

## **DONATION AGREEMENT**

**THIS DONATION AGREEMENT** is made and entered into by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado, hereinafter referred to as the "City," and **ADOLESCENT COUNSELING EXCHANGE**, a Colorado nonprofit corporation, with an address of 948 Santa Fe Drive, Denver, Colorado 80204 hereinafter referred to as the "Donor."

### **RECITALS:**

1. The Donor is a Colorado nonprofit corporation which has procured a work of art for inclusion in the permanent collection of the City, in cooperation with the Denver Arts and Venues (DAV).

2. In consultation with the Donor, and in accordance with the procedures governing the selection of public art works, the City has identified a proposed public art piece consisting of a sculpture of Cesar Chavez (the "Work") which the City and the Donor wish to commission and install at the identified site in Cesar Chavez Park 4131 Tennyson Street in Denver, Colorado (the "Project").

3. In furtherance of the Project, the Donor entered into an agreement with Emanuel Martinez (the "Artist") to create the Work.

4. The Artist has completed the Work and the Donor and the City have reviewed and accepted the Work for installation on the Site.

5. Donor shall pay all costs to fund the installation of the Work and associated base(s) and other mounting devices. Donor shall coordinate the installation with the City's Department of Parks and Recreation as well as with DAV because of the location of the site being in City Park land.

6. In accordance with the terms and conditions of the gift specified herein, the City is willing to accept the donation of the Work.

**NOW, THEREFORE**, in consideration of the mutual agreements herein contained, and subject to the terms and conditions hereinafter stated, the parties hereto agree as follows:

1. **THE PROJECT:** The term "Project" or "Work" shall mean a public work of art as depicted on **Exhibit A** attached hereto and incorporated herein in the form of a sculpture of

Cesar Chavez as ultimately conceived, designed, fabricated, executed, stored, transported and installed at the site by the Artist.

2. **DONOR GIFT AND RELATED PROJECT RESPONSIBILITIES:** The Donor shall make a gift to the City of the Work for which it has paid with privately raised funds. The Donor hereby donates, grants, conveys, assigns and delivers to the City for the use and benefit of the people of Denver, all of the Donor's rights, title and interest in and to the Work as depicted on **Exhibit A**, and any contractual rights held by the Donor. The City has determined that the Work shall not require a major repair or rehabilitation and does not require Donor to provide any additional funds to maintain the donated Work under §2-258 of the Denver Revised Municipal Code (“DRMC”).

3. **COORDINATION AND LIAISON:** The Donor agrees that during performance under this Donation Agreement it shall fully coordinate all services hereunder with the City, including the City’s Director of DAV and the Manager of the Department of Parks and Recreation, or as otherwise directed by the City. The Donor further understands that the Director of DAV is the City's representative under this Donation Agreement through whom contractual services performed hereunder shall be coordinated, except for installation work which shall be coordinated with Manager of the Department of Parks and Recreation.

5. **TERM OF DONATION AGREEMENT:** The term of the Donation Agreement shall commence on the date of execution, and remain in effect for so long as the City owns the Work.

6. **APPROPRIATION:** It is understood and agreed that any payment obligation of the City associated with this donation, whether direct or contingent, shall extend only to funds appropriated annually by the Denver City Council for the purpose of this Donation Agreement, and paid into the Treasury of the City, and encumbered for the purpose of the Agreement. The City does not by the Agreement irrevocably pledge present cash reserves for payment or performance in future fiscal years. The Agreement does not and is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

7. **STATUS OF DONOR:** It is understood and agreed by and between the parties that the status of the Donor shall be that of an independent contractor and it is not intended, nor shall it be construed, that the Donor or any employee or sub-consultant is an employee, officer, or agent of the City under Chapter 18 of the Denver Revised Municipal Code for purposes of unemployment compensation, workers' compensation, or for any purpose whatsoever.

8. **WHEN RIGHTS AND REMEDIES NOT WAIVED:** In no event shall any acceptance by the City hereunder constitute or be construed to be a waiver by the City of any breach of term, covenant, or condition or any default which may then exist on the part of the Donor, and the rendering of any such acceptance when any such breach or default shall exist shall not impair or prejudice any right or remedy available to the City with respect to such breach or default; and no assent, expressed or implied, to any breach of any one or more terms, covenants, or conditions of the Donation Agreement shall be construed as a waiver of any succeeding or other breach.

10. **EXAMINATION OF RECORDS:** The Donor agrees that any duly authorized representative of the City, including the City Auditor or his representative, shall, at any time after the commencement of this Agreement, have access to and the right to examine any directly pertinent books, documents, papers and records of the Donor, involving transactions related to this Donation Agreement.

11. **VENUE, GOVERNING LAW:** Each and every term, condition, or covenant herein is subject to and shall be construed in accordance with the provisions of Colorado law, the Charter of the City and County of Denver and the ordinances, regulations, and Executive Orders enacted and/or promulgated pursuant thereto. The Charter and Revised Municipal Code of the City and County of Denver, as the same may be amended from time to time, are hereby expressly incorporated into this grant as if fully set out herein by this reference. Venue for any action arising hereunder shall be in the Denver County or Denver District Court in the City and County of Denver, Colorado.

