

GIFT ACCEPTANCE AGREEMENT

This Gift Acceptance Agreement (Agreement) is entered into as of the 25TH day of MARCH, 2025, by and between the City of Oklahoma City ("City") and the Greater Oklahoma City Chamber of Commerce, Inc., d/b/a Visit Oklahoma City (hereinafter called "Visit OKC").

WHEREAS, Visit OKC and the City warrant that they have procured a sculpture ("Work") by Creative Machines Inc. ("Artist"), pursuant to that certain Public Art Commission Agreement among and between the City, Artist and Visit OKC (the "Commission Agreement"), which Work is more fully described in Exhibit "A", attached hereto; and

WHEREAS, Visit OKC, seeks to donate the Work to City; and

WHEREAS, City desires to accept this gift, after its installation at United Way Plaza in Bricktown, (hereinafter called "Location"), and add the Work to City's Public Art Collection (Collection); and

WHEREAS, on the 17th day of February 2025 (Item No. III.A.), the Oklahoma City Arts Commission recommended acceptance of the Work to the Collection, pending approval of this Agreement by City and Visit OKC; and

WHEREAS, on the 17th day of February 2025 (Item No. III.A.), the Oklahoma City Arts Commission recommended the placement of the accepted Work for display at Location.

NOW, THEREFORE, in consideration of the mutual terms and provisions set forth herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

1. Gift to City. Visit OKC hereby gifts to City, the Work more fully described on Exhibit "A", attached hereto, subject to the terms and conditions of this Agreement and the Commission Agreement.

2. Public Display. Subject to the Commission Agreement, the Work shall be placed for public display at the Location, more fully described on Exhibit “B”, hereof. If, at any time, City elects to remove the Work from public display, other than temporarily for repair or maintenance, or if City elects to deaccession the Work from the Collection for either surplus sale and/or to destroy the Work, City shall so advise Visit OKC, in writing, prior to any such sale or destruction. In either such event, Visit OKC may, at its option, to be exercised within thirty (30) days following receipt of such notice, request that City convey, transfer and assign all City’s rights to the Work, under the Agreement. If Visit OKC requests such conveyance, transfer, and/or assignment, City shall make such conveyance, transfer, and/or assignment within thirty (30) days following receipt of notice. Visit OKC shall then remove the Work from Location within thirty (30) days following receipt of the conveyance, transfer, and/or assignment from City. If no response is received from Visit OKC within thirty (30) days following receipt of written notice from City, City may proceed with its plan to deaccession the Work from the collection and either offer the Work for surplus sale or destroy the Work.

3. Maintenance. VISIT OKC shall provide a one-time donation of \$10,000 (Ten Thousand Dollars and no/100) for the establishment of a repair, refurbishment, and replacement fund (“Fund”) for the Work, which donation shall be provided to the City on or about December 2025. City shall directly pay any artists/contractors from said Fund for any necessary extraordinary maintenance and repair of the Work, which is above routine maintenance, as determined by City.

4. Insurance. If accepted by City, the Work will be insured under the City’s Fine Arts Insurance Policy.

5. Indemnification. Visit OKC shall indemnify and hold harmless City, and its agents, officials, and employees against all suits or claims of any kind arising out of or from any failure to donate the Work in accordance with the terms of this Agreement and the Commission Agreement.

6. Visual Arts Rights Act. All parties to this Agreement acknowledge and agree that application of certain provisions of the Visual Artists Rights Act (VARA)

17 U.S.C. § 106A et seq., will be waived by Artist. A VARA waiver signed by Artist is attached to this Agreement as Exhibit “C” hereto.

7. Copyright. Artist shall retain all rights under 17 U.S.C. §101 et seq. (the Copyright Act of 1976), and all other rights in and to the Work, as set forth in the Commission Agreement. City shall have ownership and possession of the Work pursuant to this Agreement and the Commission Agreement.

8. Laws. Visit OKC shall comply with all applicable local, state, and federal laws, rules and regulations in its administration of this Agreement, including the Oklahoma City Municipal Code, the Oklahoma Statutes and any applicable provisions of the United States Code.

