under this Agreement as well as the performance of Donor Artist's employees, agents, representatives and subcontractors.

9. NEW MEXICO TORT CLAIMS ACT

Any liability incurred by the City of Santa Fe in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1, et. seq. NMSA 1978, as amended. The City and its "public employees" as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense and do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

10. THIRD PARTY BENEFICIARIES

By entering into this Agreement, the parties do not intend to create any right, title or interest in or for the benefit of any person other than the City and the Donor Artist. No person shall claim any right, title or interest under this Agreement or seek to enforce this Agreement as a third party beneficiary of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date set forth below.

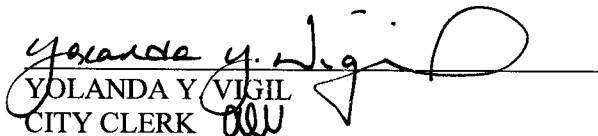
CITY OF SANTA FE:



ERIK LITZENBERG  
CITY MANAGER

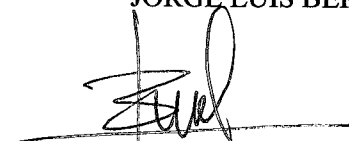
DATE: 11/29/19

ATTEST:



YOLANDA Y. VIGIL  
CITY CLERK

<sup>0</sup> DONOR ARTIST:  
JORGE LUIS BERNAL, ARTIST



NAME & TITLE

APPROVED AS TO FORM:



9/20/18  
ERIN MCSHERRY, CITY ATTORNEY