12. **USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS:** The Donor, its officers, agents, and employees shall cooperate and comply with the provisions of Executive Order 94 and Attachment A thereto concerning the use, possession or sale of alcohol or drugs.

Violation of these provisions or refusal to cooperate with implementation of the policy can result in the City barring the Donor from City facilities or participating in City operations.

13. **ASSIGNMENT AND SUBCONTRACTING**: The City is not obligated or liable under this Donation Agreement to any party other than the Donor named herein.

14. **NO DISCRIMINATION IN EMPLOYMENT**: In connection with the performance of work under this Donation Agreement, the Donor agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability; and the Donor further agrees to insert the foregoing provision in all subcontracts hereunder.

15. **INSURANCE**: As of the date of acceptance of the Work by the City which requires approval of City Council, the City will add the Work to its fine arts policy and will be responsible for risk associated with ownership of the Work. Donor agrees that it is responsible for risks related to installation of the Work and shall provide insurance coverage as it deems appropriate for protection of the City and its appointed and elected officials, agents and employees for, from and against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the installation of the Work performed under this Agreement (“Claims”), unless such Claims have been specifically determined by the trier of fact to be the sole negligence or willful misconduct of the City. This insurance obligation shall survive the expiration or termination of this Agreement until the running of all applicable statutes of limitation.

16. **CONFLICT OF INTEREST**: No employee of the City shall have any personal or beneficial interest in the services or property described in the Agreement; and the Donor shall not hire, or contract for services with, any employee or officer of the City that would be in violation of the City’s Code of Ethics, D.R.M.C. §2-51, et seq. or the Charter §§ 1.2.8, 1.2.9, and 1.2.12.

17. **NO THIRD PARTY BENEFICIARY:** It is expressly understood and agreed that enforcement of the terms and conditions of this Donation Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the City and the Donor, and nothing contained in this grant shall give or allow any such claim or right of action by any other or third person on such grant, including but not limited to subcontractors, sub-consultants, and suppliers. It is the express intention of the City and the Donor that any person other than the City the Donor receiving services or benefits under this grant shall be deemed to be an incidental beneficiary only.

18. **DISPUTES:** All disputes of whatsoever nature between the City and Donor regarding this Donation Agreement shall be resolved by administrative hearings pursuant to Denver Revised Municipal Code 56-106, with the DAV Director acting in the place of the referenced agency head.

19. **NOTICES:** All notices required by the terms of the Agreement must be hand delivered, sent by overnight courier service, mailed by certified mail, return receipt requested, or mailed via United States mail, postage prepaid, if to Donor at the address first above written, and if to the City at:

Director of Denver Arts and Venues  
144 West Colfax Avenue  
Denver, Colorado 80202

With a copy of any such notice to:

Denver City Attorney's Office  
1437 Bannock St., Room 353  
Denver, Colorado 80202

Notices hand delivered or sent by overnight courier are effective upon delivery. Notices sent by certified mail are effective upon receipt. Notices sent by mail are effective upon deposit with the U.S. Postal Service. The parties may designate substitute addresses where or persons to whom notices are to be mailed or delivered. However, these substitutions will not become effective until actual receipt of written notification.

20. **TAXES, CHARGES AND PENALTIES:** The City shall not pay or be liable for any claimed interest, late charges, fees, taxes or penalties of any nature, except as required by the City's Revised Municipal Code.

21. **PARAGRAPH HEADINGS:** The captions and headings set forth herein are for convenience of reference only, and shall not be construed so as to define or limit the terms and provisions hereof.

22. **SEVERABILITY:** It is understood and agreed by the parties hereto that if any part, term, or provision of this Donation Agreement is by the courts held to be illegal or in conflict with any law of the State of Colorado, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the grant did not contain the particular part, term, or provision held to be invalid.

23. **AGREEMENT AS COMPLETE INTEGRATION; AMENDMENTS:** This Agreement is intended as the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless embodied herein in writing. No subsequent notation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a written amendatory or other agreement properly executed by the parties. This Agreement and any amendments shall be binding upon the parties, their successors and assigns.

24. **LEGAL AUTHORITY:**

A. The Donor assures and guarantees that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this Donation Agreement.

B. The person or persons signing and executing this Donation Agreement on behalf of Donor do hereby warrant and guarantee that he/she or they have been fully authorized by the Donor, as applicable, to execute this Donation Agreement on behalf of the Donor and to validly and legally bind the Donor to all the terms, performances and provisions herein set forth.

25. **ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS:** Donor consents to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified

by the City. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

*Remainder of page left intentionally blank.  
Signatures follow.*

**Contract Control Number:**

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of

SEAL

**CITY AND COUNTY OF DENVER**

ATTEST:

By \_\_\_\_\_

\_\_\_\_\_

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_





Contract Control Number: MOACF-201522830-00

Contractor Name: ADOLESCENT COUNSELING EXCHANGE

By: Eloy Chavez

Name: Eloy Chavez  
(please print)

Title: Executive Director  
(please print)

ATTEST: [if required]

By: \_\_\_\_\_

Name: \_\_\_\_\_  
(please print)

Title: \_\_\_\_\_  
(please print)



**EXHIBIT A**

(exhibit follows)