9. Termination; Termination for Cause. If the Gift Acceptance Agreement is terminated before the Work is fully completed and installed, this Agreement shall automatically terminate. In addition, if Visit OKC fails to fulfill any terms of this Agreement, City may give written notice to Visit OKC to correct such condition or default within thirty (30) calendar days, or that said failure to act, as required, may be considered a default of this Agreement. If Visit OKC does not correct such condition or default within the written notice period, City may then terminate this Agreement immediately, without cost or liability, by providing written Notice, as set forth in Paragraph 12 of this Agreement. Provided, however, that if Visit OKC has made substantial progress towards correcting the condition or default within the written notice period, Visit OKC shall have a reasonable time, not to exceed an additional sixty (30) days, to fully correct such condition or default, at the discretion of City.

10. Representations. Visit OKC warrants that it is an organization legally capable of conducting business in the State of Oklahoma. Visit OKC further warrants that Visit OKC has the resources and ability to fulfill its obligations under this Agreement, and that its authorized agents, as indicated below, are empowered to bind Visit OKC under the terms of this Agreement and the Commission Agreement.

11. Entire Agreement. This Agreement, together with the Commission Agreement, contains the entire understanding of the parties, and supersedes all prior

agreements, arrangements and understandings, whether written or oral, relating to the subject matter hereof, all of which are merged into this Agreement. In the event there is a conflict between this Agreement and the Commission Agreement, the Commission Agreement shall govern.

12. Notification: Notifications under this agreement shall be sent to:

If to City:

Office of Arts & Cultural Affairs
Attn: Arts Program Planner
Oklahoma City Planning Department
420 W. Main, 9th Floor
Oklahoma City, OK 73102
arts@okc.gov

If to Visit OKC:

Visit OKC
Attn: Lindsay Vidrine
Title: SVP of Destination Marketing
123 Park Ave.
Oklahoma City, OK 73102

13. Headings. The section headings contained in this Agreement are for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

[THIS SPACE INTENTIONALLY LEFT BLANK]

APPROVED by the City of Oklahoma City and SIGNED by the Mayor this
25TH day of MARCH, 2025.

Attest:

Amy K. Simpson
City Clerk



MAYOR

David Holt

APPROVED as to form and legality.

Patricia E. Douglas-Tally
Assistant Municipal Counselor

APPROVED by Greater Oklahoma City Chamber of Commerce, Inc (dba Visit
Oklahoma City) this 10th day of March, 2025.

Greater Oklahoma City Chamber of Commerce, Inc

Christy Gillenwater
By: Christy Gillenwater
As Is: President & CEO

Subscribed and sworn to before me this 10th day of March, 2025.

Debra Shumate
Notary Public



My Commission Expires: 11/20/28
My Commission Number: 12011019

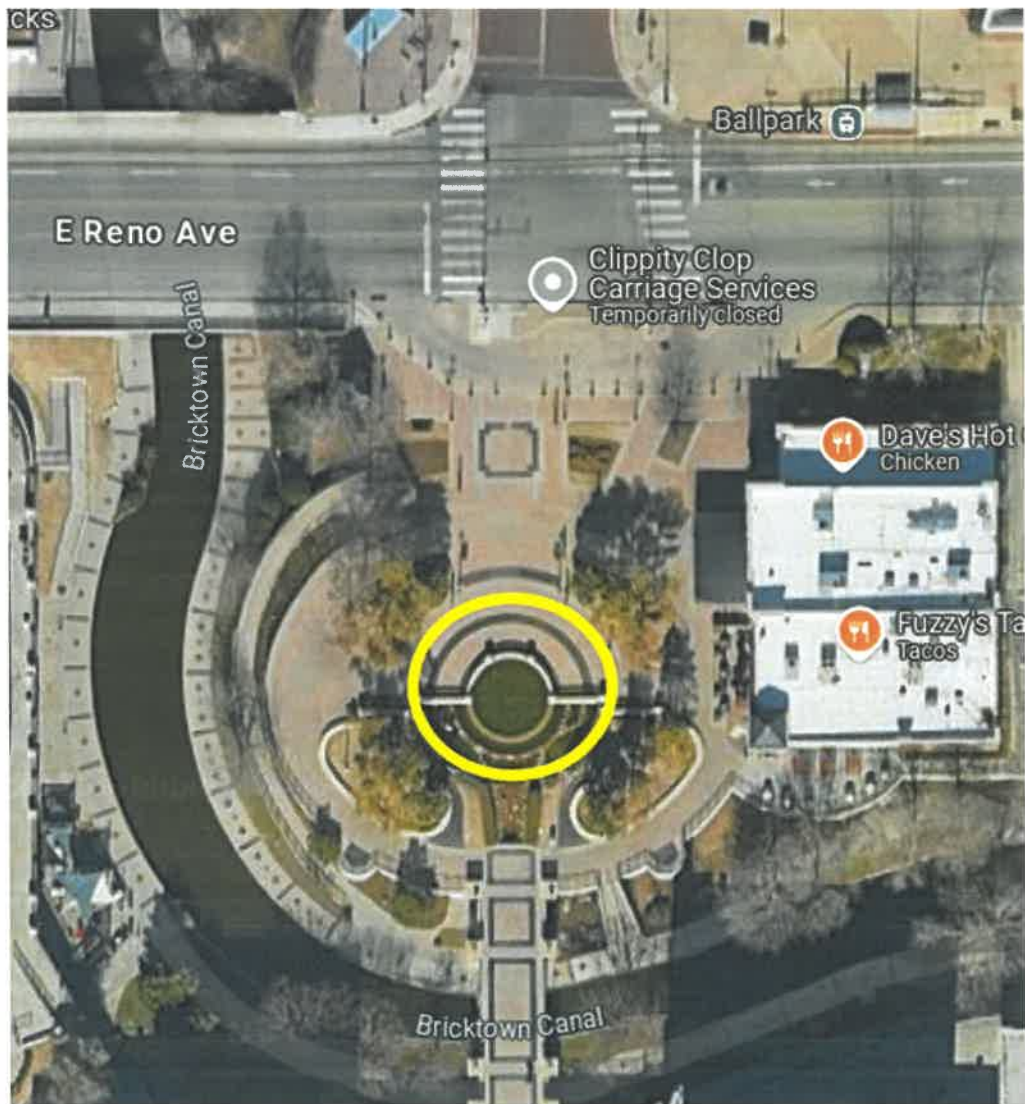
EXHIBIT A

Rendering of Sculpture



EXHIBIT B

Location



Located in the United Way Plaza just south of E. Reno Avenue and S. Micky Mantle Drive, 200 Johnny Bench Drive.

EXHIBIT C

VARA Waiver

General VARA Waiver for Works of Visual Art

To be completed by the Artist, Property Owner, and Purchaser (if different than Property Owner)

Joseph O'Connell

I, _____ (printed name of Artist) hereby acknowledge the rights of attribution and integrity generally conferred by Section 106A(a) of Title 17 of the U.S. Code, (The Visual Artists Rights Act of 1990, "VARA"), as well as any other rights of the same or similar nature granted by other federal, state, or international laws, that may accrue to me with respect to a certain work of art (Work):

Title of Work:

Cloud Embrace

Description of Work (dimensions, media/materials):

39'8" wide x 22'5" high, painted steel, LED lighting

Location/Address:

Bricktown Oklahoma City, OK, 35°27'49.7"N 97°30'33.2"W

Initial the following:

JO I hereby acknowledge and attest that I am an author of the Work and I am authorized and fully capable of waiving the rights conferred by VARA, in accordance with the waiver provision of 17 U.S.C. § 106A(e)(1).

JO I hereby acknowledge that the Work will be placed in the Location and will be, therefore, accessible to the public and be subject to environmental and other factors, both known and unknown.

JO I further acknowledge that the Work may be destroyed, in whole or in part, for any reason or no reason, including, but not limited to, abuse, vandalism, neglect, property destruction, pestilence, repairs or renovations to the Location, or any other necessity otherwise occasioned, which requires removal of the Work, in whole or in part, from the Location.

Therefore, of my own free act, I hereby waive my VARA rights with respect to the uses specified above and acknowledge that the City of Oklahoma City (City), or anyone duly authorized by the City, may have cause to remove said Work when to do so is determined to be in the best interest of the City. I hereby further acknowledge a requirement for removal of the Work to accomplish the best interests of the City may occur, and the removal requirement on the part of the City may occur without opportunity for prior notice to me.

As such, and of my own free will, I hereby permanently and irrevocably waive any and all VARA rights pursuant to 17 U.S.C. § 106(a)(3) to prevent any removal, impairment, distortion, mutilation, modification, or destruction, in whole or in part, of the Work for any reason or no reason, and for any use of the Work that is undertaken that results in the removal, impairment, distortion, mutilation, modification, or destruction, in whole or in part, of the Work. This waiver does not extend to the rights of attribution conferred by 17 U.S.C. § 106A(a)(1) or § 106A(a)(2).

Signature of Artist:

Joseph O'Connell

Date: March 5, 2025